

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 24, 2013

v

MILTON ELLIOTT LEWIS III,

Defendant-Appellant.

No. 310295
Wayne Circuit Court
LC No. 11-008407-FC

Before: SAAD, P.J., and SAWYER and JANSEN, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts first-degree premeditated murder, MCL 750.316(1)(a), first-degree felony murder, MCL 750.316(1)(b), assault with intent to commit murder, MCL 750.83, three counts armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to life imprisonment for the first-degree murder convictions,¹ 285 to 600 months' imprisonment for the assault with intent to murder conviction, 285 to 600 months' imprisonment for the armed robbery convictions, and two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

On April 25, 2011, defendant entered the St. John Eastwood Clinic Connor House, a drug and alcohol rehabilitation facility in Detroit, Michigan. Inside, defendant fatally shot Milford Reed, robbed and fatally shot Ricky Charles, robbed and assaulted Terence Ross, and robbed Gregory Walton. Several hours before the murders, defendant sent a series of text messages to Gus Mills, who lives adjacent to the Connor House, instructing Mills to leave town, that Mills would be "the last one standing," and that defendant was going to "deal" with the residents of Connor House on their "own terms."

Defendant argues that the prosecution failed to present legally sufficient evidence to support his convictions of first-degree premeditated murder. Specifically, defendant argues that

¹ Defendant's sentence for the first-degree felony murder of Ricky Charles was merged into the life imprisonment sentence for the first-degree premeditated murder of Charles.

the prosecution failed to prove that the murders of Charles and Reed were premeditated and deliberate. We disagree.

In a challenge to a criminal conviction based on insufficient evidence, this Court reviews the record de novo. *People v Parker*, 288 Mich App 500, 504; 795 NW2d 596 (2010). This Court analyzes whether the evidence, taken in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *Id.* Sufficient evidence existed for a rational jury to convict defendant of two counts first-degree premeditated murder.

First-degree premeditated murder is a murder “perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.” MCL 750.316(1)(a). Second-degree murder includes “all other kinds of murder.” MCL 750.317. A conviction of first-degree premeditated murder requires evidence 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). As defined by Michigan courts, premeditation requires a defendant to “think about beforehand,” and deliberation requires a defendant to “measure and evaluate the major facets of a choice or problem.” *People v Morrin*, 31 Mich App 301, 329; 187 NW2d 434 (1971); see also *People v Plummer*, 229 Mich App 293, 299-300; 581 NW2d 753 (1998). There is no specific period of time that must pass for premeditation to be found; however, “[o]ne cannot instantaneously premeditate a murder.” *Id.* at 305. Neither premeditation nor deliberation need be established by direct evidence; the required state of mind can be inferred from all of the facts and circumstances on the record. *People v Boose*, 109 Mich App 455, 473; 311 NW2d 390 (1981). For a jury to infer premeditation and deliberation, the factors considered are: (1) the previous relation of the parties; (2) the defendant’s actions prior to the killing; (3) the circumstances of the killing itself; and, (4) the defendant’s conduct after the homicide. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999).

There is sufficient evidence for a rational jury to conclude that defendant murdered Reed and Charles with premeditation and deliberation. With regard to the first factor, defendant was familiar with some of the victims, and his actions hours before the murders show he had some desire to murder them. Defendant was acquainted with Ross and Walton prior to April 25, 2011. None of the victims indicated any previous hostility with defendant, and several of the victims considered themselves friendly with defendant through their shared experiences in the rehabilitation program at Connor House. However, defendant indicated in his text messages to Mills that Mills should leave town and would be “the last one standing,” which suggests motivation to murder the residents of Connor House. A rational jury could infer premeditation and deliberation from the prior relationship of defendant to the victims, especially when taken in the light most favorable to the prosecution.

With regard to the second factor, there is strong evidence on the record to indicate that defendant planned to kill the residents at Connor House. Defendant sent text messages to Mills hours before the murders predicting that Mills would be “the last one standing,” that Mills should leave the neighborhood and go to Canton on the day of the murders, and that defendant would “deal” with the residents of Connor House on their “own terms.” Further, defendant instructed

Mills to leave the Connor House back door unlocked so that he could easily gain entrance. A reasonable conclusion based on defendant's text messages is that he intended to go to Connor House to rob and kill its inhabitants. From these facts the jury could rationally infer that defendant premeditated and deliberated the murder of the victims.

With regard to the third factor, defendant entered Connor House, robbed its inhabitants, and systematically shot three of the four people present in the head. Although there were no eye witnesses to the murder of Reed, Walton did observe defendant demand money from Walton and Charles, and then proceeded to shoot Charles in the head when Charles produced only coins. Ross also testified that he was robbed, and defendant shot him numerous times before he even had an opportunity to locate his money. The circumstances of the killings of both Reed and Charles suggest that defendant shot them both with premeditation and deliberation, in accordance with the text messages to Mills. Walton, who was in the room directly next to the television room, heard no argument or conversation of any kind before hearing the gunshot that killed Reed. Though defendant correctly points out that Walton and Ross both testified that defendant appeared to behave normally before he suddenly became extremely agitated, there is no evidence on the record of any arguments or hostilities that might have caused defendant to act in "hot blood." In fact, there is no evidence on the record to suggest that defendant was provoked in any way. Instead, the evidence tends to show that defendant followed through on his plan, mentioned to Mills hours earlier, to leave Mills "the last one standing." A rational jury could infer from the circumstances of the killings that defendant acted with premeditation and deliberation in killing both Reed and Charles.

Consideration of the entire record, in the light most favorable to the prosecution, could lead a jury to rationally infer that defendant murdered Reed and Charles with premeditation and deliberation. Defendant's actions before the murders and the circumstances of the killings show a plan to rob and kill the residents of Connor House, that defendant had an opportunity to take a "second look," and the evidence does not suggest that defendant was provoked or that either of the murders were committed in "hot blood."

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Kathleen Jansen