

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 17, 2013

v

JUNIOR LEE BEEBE, JR.,

No. 306389
Van Buren Circuit Court
LC No. 11-017517-FC

Defendant-Appellant.

Before: GLEICHER, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

A jury convicted defendant Junior Lee Beebe, Jr., of first-degree murder, MCL 750.316, for the killing of his girlfriend, Tonya Howarth, and second-degree murder, MCL 750.317, for the killing of Amy Henslee, the wife of defendant's cousin. The jury also convicted defendant of two counts of possession of a firearm during the commission of a felony, MCL 750.227b. The prosecutor presented sufficient evidence from which the jury could conclude beyond a reasonable doubt that defendant was the individual who killed Amy Henslee and that defendant killed Howarth with premeditation and deliberation rather than in self-defense. We therefore affirm defendant's convictions and sentences.

I. BACKGROUND

On Monday, January 24, 2011, Amy Henslee went missing from her home in a rural area outside of Bangor, Michigan. The home's sliding back door was open, the family dog was left tied up outside in the snow, and Amy's coat and shoes, but not purse, were gone. Amy could not have left the home alone because her husband, James Henslee, had driven the couple's only functioning car to work that day. A neighbor saw a black pick-up truck in the Henslee driveway that morning. James called his cousin, defendant, who owned a black truck. Defendant told James that he and his girlfriend, Tonya Howarth, stopped by the Henslee house at around 9:00 a.m., but no one was home. Over the next several days, James searched for Amy with the help of family, friends, and the police. Defendant even assisted, posting on Facebook that Amy was missing and asking anyone with information to come forward.

During this time, Howarth's grandparents called defendant's home to speak to Howarth and defendant's mother asked about her whereabouts. Defendant indicated that he had driven Howarth to her cousin's house and she was staying there. No one suspected that Howarth was also missing.

On Thursday, January 27, James Henslee continued the search for his wife employing the services of a private canine tracking unit. The search dog's behavior in the Henslee driveway suggested that Amy had left in a motor vehicle. Knowing that defendant had been at the house, James and the investigators travelled to a wooded lot that defendant was purchasing from his uncle, Phillip Beebe, on land contract. Defendant's truck was parked on the property, but defendant was not there. Phillip Beebe was on site and granted permission to search. The canine alerted at defendant's truck and then led its handler down a trail into the woods to a small camper-trailer. The handler noticed red spots in the snow and on the camper's door, which she suspected were blood. The handler then stopped the search and contacted law enforcement.

Michigan State Police officers arrived at the scene and immediately began investigating. They discovered additional spots of blood on the camper and in the snow. They also found a snow-mud-blood mixture on a tree near the camper and suspected that someone had dug a grave and hit the shovel against the tree to clean it.

During the search of the Beebe property, defendant's mother drove him to the site. Defendant had only intended to collect a generator he had stored on the property; however, Phillip Beebe told him that the officers needed to speak with him. Defendant approached the officers and answered a few preliminary questions. Defendant indicated that he had not seen Amy and repeated his story of travelling to the Henslee house on Monday morning with Howarth. When the officers asked if defendant knew anything about the suspected blood around the camper, defendant's demeanor changed. Defendant suddenly told the officers that he had been Amy's drug supplier in the past, selling her Vicodin. Defendant then indicated that he had been alone with Amy on Monday morning and the two were "making out" in the camper when Howarth barged in. Defendant claimed that a "feud" erupted, Howarth grabbed a loaded shotgun that was in the camper, and shot Amy. Defendant asserted that Howarth turned her attention to him and he wrestled her for the gun, shooting her in the process. The officers then took defendant into custody.

During a second interview at the Michigan State Police post, defendant provided further details of the day's events. Defendant claimed that he and Amy had been having an affair for approximately 18 months. On the day in question, he drove to the Henslee house, picked Amy up and took her to the camper to watch a videotape of his mixed martial arts competition from the weekend prior. Defendant indicated that he and Amy smoked a marijuana cigarette and then lay on the bed to become intimate. According to defendant, Howarth flung open the trailer door. Amy stood up and the two women argued. Defendant's .410 rifle was in the camper and Howarth grabbed it and shot Amy in the leg. Amy fell back to a sitting position on the bed and Howarth put the gun to Amy's chest and shot her dead. Howarth then pointed the gun at defendant and said, "You're next." The gun jammed when Howarth tried to chamber another shell. Defendant used the opportunity to wrestle Howarth for the weapon. Defendant claimed that during the battle, the gun somehow got behind Howarth's back and he accidentally fired it. Tonya dropped to the ground and defendant pointed the gun at her head and shot her again.

Defendant told the interrogating officers that he left Amy and Howarth's bodies in the camper. On Wednesday, he returned to cover his tracks. Defendant admitted to burying the women's bodies in a shallow grave just outside the camper door and using cleaning solution to wash the camper's interior. As snow had covered the grave by Thursday, the officers needed to use electronic mapping devices to discern where to dig. In the grave, they found shotgun shells, empty cement bags, cement that was beginning to harden, black garbage bags, blankets, duct tape, and clothes. The officers found Amy and Howarth's bodies approximately three feet below the surface. The officers searched the interior of the trailer and found many blood spots that defendant had missed during cleaning. These all belonged to Tonya or defendant. No DNA material inside the camper was conclusively matched to Amy. The officers also found several pellets in the camper door and floor that were ejected from a shotgun shell when fired. The pellets were consistent with those found inside Howarth's skull and were likely fired from the same shell. Defendant also directed the officers to the rifle, which he had hidden underneath a mattress in another trailer located on the property. Cellular material matching defendant's DNA profile was found on 12 locations on the rifle. Forensic investigators found no usable fingerprints, however.

Dr. Stephen Cohle conducted the autopsies on both Amy and Howarth's bodies. Amy had marijuana in her blood and urine. Amy had several abrasions, scratches, and bruises over her body, which were inflicted shortly before her death. James testified that Amy had no such wounds before she disappeared. Amy had a gunshot entrance wound on her left inner thigh. The pellets from the shotgun shell travelled upward toward Amy's pelvis, suggesting that Amy was either sitting down or was standing with her knee bent and her foot resting on a higher object when she was shot. The shot was fired within six inches of Amy's leg. Amy had a second gunshot wound to her left front chest. That shot was fired from two to three feet away and the angle at which the pellets travelled through her torso suggested that Amy was sitting and her shooter was standing. Dr. Cohle testified that the chest wound was fatal.

In relation to Howarth, Dr. Cohle testified that she had nicotine as well as methamphetamine and its byproducts in her system. Howarth had a complex wound on the back of her head. Howarth had been shot from the bottom of her scalp and the pellets from the shotgun shell deeply grazed the back of her head and exited from the top of her head. Howarth's skull was fractured in several places and the skin was shredded. Soot on Howarth's skull and tissues revealed that the gun had been pressed against her head. Howarth also had a bullet entrance wound behind her right ear. This shot was fired from approximately four feet away and travelled into the brain with no angle. The trajectory of the shotgun shell suggested that Howarth was lying on the ground at the time of the second shot.

II. SUFFICIENCY OF THE EVIDENCE

Defendant challenges the sufficiency of the evidence to support his convictions, arguing that the prosecutor failed to prove that *he* killed Amy and failed to disprove his claim of self-defense in relation to Howarth's shooting. When examining a challenge to the sufficiency of the evidence, we must review the evidence *de novo* in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the prosecutor proved the elements of the charged offense beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Circumstantial evidence, and the reasonable inferences drawn from that

evidence, can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). “[B]ecause it can be difficult to prove a defendant’s state of mind,” the jury’s resolution of such issues can be supported by “minimal circumstantial evidence” and may be inferred from the evidence. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). It is the jury’s sole province to weigh the evidence and adjudge witness credibility and we may not second guess those considerations. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Accordingly, we must “draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant’s challenge in relation to Amy must fail because it is based on witness credibility. Defendant is the only living witness to the shooting. He alone claimed that Howarth shot Amy and the jury disbelieved his tale. Supporting the jury’s verdict, the forensic team found only defendant’s DNA evidence on the .410 rifle used to shoot Amy. Additionally, defendant’s deceptive actions following Amy’s death, including his attempts to hide the bodies and clean up the scene, his false declarations of ignorance regarding Amy’s whereabouts, and his feigned pleas for information from the public evidence “consciousness of guilt.” *People v Unger*, 278 Mich App 210, 227; 749 NW2d 272 (2008). Moreover, defendant offered no explanation for the premortem bruises, scratches, and abrasions suffered by Amy, which otherwise implied that she had been involved in a struggle. The jurors adjudged the credibility of the witnesses, weighed the evidence, and made rational inferences from the information placed before them. We may not interfere with the jury’s determination that defendant, not Howarth, killed Amy.

The prosecutor also presented sufficient evidence to support defendant’s first-degree premeditated murder conviction in relation to Howarth. “The elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation.” *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). “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). “‘The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing.’” *Unger*, 278 Mich App at 229, quoting *Anderson*, 209 Mich App at 537.

Though not exclusive, factors that may be considered to establish premeditation include the following: (1) the previous relationship between the defendant and the victim; (2) the defendant’s actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. Premeditation and deliberation may be inferred from all the facts and circumstances, but the inferences must have support in the record and cannot be arrived at by mere speculation. [*People v Plummer*, 229 Mich App 293, 300-301; 581 NW2d 753 (1998) (citations omitted).]

“[S]elf-defense justifies otherwise punishable criminal conduct . . . if the defendant honestly believes his life is in imminent danger or that there is a threat of serious bodily harm and that it is necessary to exercise deadly force to prevent such harm to himself.” *People v Dupree*, 486 Mich 693, 707; 788 NW2d 399 (2010) (quotation marks and citation omitted); see also MCL 780.972 (the self-defense act). The defendant bears the burden to produce “some

evidence” tending to establish that he acted in self-defense. *Dupree*, 486 Mich at 709-710. The prosecution then bears the burden to disprove the defense beyond a reasonable doubt. *Id.*

The prosecutor presented sufficient evidence to establish defendant’s intent and to disprove defendant’s claim of self-defense. First, the prosecutor injected reasonable doubt regarding defendant’s honest belief that he was in danger of death or serious harm. Defendant is 5 feet and 6 inches tall and weighed 220 pounds at the time of the shooting. He had trained in mixed martial arts and competed in amateur competitions. Howarth, on the hand, was 5 feet and 8 inches tall but only 128 pounds. She suffered from scoliosis and back pain that prevented her from working. While defendant claimed that he was surprised because Howarth was “a lot stronger than [he] thought she was,” the jury could infer by the size difference that defendant did not honestly believe he was in serious danger of harm at Howarth’s hands.

Second, the physical evidence was inconsistent with defendant’s claim that he accidentally shot Howarth in the back of her head while struggling for the shotgun. Shotgun pellets matching those found in Howarth’s scalp had pierced the camper’s door around the doorknob. Dr. Cohle agreed that the trajectory of these pellets was consistent with defendant standing inside the camper and shooting Howarth in the back of the head as she “start[ed] to head out the door.” Further, assuming that defendant and Howarth were struggling face-to-face over the shotgun, Dr. Cohle found it “very unlikely” that Howarth could have been shot in the back of the head. The evidence suggests that Howarth was trying to escape when defendant first shot her and that defendant therefore had no need to act in self-defense.

Third, even if defendant’s first shot at Howarth was taken in self-defense, there is no evidence that defendant believed he was in continuing danger when he fired the second time. Dr. Cohle testified that the deep grazing wound to the back of Howarth’s head was fatal. Defendant admitted that Howarth fell down, or that he threw her down, and he shot her again. During questioning by Michigan State Police Trooper Paul Gonyea, defendant further agreed to the following damning description of events:

[Gonyea]- And my guess is, had she just shot Amy and you grabbed the gun and locked that gun up, cause you’re a big dude and no one’s getting that gun off of you once you have it, um, I doubt even I could, but the point is, at that point, had you just shut it down right there, all you had was Amy lying on the bed bleeding and [Howarth] took off like some lunatic in the woods, what are the odds that you probably would have called the police and said you needed help. [Howarth] just came here and shot her. I think you covering things up has more to do with you probably knew in your head that, I freaked out, I was hyped up, I just saw someone get shot and I shot her and I didn’t have to, she was down, I didn’t have to do that, now I’m going to be in a pickle. That’s probably, if I had to go out on a limb, I would say that that is why you said you didn’t know what to do and wanted to cover it up, right.

[Defendant]- Exactly right. [Emphasis added.]

In addition to effectively challenging defendant's self-defense claim, the prosecutor sufficiently supported his theory that defendant acted with premeditation and deliberation. The prosecutor presented evidence that Howarth and defendant had a "rocky" relationship. *Plummer*, 229 Mich App at 301 (holding that the parties' previous relationship is relevant to establish premeditation and deliberation). Defendant's mother testified that both Howarth and defendant were at times involved with other people. Defendant's mother and Howarth's daughter also testified that defendant may have physically abused Howarth in the past.

There was some evidence that defendant took steps before the shootings to prepare. See *id.* Defendant's mother testified that defendant usually kept his .410 rifle in a gun cabinet at her house. On January 24, 2011, however, defendant had inexplicably left the loaded gun in the camper. Second, defendant's mother supported defendant's claim that Howarth burst into the camper in a jealous rage by testifying that she drove Howarth to city hall that morning and then took Howarth to defendant's property hours before he expected her. Yet, a city employee who was walking through the municipal parking lot at the time in question contradicted that testimony. He testified that a person matching defendant's description waited in a blue truck while Howarth went inside city hall.

Moreover, the Michigan Supreme Court has held that evidence that a defendant took steps to conceal his crime, either during the act or after, tends to establish that he acted with premeditation and deliberation. *People v Gonzalez*, 468 Mich 636, 641-642; 664 NW2d 159 (2003) (premeditation and deliberation can be inferred where the defendant took steps to conceal the killing after it took place by burning the body); *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999) (premeditation and deliberation can be inferred where the defendant moves the victim to a more secluded spot just before killing her). After the shootings, defendant went to great lengths to conceal his crime. He lied about Howarth's whereabouts and feigned ignorant concern for Amy, even assisting in search efforts. Defendant then returned to the scene, buried the bodies, hid the shotgun and cleaned the area. Defendant continued to lie until the police directly and specifically told him they had found evidence of foul play. As noted by the prosecution on appeal, by that time defendant had three days to fabricate a story to make him appear innocent.

The manner of the killing also supports an inference that defendant acted with premeditation and deliberation. See *Plummer*, 229 Mich App at 301. Defendant shot Amy twice before turning the gun on Howarth. The forensic evidence suggests that Howarth had her back to defendant and was trying to escape when defendant first shot her. Defendant proceeded to shoot Howarth a second time despite his later acknowledgment that this was unnecessary even under his self-defense theory. The time it took defendant to fire four shots, chambering a new shell between each shot, was adequate to allow defendant the "second look" required to premeditate and deliberate his actions. See *People v Schollaert*, 194 Mich App 158, 171; 486 NW2d 312 (1992) (noting that the number of shots fired can be indicative of premeditation and deliberation). Even if defendant truthfully asserted that he and Howarth struggled for the gun, defendant had enough time to consider his actions before shooting Howarth a second time.

Based on the evidence presented, the jury could have rationally concluded that defendant acted with premeditation and deliberation when shooting Howarth and did not act in self-defense. We may not interfere with that judgment as it is supported when viewing the evidence in the light most favorable to the prosecution.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O'Connell
/s/ Christopher M. Murray