

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAHSHAAD MILLER a/k/a RA-RA,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 188899

Genesee Circuit Court

LC No. 94-051376-FC

Before: MacKenzie, P.J., and Neff and Markey, JJ.

PER CURIAM.

Defendant was originally charged with first-degree murder. Following a jury trial, he was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b(1); MSA 28.424(2)(1). Defendant was sentenced to fifty to ninety years' imprisonment for the second-degree murder conviction and two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

This case arises from the shooting death of a man who was trying to help a woman recover her purse after it was snatched from her shoulder by a friend of defendant. After learning that the purse had been stolen, the victim drove around trying to locate the thief. The victim eventually saw defendant riding a bicycle and confronted him about the purse. When the owner indicated that defendant was not the person who had taken her purse, the victim released him. According to the purse's owner, defendant indicated that he had been present when his friend took the purse and told the victim to follow him to his house.

Defendant rode home on his bicycle at a slow pace, followed by the victim, as well as the owner of the purse. Defendant was carrying a gun given to him by his friend. When defendant arrived home, he left his bicycle in the driveway and ran into the backyard. The victim got out of the car and followed defendant into the backyard, where he was shot.

Defendant argues that because there was insufficient evidence of premeditation, the trial court erred in refusing to direct a verdict of acquittal on the charge of first-degree murder. We disagree.

In ruling on a motion for directed verdict, the trial court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime have been proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 465-466; 502 NW2d 177 (1993). This Court applies the same standard when reviewing the trial court's ruling on the motion. *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1992).

To prove first-degree murder, the prosecution must show that defendant killed the victim intentionally and that in killing, defendant acted with premeditation and deliberation. Premeditation implies that defendant has had time to think about his actions beforehand and to evaluate his choices. *People v Coddington*, 188 Mich App 584, 599-600; 470 NW2d 478 (1991). Premeditation can be inferred from all the facts and circumstances, including the relationship between defendant and victim, defendant's actions both before and after the killing, and the circumstances surrounding the killing. *Id.*

Viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence of premeditation to submit the charge of first-degree murder to the jury. Testimony indicated that defendant rode his bicycle back to his home at a leisurely pace, giving him time to contemplate his actions. Defendant rode slowly even though he knew he was being followed by the victim. Further, defendant knew that the victim was not armed and had not harmed him when he confronted defendant about the stolen purse. Testimony indicated that defendant warned the victim to get back before he shot him. A witness testified that defendant left the yard in which the victim was shot with the gun in his hand, aimed at the victim. In light of these facts, we find that the trial court did not err in refusing to direct a verdict of acquittal.

Defendant also argues that his sentence of fifty to ninety years' imprisonment violates the principle of proportionality and is an abuse of discretion. We disagree.

Under the sentencing guidelines, defendant's recommended minimum sentence was eight to twenty-five years' imprisonment. A sentencing court may depart from the sentencing guidelines where the guidelines are not proportionate to the seriousness of the crime or the defendant's criminal background. *People v Milbourn*, 435 Mich 630, 656-657; 461 NW2d 1 (1990). When departing from the guidelines, the sentencing court must articulate its reasons for departure both at sentencing and in the sentencing information report. *People v Johnson*, 187 Mich App 621, 630; 468 NW2d 307 (1991).

At sentencing and in the sentencing information report in this case, the trial court indicated that departure was necessary due to the circumstances surrounding the killing, including defendant's criminal background and his relationship with the victim, and defendant's lack of remorse. The court found defendant's juvenile history significant because defendant failed to appear for his probate court hearings. The court also looked to the length of time over which the events occurred, the fact that the victim was not armed and did not harm defendant when he confronted defendant about the purse snatching, the fact that the victim released defendant after he questioned him, and the way in which defendant idly rode his bicycle home after the confrontation. These circumstances led the court to conclude that defendant was not threatened by the victim and that defendant had time to contemplate his actions as he rode home.

Defendant suggests that by considering these facts, the sentencing court independently found defendant guilty of first-degree murder when the jury had convicted defendant of second-degree murder and used this finding to justify its departure from the guidelines. We disagree. The sentencing court's reasons indicate that it properly considered all the circumstances surrounding the crime before making its determination, including defendant's criminal background and the relationship between defendant and the victim.

The sentencing court also properly considered defendant's lack of remorse. A sentencing court may consider a defendant's lack of remorse, but it may not consider a defendant's refusal to admit guilt. *People v Houston*, 448 Mich 312, 323-324; 532 NW2d 508 (1995). The statements and behavior of defendant – his comments to the victim's wife during trial and to an officer after his conviction – indicate a lack of remorse on defendant's part and were proper reasons to depart from the sentencing guidelines.

Given the circumstances surrounding the crime and this offender, we conclude that defendant's sentence does not violate the principle of proportionality. There was no abuse of discretion in the sentence imposed.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Janet T. Neff

/s/ Jane E. Markey