

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KELLY M. CASH,

Defendant-Appellant.

UNPUBLISHED

September 28, 1999

No. 199636

Recorder's Court

LC No. 96-001132

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316; MSA 28.548, first-degree felony murder, MCL 750.316; MSA 28.548, and unarmed robbery, MCL 750.530; MSA 28.798, arising from the multiple-stab wound killing of a neighbor and theft of her wallet. The trial court subsequently vacated the felony-murder conviction and sentenced defendant to life imprisonment without parole for the first-degree premeditated murder conviction and a concurrent ten to fifteen-year term for the unarmed robbery conviction. Defendant now appeals of right. We affirm.

Defendant first argues that her police confession should have been suppressed as the fruit of a warrantless arrest unsupported by probable cause.

We conclude that the trial court did not err in finding that there was sufficient probable cause for the police to arrest defendant considering the totality of the facts available to the police at the time of arrest. *Brown v Illinois*, 422 US 590, 602; 95 S Ct 2254; 45 L Ed 2d 416 (1975); *People v Mallory*, 421 Mich 229, 243 n 8; 365 NW2d 673 (1984); *People v Richardson*, 204 Mich App 71, 78-79; 514 NW2d 503 (1994). The information known to the police at the time of arrest was sufficient to cause a fair-minded person of average intelligence to believe that defendant was involved in the charged crimes. While it may be true, as defendant argues on appeal, that each individual fact or circumstance, considered alone, does not rise to the level of probable cause, the trial court here properly observed that the facts and circumstances are to be considered in their totality.

Furthermore, assuming *arguendo* that the police did not have probable cause to arrest defendant, we are satisfied that the circumstances surrounding defendant's confession demonstrate that the confession was "sufficiently an act of free will" as to purge defendant's statements of any taint of illegality, thereby rendering them admissible. *Brown, supra*; *Mallory, supra*. Consequently, we also reject defendant's claim that defense counsel was ineffective for failing to challenge the admissibility of her confession before trial. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Next, we conclude that the trial court did not abuse its discretion in admitting under MRE 404(b)(1) evidence that defendant had been terminated from her employment at Sinai Hospital for stealing money from elderly patients. The challenged evidence was relevant to the issue of motive and the probative value of the evidence was not substantially outweighed by its potential for unfair prejudice. *People v Starr*, 457 Mich 490, 495; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), modified 445 Mich 1205; 520 NW2d 338 (1994). Further, the trial court did not err in failing to provide a cautionary jury instruction concerning the use of this "bad acts" evidence where defense counsel never requested a limiting instruction.

Next, the trial court did not err in denying defendant's motions for directed verdict, *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997), cert den ___ US ___; 118 S Ct 424; 139 L Ed 2d 325 (1997), and judgment notwithstanding the verdict, *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998).

To establish first-degree murder, the prosecutor must show that the defendant intentionally killed the victim and that the act was premeditated and deliberate. *People v Saunders*, 189 Mich App 494, 496; 473 NW2d 755 (1991). Premeditation and deliberation may be inferred from the circumstances surrounding the killing. *Id.* Although the length of time needed to decide is incapable of precise determination, premeditation can be formed in the time that it would take a reasonable person to take a "second look" at the act contemplated. *People v Tilley*, 405 Mich 38; 273 NW2d 471 (1979); *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992); *People v Coddington*, 188 Mich App 584, 600; 470 NW2d 478 (1991). Moreover, in *People v Passeno*, 195 Mich App 91, 100; 489 NW2d 152 (1992), this Court observed:

A partial list of factors that may be considered by the trier of fact to determine if premeditation and deliberation are present includes: (1) the previous relationship between the victim and the defendant, (2) the defendant's actions before and after the crime, and (3) the circumstances surrounding the killing itself, including the weapon used and the location of the wounds inflicted.

In the instant case, the evidence showed that defendant had a relationship with the victim, having previously borrowed money from her to purchase crack cocaine, and had gone to the victim's house earlier in the day to borrow money for cocaine. Defendant also admitted in her confession that the victim refused to lend her more money before she killed her. Moreover, defendant repeatedly stabbed the victim after pursuing her into the kitchen where the victim turned to pick up the telephone. After killing the victim, defendant looked for the victim's purse, which she found in a hallway closet, and took the victim's wallet containing money and credit cards. Thereafter, defendant went home and then drove

to a drug house where she purchased cocaine. Defendant also disposed of the victim's wallet and the knife that she used to kill the victim by discarding them in a dumpster. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find that defendant killed the victim with premeditation and deliberation beyond a reasonable doubt.

Regarding the issue of defendant's sanity, we note that under MCL 768.21a(3); MSA 28.1044(1)(3), as amended by 1994 PA 56, the burden was on defendant to prove the affirmative defense of insanity by a preponderance of the evidence. Thus, contrary to what defendant argues on appeal, the prosecutor was not required to establish defendant's sanity beyond a reasonable doubt. In this case, conflicting evidence was presented regarding the issue of defendant's sanity and the issue was properly submitted to the jury under proper instructions.

Finally, the trial court did not err when it reinstructed the jury regarding the elements of the charged offenses without reinstructing on the elements of the affirmative defense of insanity where the jury did not request reinstruction on the insanity defense. *People v Darwall*, 82 Mich App 652, 663; 267 NW2d 472 (1978); *People v Green*, 7 Mich App 346, 358; 151 NW2d 834 (1967).

Affirmed.

/s/ Jeffrey G. Collins

/s/ David H. Sawyer

/s/ Mark J. Cavanagh