STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 15, 2011
v	No. 295533 Wayne Circuit Court
DALE ALLEN HURICK, Defendant-Appellant.	LC No. 09-000523-FC

Before: K.F. KELLY, P.J., and GLEICHER and STEPHENS, JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a). The trial court sentenced defendant to life imprisonment without the possibility of parole. Defendant appeals as of right. We affirm.

I

Defendant initially disputes the propriety of the trial court's denial of a requested adjournment "for the purpose of having independent forensic evaluations conducted on the issues of criminal responsibility, competency to stand trial and competency to waive *Miranda*[1]." In October 2009, shortly before trial, defendant urged the trial court to grant an adjournment for an independent examination of his competency to waive his *Miranda* rights at the time he made inculpatory statements to the police. We generally review for an abuse of discretion a trial court's ruling whether to grant an adjournment. *People v Coy*, 258 Mich App 1, 18; 669 NW2d 831 (2003). However, defendant did not ask for an adjournment to facilitate either an independent evaluation of his competency to stand trial[2] or an independent criminal

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[2] With respect to defendant's competency to stand trial, defendant expressly and affirmatively waived appellate claims of error relating to this issue on the record during an April 30, 2009 hearing. Defense counsel acknowledged her "receipt of a competency report" and "stipulate[d] as to the competency that he has come back as competent," the prosecutor agreed, and the court

responsibility examination. Consequently, we limit our consideration of these purported improprieties to whether any plain error affected defendant's substantial rights. *People v Cross*, 281 Mich App 737, 738; 760 NW2d 314 (2008).

"A motion or stipulation for a continuance must be based on good cause." *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002), citing MCR 2.503(B)(1). The court rule governing adjournments additionally envisions in pertinent part as follows:

> (1) A motion to adjourn a proceeding because of the unavailability of a witness or evidence must be made as soon as possible after ascertaining the facts.
>
> (2) An adjournment may be granted on the ground of unavailability of a witness or evidence only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence. [MCR 2.503(C).]

"Thus, to invoke the trial court's discretion to grant a continuance or adjournment, a defendant must show both good cause and diligence," as well as the materiality of the evidence or witness. *Coy*, 258 Mich App at 18. Yet, "[e]ven with good cause and due diligence, the trial court's denial of a request for an adjournment or continuance is not grounds for reversal unless the defendant demonstrates prejudice as a result of the abuse of discretion." *Id*. at 18-19.

In January 2009, shortly after defendant's circuit court arraignment, his counsel requested that the court order evaluations pertaining to defendant's competency to stand trial, competency to have waived his *Miranda* rights, and criminal responsibility. By the end of January 2009, the court had ordered all three evaluations at the center for forensic psychiatry. Although of the three evaluations, only the criminal responsibility examination appears in the trial court record or appended to the parties' briefs on appeal, the parties apparently do not dispute that the center for forensic psychiatry evaluations deemed defendant competent to stand trial, competent to waive his *Miranda* rights, and not suffering any mental defect or deficiency potentially relieving him of criminal responsibility for killing the victim. On June 28, 2009, defendant first moved to adjourn the July 6, 2009 scheduled trial date to accommodate the not-yet-conducted center for forensic psychiatry's competency to waive *Miranda* evaluation. On July 6, 2009, the trial court denied the motion, but the chief circuit court judge overruled the trial court and adjourned the trial date until October 26, 2009. Through a substitute, retained counsel, defendant next orally sought an adjournment of trial on October 16, 2009, solely to allow "for an independent evaluation on the competency to waive [*Miranda*]." The trial court agreed that it would refer defendant for an independent *Miranda* competency evaluation. However, the trial court refused to adjourn trial again to facilitate the independent evaluation. The trial court reiterated its refusal to adjourn trial when defense counsel made identical oral requests on October 21, 2009 and October 26, 2009.

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proceeded to "find that . . . Defendant is competent to stand trial based on the April 16, 2009 report . . . ." *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000).

Our review of the record reveals a glaring deficiency in the area of good cause warranting any adjournment of defendant's trial for the purpose of securing independent psychiatric evaluations. MCR 2.503(B)(1); *Jackson*, 467 Mich at 276; *Coy*, 258 Mich App at 18. On January 28, 2009, in response to the trial court's inquiry why defense counsel wanted an examination to delve into defendant's competency to waive his *Miranda* rights, counsel mentioned in nonspecific fashion, "Because he has a closed head injury as well as there is some schizophrenia. And I'm getting this from the family. And I've had conversations with [defendant] . . . and it's a little difficult to communicate with him." But the record otherwise remains entirely devoid of any medical records, testimony, affidavits or any offer of proof tending to substantiate that defendant suffered from a mental illness or infirmity that may have diminished or precluded his culpability for killing the victim.[3, 4] Notably, defendant also never notified the trial court that he intended to raise an insanity defense, in conformity with MCL 768.20a.

In light of defendant's failure to present any evidence suggesting that he labored under a mental defect or disease that could affect his culpability or capacity to stand trial or waive *Miranda*, he has not demonstrated any good cause to justify independent psychiatric evaluations of his competency to stand trial, competency to waive his *Miranda* rights, or criminal responsibility. Accordingly, defendant has not shown that the trial court abused its discretion in denying his unsupported motions to adjourn the proceedings to obtain an independent *Miranda* waiver evaluation, and defendant has not shown any plain error relating to his unpreserved claim concerning an independent criminal responsibility examination.

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[3] The only written motion in the record supplied this Court was defendant's June 28, 2009 motion to adjourn, and this motion contained no supporting exhibits pertaining to the status of defendant's mental health.

[4] We have reviewed the April 16, 2009 report authored by psychologist Krissie Fernandez, Ph.D., documenting her criminal responsibility examination of defendant in March 2009. Fernandez's report offers the following conclusion:

> Based on the defendant's presentation and available information, there appeared to be nothing to suggest mental retardation or mental illness during the time in question [December 2008]. Although the defendant has a history of mental health treatment and currently takes psychotropic medication, he denied experiencing any symptoms of mental illness during the time in question. The symptoms he has endorsed as of February 2009 are not consistent with typical psychiatric symptoms and likely reflect an attempt to feign symptoms of mental illness as well as memory impairment. Although Mr. Hurick denied the alleged offense, there was nothing to indicate he lacked the substantial capacity to appreciate the nature and quality or wrongfulness of his conduct, or to conform his conduct to the requirements of the law during the time in question. Given this, it is this examiner's opinion that there was no basis for a finding of legal insanity for the present alleged offense.

II

In defendant's next appellate contention, he insists that the trial court's denial of a "motion to adjourn . . . trial in order to conduct an evidentiary hearing to test whether his inculpatory statement to police was voluntary, knowing and intelligent constitute[d] an abuse of discretion and reversible error." Contrary to defendant's appellate characterization of the record, his trial counsel never specifically asked the trial court to hold a *Walker*[5] hearing to investigate whether his statements to the police in December 2008 qualified as voluntary, knowing and intelligent.[6] Therefore, we review this unpreserved issue only to determine whether any plain error affected defendant's substantial rights.[7] *Cross*, 281 Mich App at 738.

The defense at no point raised a challenge to the admissibility of the statements defendant made to the police. Although a trial court must sua sponte investigate the voluntary nature of a defendant's statement if "the evidence clearly and substantially reflects a question about the voluntary nature of a confession or implicates other due process concerns," the record reveals no such circumstances in this case. *People v Ray*, 431 Mich 260, 271; 430 NW2d 626 (1988). The parties do not dispute that the only forensic psychiatric evaluation in the record concluded that defendant had the capacity to waive his *Miranda* rights at the time he made his statements, and defendant presented no evidence tending to substantiate that he labored under any mental or emotional infirmity that might have placed in doubt the voluntary, knowing and intelligent nature of his statement. Furthermore, the available record gives rise to no suggestion of police coercion. The police arrested defendant on December 15, 2008, and a deceased police officer attempted to interview defendant on December 16, 2008. The sergeant who testified at trial recounted that he briefly and unsuccessfully interviewed defendant at some point on December 17, 2008, and that he later returned to discuss the victim's murder with defendant at defendant's request. The December 17, 2008 interviews encompassed approximately 90 minutes, and the sergeant denied noticing any signs that defendant had offered his statements unwillingly.

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[5] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

[6] The sole mention of a potential *Walker* hearing occurred before trial on May 14, 2009; after defense counsel apprised the court she did not yet have an evaluation of defendant's competency to waive *Miranda*, the trial court raised the subject of a potential *Walker* hearing when scheduling the July 6 trial date: "Well, then we'll have to make sure to schedule a *Walker* hearing and have the reports available."

[7] At trial, defense counsel did not object to the admissibility of the inculpatory statement defendant wrote on December 17, 2008. The prosecutor subsequently offered into evidence a 1-1/2-hour video recording of two separate interviews with defendant on December 17, 2008, the trial court gave defendant and his counsel time to review the recording together, and counsel twice affirmatively stated on the record that he had no objections to the recording. Defendant seemingly has waived any claim of appellate error concerning the video recorded interviews, the second of which yielded, and thus contained the same information as, the written statement the prosecutor earlier had admitted. *Carter*, 462 Mich at 214-216.

In summary, we detect no error or prejudice relating to the absence of a *Walker* hearing.[8]

III

Defendant lastly challenges the sufficiency of the evidence supporting his first-degree murder conviction, contending that only "purely circumstantial" evidence and his improperly admitted "inculpatory statement to a police interrogator" tended to prove his guilt. In defendant's estimation, "there was no credible or reliable evidence presented upon which to find him guilty beyond a reasonable doubt." When reviewing a criminal defendant's challenge to the sufficiency of the evidence, this Court considers all the evidence presented in the light most favorable to the prosecution to determine whether a reasonable juror could find the defendant's guilt proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). This Court must draw all reasonable inferences and make credibility choices in support of the jury's verdict; the Court should not interfere with the factfinder's role in determining witness credibility or the weight of the evidence. *Nowack*, 462 Mich at 400; *People v Elkhoja*, 251 Mich App 417, 442; 651 NW2d 408 (2002), vacated in part on other grounds 467 Mich 916 (2003).

To convict a defendant of 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 Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002). Premeditation and deliberation require sufficient time to permit the defendant to take a second look. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999); *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation and deliberation may be established by evidence of (1) the prior relationship between the defendant and the victim, (2) the defendant's actions before the murder, (3) the circumstances of the killing itself, including the type of weapon used and the location of the wounds inflicted, and (4) the defendant's conduct after the murder. *Abraham*, 234 Mich App at 656; *People v Berry (On Remand)*, 198 Mich App 123, 128; 497 NW2d 202 (1993). Circumstantial evidence and the reasonable inferences arising therefrom may suffice to prove the elements of a crime, and "[m]inimal circumstantial evidence is sufficient to prove an actor's state of mind." *Ortiz*, 249 Mich App at 301; *Abraham*, 234 Mich App at 656. "Proof of motive is not essential." *Abraham*, 234 Mich App at 657.

The victim and defendant shared a lengthy acquaintanceship or friendship; they spent most of the evening of December 11, 2008 drinking alcohol with other friends in a couple south Detroit bars. After midnight on December 12, 2008, defendant and the victim visited 1962 Cabot Street in Detroit, defendant's temporary residence, where they drank some more alcohol.

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[8] Defendant also mentions in the course of his argument concerning Issue II the trial court's denial of an adjournment on the first day of trial to permit defense counsel to investigate a potential "expert [witness] on false confessions." Because defendant does not elaborate an argument challenging the trial court's decision in this regard, we deem abandoned any claim relating to a false confession expert. *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004).

Another occupant of 1962 Cabot, Francisco Saadedra, testified that just before defendant and the victim walked out into the night together, he noticed "something on [defendant] that looked like the handle or a grip of some kind of tool like a hammer or screwdriver or something." Saadedra denied having noticed defendant in possession of the tool either when defendant and the victim first arrived at 1962 Cabot, or when defendant returned to 1962 Cabot alone, "10 or 15 minutes" after defendant and the victim had departed. Saadedra recalled that when defendant walked back inside 1962 Cabot, "[h]e came in and he went upstairs rapidly and when he came back down his hands and face had been washed," which Saadedra gleaned from the fact that when defendant came downstairs a few minutes later he was shirtless and had "water dripping off him." Saadedra nonetheless saw something red on defendant's hands, and that defendant "sat down in the dining room area to clean his shoes. They were black with a white streak on them and [Saadedra] could see something on the white streak. . . . Like blood or something red. . . . [Defendant] was using a paper towel and it was coming back stained red." At some point close to defendant's return, Saadedra noted that he had changed out of a white sweatshirt into a black one, and that he eventually left the house again.

Richard Bowles, who owned or leased 1962 Cabot, recounted that defendant had resided there temporarily in December 2008, and that Bowles met the victim when he arrived at 1962 Cabot with defendant early on December 12, 2008. Bowles remembered that "[e]verything [seemed] cool" with defendant and the victim during their brief visit, and that defendant and the victim left together. Fifteen or 20 minutes later, Bowles heard barking, which drew his attention outside, where he noticed the front gate ajar. Bowles described that he went outside, closed the gate, and "look[ed] up towards Verner [sic], there's nobody. I look to the left and [defendant] comes running out of the alley" "towards the house," alone and without a jacket of Bowles's that defendant had worn when he left with the victim. Defendant told Bowles "[h]e had to leave it and he'll get me another one," and on entering the house explained, "I ran through some mud or something like that and in the dining room he's cleaning his shoes up." Bowles related that "[h]e [defendant] goes upstairs. He comes down. He ends up changing all his clothes. . . . He ends up saying he's got something he's got to take care of, . . . [s]o, he puts on another coat of mine," and "leav[es] on foot again." Bowles recalled as follows defendant's return to 1962 Cabot:

> *Bowles*: . . . And a little while elapses . . . and he shows up again.
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> * * *
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> He's in the kitchen. . . . He signals me to come to the kitchen. So, I go in the kitchen and he says, I fucked dude [the victim] up pretty good. . . .
>
> * * *
>
> Not the name, but he said, dude. Like I fucked dude up pretty good. But he didn't say the name on it.
>
> *Q*: Okay. You knew who he was referring to?
>
> *Bowles*: Yeah.
>
> *Q*: What did he say he did to [the victim] or dude?

Bowles: . . . He didn't exactly say what he did to him though. I'm looking at him and he's cleaning off the sleeve of the other coat, the black one, and it kind of gets me mad cause . . .. this is the second coat tonight. I'm like, what did you do to this one? So, I looked at it and it's got scrapes on it. Like he used his sleeves to grab something and it's got some blood on it. He's trying to get it off, I think.

* * *

Q: And what made you think it was blood?

Bowles: Because it was like a little drip. Like I didn't know it was blood.

* * *

. . . [L]ike little spots. Like eye drop spots. . . .

Bowles added that defendant elaborated that he had struck the victim's head with "a stone or a brick or something like that." Bowles directed defendant to remove the bloody jacket and shoes from the house, prompting defendant to leave through the back door "and jump[] the fence."

In the course of a December 17, 2008 interview with Detroit police Sergeant Samuel Mackie, defendant authored a handwritten statement. The writing attributed the initial idea of the victim's attack to Bowles, who allegedly became angry after the victim had misrepresented whether he possessed any marijuana. According to defendant, Bowles recruited him to participate in the killing:

> . . . [Bowles] told me to walk [the victim] down the alley and he would catch up to us. [Bowles's] trust exercise was if he shot somebody, I would have to shoot that same person, therefore, we would have the same involvement, thus, [we] wouldn't go to the police. While in the alley, I noticed [Bowles] running up behind me. I then hit [the victim] twice with the hammer. [Bowles] asked me, what are you doing? Then, said finish him, but took the hammer from me and hit him over three times in the face that I remember. I ran off and [Bowles] followed. He threw the hammer in an industrial dumpster on Ca[bo]t and Longdale. We met back up at his house. I started to wash my shoes. [Bowles] told me don't bother because we have to burn everything. [Bowles] then told me, let's go check everything out. So, we walk out of our reach [sic] just to make it where we would be in the direction of walking up on the body. I notice [the victim] still breathing because blood was bubbling out of his nose. And then [Bowles] found a huge rock and slammed it on [the victim's] face. . . .

> Defendant further explained that he and Bowles had discarded or destroyed in different locations the clothing they had worn in the course of the killing.[9]

The police found the victim lying on his back in an alley, against a brick or concrete wall that bore blood spattering around and several feet above the victim's head; police officers opined at trial that the fatal attack took place as the victim was lying on the ground. A forensic examiner testified that his autopsy of the victim revealed "23 lacerations to the [victim's] head area," representing distinct instances of blunt force trauma to the victim's head. The victim suffered "multiple fractures of the facial bones, the top of the skull, the back of the skull, the inside of the skull, as well as, fragmentation and hemorrhage of both lobes of the brain."

Defendant accompanied the victim on the night before the murder, and was the sole individual witnesses last saw with the victim. The reasonable inferences from these facts, together with defendant's admissions to Bowles and his properly admitted inculpatory statements to Sergeant Mackie, sufficiently proved beyond a reasonable doubt defendant's identity as the victim's killer. And substantial other circumstantial evidence and reasonable inferences established beyond a reasonable doubt that defendant intentionally killed the victim with deliberation and premeditation. Most notably, defendant armed himself with a hammer or other tool immediately before he left with the victim the last time anyone saw the victim; the victim endured a high number of blunt force blows to his head as he was lying on his back; defendant admitted to Bowles that he had used a brick to strike the victim's head, and his statement to Sergeant Mackie that he hit the victim's head with a hammer; and defendant engaged in several instances of conduct after the killing, including his efforts to clean himself and his shoes immediately after returning alone from his recent departure with the victim, and his attempts to discard clothing after the crime. *Ortiz*, 249 Mich App at 301; see also *People v Haywood*, 209 Mich App 217, 229-230; 530 NW2d 497 (1995) (explaining that the defendant's attempt to clean up blood after the killing could be used to infer that he acted with deliberation and premeditation).

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[9] During defendant's statement, he drew two maps purportedly showing the different locations where he hid the clothes he had worn at the time of the murder, and where Bowles burned the clothing he had worn. The police found no discarded clothing in the vicinity where defendant supposedly discarded his clothing, which they never recovered. Following the second, "very detailed map" drawn by defendant, the police uncovered below six inches of snow two "severely burned" articles of clothing. The police also emptied the industrial dumpster defendant referenced in his statement, but found no hammer. At 1962 Cabot, the police scraped suspected blood samples from multiple surfaces and removed paper towels and napkins from two garbage receptacles. However, scientific testing on eight items submitted to a chemist at the Michigan State Police crime laboratory yielded no indications "of blood on any of the items submitted."

In conclusion, sufficient evidence supported the jury's rational determination beyond a reasonable doubt that defendant committed first-degree murder in killing the victim.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens