STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK ALLEN MCKINNEY, aka FREDRICK ALLEN MCKINNEY,

Defendant-Appellant.

UNPUBLISHED
May 2, 1997

No. 177618
Saginaw Circuit Court
LC No. 94-8641-FC-5

Before: Young, P.J., and Markey and D.A. Teeple,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). He was sentenced to life imprisonment without parole for his first-degree murder conviction, to a concurrent five-year term for his carrying a concealed weapon conviction, and a preceding and consecutive two year term for felony firearm . Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence of premeditation and deliberation to support his conviction of first-degree murder. We disagree. Premeditation and deliberation "characterize a thought process undisturbed by hot blood," and "require sufficient time to allow the defendant to take a second look." *People v Vail*, 393 Mich 460, 468-469; 227 NW2d 535 (1975). In determining whether the evidence on this element was sufficient, we must view the evidence in the light most favorable to the prosecution and determine whether this element was proven beyond a reasonable doubt. *People v Hurst*, 205 Mich App 634, 640; 517 NW2d 858 (1994). There was evidence indicating that defendant told his girlfriend that he would kill anyone whom he found talking to her, that, while armed, defendant went searching for her when she was not at home and that he was armed when he approached the house where she was visiting. There was also evidence indicating that, although angry, he talked to his girlfriend before he approached the decedent on the front porch of the house in a confrontational manner. Based on this evidence, a reasonable jury could conclude that

defendant thought about his actions "undisturbed by hot blood" and that he had sufficient time to take a second look. Thus, it was sufficient to support his first-degree murder conviction.

Defendant next argues that he received ineffective assistance of counsel because his trial attorney argued in closing that defendant was at most guilty of voluntary manslaughter but did not argue, in the alternative, that he was at most guilty of second-degree murder. We disagree. The jury was instructed on both voluntary manslaughter and second-degree murder. Trial counsel's decision to emphasize the alternative of voluntary manslaughter, the less serious of the two crimes, was a trial strategy which this Court will not second-guess. *People v Pickens*, 446 Mich 298, 330; 521 NW2d 797 (1994).

Defendant next argues that the trial court erred in admitting highly prejudicial but marginally probative photographs of the decedent's wounds. We disagree. The photographs at issue were instructive to show the location of the decedent's wounds, a material condition of the body relevant to the issue of defendant's intent to kill. Hence, because the trial court found that the photographs were relevant and not particularly gruesome or shocking, the trial court's decision to admit them was not an abuse of discretion. *People v Hoffman*, 205 Mich App 1, 18-19; 518 NW2d 817 (1994).

Finally, defendant argues that because of his youth his mandatory sentence of life in prison without parole for first-degree murder constitutes cruel or unusual punishment. We disagree. Recently, this Court held that sentencing a juvenile to mandatory life imprisonment without parole did not constitute cruel and unusual punishment. *People v Launsburry*, 217 Mich App 358, 364-365; 551 NW2d 460 (1996).

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Jane E. Markey
/s/ Donald A. Teeple