

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAY EDMOND SMITH,

Defendant-Appellant.

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UNPUBLISHED

February 26, 1999

No. 201452

Saginaw Circuit Court

LC No. 96-012471 FC

Before: Jansen, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316; MSA 28.548, and sentenced to life imprisonment. He appeals as of right. We affirm.

Evidence was presented at trial that defendant killed his wife by smothering her after a long history of spousal abuse and marital discord. On appeal, defendant first argues that the trial court erred by allowing the prosecution to introduce testimony of other bad acts under MRE 404(b) through twelve witnesses. However, we find that defendant has failed to sufficiently brief the factual basis of this argument because he has not provided any citations to the challenged trial testimony. A party may not leave it to this Court to search for a factual basis to sustain or reject his position. *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990). In any event, the record does not support defendant's claim that evidence of a misdemeanor conviction arising out of a prior act of domestic violence was introduced at trial. Although the prosecution presented testimony that a domestic violence charge was pending against defendant, it was defendant's attorney who elicited the testimony that defendant pleaded guilty to the domestic violence charge and then subsequently withdrew his plea.

Further, contrary to what defendant argues, the record does not show that the prosecution proffered twelve witnesses to give testimony about the domestic violence charge, or even that all twelve witnesses actually testified at the trial. Rather, some of the witnesses provided testimony relative to defendant's wife's statements, so as to establish her state of mind, and testimony regarding other instances of marital discord preceding her death. The prosecution also offered the testimony of an expert witness regarding the battered women's syndrome to assist the jury in understanding the behavior of a battered spouse.

This Court will find an abuse of discretion in a trial court's ruling to admit evidence only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994). We conclude that the trial court did not abuse its discretion when it granted the prosecution's motion to admit evidence of defendant's other bad acts, subject to defendant's right to object at trial and to seek a limiting instruction. MRE 404(b); *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998); *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994). The evidence of marital discord was relevant to the issue of defendant's motive, because defendant was the only witness to his wife's death. Cf. *People v Fisher*, 449 Mich 441, 452; 537 NW2d 577 (1995). The probative value of the evidence was also heightened by the fact that defendant gave inconsistent statements to the police regarding whether he killed his wife and the circumstances of her death, including whether his wife wanted to die. Absent the proposed evidence, the jury may have found it difficult to believe defendant's statement to the police that he killed his wife. Cf. *People v Hoffman*, 225 Mich App 103, 110; 570 NW2d 146 (1997). Thus, the trial court did not abuse its discretion in finding that the probative value of the proposed evidence was not substantially outweighed by the danger of unfair prejudice under MRE 403.

Defendant also contends that admission of the other-acts evidence violated his right to due process and a fair trial, but we decline to consider this argument because defendant did not raise it below and has failed to sufficiently brief the issue on appeal. See *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996) (an objection to evidence on one ground is insufficient to preserve an appellate attack on a different ground); *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992) (a party may not merely announce a position and then leave it to this Court to discover and rationalize the basis of the claim).

Defendant next argues that the trial court abused its discretion in allowing the prosecution, over objection, to introduce eight photographs depicting bruises on the victim, which were taken about two months before her death. We disagree. Although witnesses also testified about the bruises, it was not an abuse of discretion for the trial court to permit the jury to view the nature and extent of the bruises itself. *People v Mills*, 450 Mich 61; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). Indeed, the only material objection raised below concerned whether the number of photographs was, at most, excessive. However, we are satisfied that any duplicative impact of the photographs was, at most, harmless error and, accordingly, find no basis for vacating the jury's verdict. See MRE 103(a); MCL 769.26; MSA 28.1096; *People v Huyser*, 221 Mich App 293, 299; 561 NW2d 481 (1997); *People v Price*, 214 Mich App 538, 546; 543 NW2d 49 (1995). Finally, as with defendant's first issue, we are not persuaded that defendant has shown any basis for relief on constitutional grounds.

Defendant next argues that the prosecution presented insufficient evidence to convict him of first-degree murder. We disagree. When reviewing the sufficiency of the evidence, the question to be decided is whether, viewed in a light most favorable to the prosecution, the evidence was sufficient to permit a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Before a defendant may be convicted of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem. *People v Vail*, 393 Mich 460, 468-469; 227 NW2d 535 (1975), overruled on other grounds *People v Graves*, 458 Mich 476; 581 NW2d 229 (1998). Causation is also an element of first-degree murder, inasmuch as the criminal law requires that the party convicted of a crime be a "contributory cause that was a substantial factor in producing the harm." *People v Bailey*, 451 Mich 657, 676; 549 NW2d 325 (1996), amended 453 Mich 1204 (1996).

While a murder case that rests upon uncertain medical speculation as to the cause of death is not a case which has been proven beyond a reasonable doubt, *People v Stevenson*, 416 Mich 383, 392-393; 331 NW2d 143 (1982), the cause of death in this case was not based on uncertain medical speculation. Rather, causation was sufficiently established by the prosecution's presentment of an expert witness' opinion, based on principles of forensic pathology, that defendant's wife died from smothering, which in turn was corroborated by other proofs, most notably, defendant's own statement to the police that he pinched his wife's nose and held her mouth shut for two minutes, along with evidence that defendant's wife was found lying in bed by paramedics with bruises covering her face. Other proofs, including the evidence of the marital history, were probative of how defendant's wife's death came about and defendant's motive. While not essential, proof of motive is relevant in proving premeditation and deliberation. *People v David Wells*, 102 Mich App 122, 128-129; 302 NW2d 196 (1980). Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find that defendant intentionally killed his wife with premeditation and deliberation.

Affirmed.

/s/ Kathleen Jansen

/s/ David H. Sawyer

/s/ Stephen J. Markman