

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN L. TAYLOR,

Defendant-Appellant.

UNPUBLISHED

March 26, 1999

No. 205413

Recorder's Court

LC No. 95-011519

Before: Murphy, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted on two counts of first-degree premeditated murder, MCL 750.316; MSA 28.548. The trial court sentenced defendant to two non-parolable terms of life in prison. Defendant now appeals as of right. We affirm.

Defendant first argues that the evidence of premeditation and deliberation was insufficient to support his convictions on first-degree murder. When reviewing the sufficiency of evidence, we look at the record in a light most favorable to the prosecution and determine if a rational trier of fact could have found that the elements were established beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Breck*, 230 Mich App 450, 456; 584 NW2d 602 (1998). The elements of first-degree premeditated murder include an intentional killing that is premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). These elements may be inferred from the circumstances and by a defendant's actions, before and after the crime. *Id.* at 300. A pause between the moment when the initial homicidal intent was formed and the resultant killing may be enough time to premeditate and deliberate. *Id.* at 301.

The record reveals that the victims were killed following a fight at La Players Lounge, where defendant worked as a doorman. When defendant returned home from work that day, he told his girlfriend that he had killed some boys at the club at the behest of his boss, "Big Mike." Defendant also sought the help of his cousin in disposing of the bodies of the victims. Defendant told his cousin that there had been a fight and that he had cut a person's throat. The police ultimately discovered the

victims' bodies in a makeshift grave in defendant's basement. Based on defendant's statements to his cousin and girlfriend, along with his participation in the effort at hiding the corpses, it is reasonable to conclude that defendant did the stabbing and participated in the beating.

Further, defendant's statements to his girlfriend suggest that the victims were not killed during a fight, but rather, as some sort of sanction subsequent to a fight. She testified that defendant "said a fight had jumped off in the bar and Big Mike had them to kill some boys." That is a significantly different statement than saying the boys were killed during the fight. Accordingly, the evidence suggests that the killings were accomplished by defendant and others because that was what Big Mike ordered.

Finally, the defensive bruising on one victim suggests that, well beyond the point where he was offering any resistance, the beating that resulted in his death continued. Even if the beating began in anger, this indicates a deliberate choice to conclude the abuse only upon the achievement of some end other than capitulation. The jury could have reasonably inferred that his death was the goal sought to be achieved during that period. By comparison, the lack of bruising on the other victim indicates that he had not engaged in a fight at all. The single wound that cut his carotid artery and pierced his larynx, while making straight-line entry and exit wounds, suggests that the fatal plunge was well-aimed and intended to be lethal. The jury could have reasonably determined that defendant made a premeditated and deliberate decision to kill this victim and chose a single, forceful stab to the neck to accomplish that end.

Moreover, substantial evidence was presented that a number of people, including defendant, engaged in an attempt to hide the bodies. Cooperation in an undertaking of such a nature not only suggests mutual culpability, but the jury could have reasonably inferred that the post-killing cooperation was secured by pre-killing agreement. In sum, the evidence regarding the circumstances under which the victims were killed was sufficient that a rational factfinder could have found premeditation and deliberation beyond a reasonable doubt.

Defendant next raises two contentions of error respecting the trial court's instructions to the jury. First, defendant argues that he was entitled to have a manslaughter instruction read to the jury. Second, defendant claims that the trial court incorrectly instructed the jury as to the required findings of intent in order to convict defendant of first-degree premeditated murder under an aiding and abetting theory. However, these claims of instructional error were not properly preserved for our review because defendant neither sought a manslaughter instruction nor objected to the trial court's instructions concerning premeditated murder under an aiding and abetting theory. Accordingly, given the unpreserved nature of these claims, relief should be granted only if necessary to avoid manifest injustice to defendant. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). On this record, we find that manifest injustice will not result if we decline to grant defendant's request for relief.

Finally, defendant claims that he was denied his constitutional right to the effective assistance of counsel because his trial attorney failed to raise the issues that defendant now brings on appeal. We review a claim for ineffective assistance of counsel to see if defendant's representation fell below an objective standard of reasonableness and whether this was so prejudicial to defendant that he was

denied a fair trial. *People v Mitchell*, 454 Mich 145, 157-158; 560 NW2d 600 (1997). Because defendant has not moved this Court to remand for an evidentiary hearing, our review is limited to details that are supported in the record. *People v Ullah*, 216 Mich App 669, 684; 550 NW2d 568 (1996).

Trial counsel's failure to request a manslaughter instruction was neither deficient nor prejudicial to defendant. Rather, our review of the record reveals that the evidence did not support a manslaughter instruction, and therefore, there can be no prejudice resulting from trial counsel's decision not to seek a manslaughter instruction. Similarly, counsel's failure to object to the jury instruction regarding aiding and abetting was not improper because the instruction was neither deficient nor prejudicial to defendant. On the contrary, our review of the record reveals that the jury was adequately instructed on the elements of first-degree premeditated murder, including the specific intent requirement. Additionally, the given instruction on aiding and abetting fairly incorporated by reference the intent requirements of first-degree and second-degree murder. Finally, since there was sufficient evidence to sustain the convictions, there was no prejudice to defendant based on his counsel's failure to move for a directed verdict. Accordingly, defendant has not established that he was denied the effective assistance of counsel.

Affirmed.

/s/ William B. Murphy

/s/ Hilda R. Gage

/s/ Brian K. Zahra