

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY LEIGH COFFER,

Defendant-Appellant.

UNPUBLISHED
February 15, 2005

No. 250494
Kent Circuit Court
LC No. 02-010900-FC

Before: Schuette, P.J., and Fitzgerald and Bandstra, JJ.

PER CURIAM.

Defendant was charged with open murder. Following a jury trial, he was convicted of first-degree murder, MCL 750.316(1)(1)(a), and was sentenced to life imprisonment without parole. Defendant appeals as of right. We affirm.

This case arises from the ligature strangulation death of Leslie Hunter. There is no dispute that defendant killed the victim. Defendant argues, however, that there was insufficient evidence of premeditation and deliberation to convict him of first-degree murder. To determine whether defendant's claim that there was insufficient evidence to convict him has merit, "this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998).

To establish first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation and deliberation require sufficient time to allow the defendant to take a "second look." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995); *People v Furman*, 158 Mich App 302, 308; 404 NW2d 246 (1987). Here, the prosecutor presented evidence that the belt used to strangle the victim had a loop in it that made it appear like a noose. "To take the step of creating a weapon to kill shows premeditation and deliberation." *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). The evidence also indicated that the victim suffered three blunt impacts that may have caused a loss of consciousness or decreased consciousness. Further, the evidence presented at trial indicated that it takes fifteen to twenty seconds for a strangulation victim to lose consciousness, and that the strangulation force would have to be continued for at least two minutes after the victim loses consciousness to cause irreparable brain damage. Viewed in a light most favorable to the prosecution, sufficient evidence was presented to support

a finding that defendant had a “sufficient interval between the initial thought and the ultimate action . . . to afford a reasonable person an opportunity to take a second look at his contemplated actions.” *Furman, supra* at 308; see also *Anderson, supra* at 537.

Defendant also contends that the trial court abused its discretion when it admitted other acts evidence under MRE 404(b)(1) for the purpose of showing a common scheme, plan, or system in doing an act. The evidence involved a police report from Illinois detailing defendant’s alleged kidnapping, rape, and choking of a prostitute in Illinois. This Court reviews a trial court’s decision to admit evidence for abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

MRE 404(b) prohibits "evidence of other crimes, wrongs, or acts" to prove a defendant's character "in order to show action in conformity therewith." MRE 404(b)(1). Of course, 404(b) evidence is admissible when offered to prove "motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material...." *Id.* Four steps have been established for a court to follow in determining the admissibility of 404(b) evidence:

First, the prosecutor must offer the other acts evidence under something other than a character to conduct or propensity theory. MRE 404(b). Second, the evidence must be relevant under MRE 402, as enforced through MRE 104(b), to an issue of fact of consequence at trial. Third, under MRE 403, a " 'determination must be made whether the danger of undue prejudice substantially outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making decision of this kind under Rule 403.' " Finally, the trial court, upon request, may provide a limiting instruction under MRE 105. [*People v Sabin (After Remand)*, 463 Mich 43, 55-56; 614 NW2d 888 (2000), quoting *People v VanderVliet*, 444 Mich 52, 75; 508 NW2d 114 (1993), quoting advisory committee notes to FRE 404(b).]

If evidence is erroneously admitted under 404(b), a defendant must show that it is "more probable than not that the error was outcome determinative." *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001). The evidence must be viewed in the light most favorable to the prosecution. *People v Knox*, 256 Mich App 175, 195; 662 NW2d 482 (2003).

Even if we were to agree with defendant that the evidence was not subject to the 404(b) exceptions and was thus erroneously admitted, defendant fails to address if or how admitting the evidence was not harmless error. In any event, we cannot conclude, given the other evidence presented, as well as the prosecutor’s lack of reliance on the evidence in his closing argument, that it is more probable than not that the jury would not have convicted defendant had the evidence of the other bad act been suppressed.

Affirmed.

/s/ Bill Schuette
/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra