

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY JEROME NELSON,

Defendant-Appellant.

UNPUBLISHED

May 26, 2000

No. 218339

Kent Circuit Court

LC No. 98-005663-FC

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant Ricky Jerome Nelson of first-degree premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a). The trial court sentenced Nelson to life in prison without parole. Nelson appeals as of right. We affirm.

I. Basic Facts And Procedural History

The prosecutor charged Nelson with murder after Nelson and Jennette Shyeca-Montrea Floyd had an altercation on May 11, 1998, in which Nelson killed Floyd. After voluntarily surrendering himself to the police on May 12, 1998, Nelson waived his *Miranda*¹ rights and confessed that he stabbed Floyd to death when Floyd failed to return Nelson's car to him; Nelson had used his car as collateral for \$400 worth of crack cocaine that Floyd provided to him. The police tape recorded this confession

During the trial, numerous witnesses corroborated Nelson's taped confession and trial testimony. In fact, the prosecutor noted in her opening statement that "there will be little to no dispute about the events of [May 11, 1998] and how they occurred." For example, there is no dispute that Floyd received fifty-three knife wounds during her struggle with Nelson. Indeed, Nelson took the stand in his own defense and restated the substance of his taped confession to a significant extent. For example, defense counsel asked Nelson:

Q. What happened when Ms. Floyd got back into your apartment?

- A. She was telling me, you know, "Ricky, I looked for your car, you know. I'm sorry that it got away like this, but I'm going to keep looking for your car." She said, "You know, by you being the customer that you was"—oh God. That she gave me two more pieces of crack cocaine and that she told me that, you know, this would make us even on your car. I told her that this won't make us even on my car.

I said, you know, the deal was with the car. Regardless of what shape anybody else thought it was in, it was my car, and that our arrangement was you give me my car, and I would get you your money for your—for my car. You know, I would pay you. She just asked me could she go and use my bathroom, and I told her yes, she could.

- Q. Now, you heard your statement where you said that "You have to give me my car, money or something else." Did you have that conversation with her?

- A. I had the conversation with her. I wanted my car. Nothing else mattered. The money didn't matter. I could have went to my people and got money. If I had said that, I don't remember. I don't remember.

* * *

- Q. In your mind you indicated—you testified that she indicated to you the last two rocks she gave you would make you even—you all even Steven for the car versus the crack cocaine, correct?

- A. Yes, sir, that's correct.

- Q. Now, what was your attitude to her at that point? Were you happy with her? Were you angry at her? Were you getting upset or what? What was happening?

- A. I was—I was—you know, I was angry about my car, you know.

According to Nelson, after he demanded that Floyd return his car, Floyd used the bathroom while he went into his bedroom and smoked the two crack cocaine rocks that Floyd had just given him. After he smoked the crack cocaine, Nelson began wondering why Floyd was taking so long to use the bathroom. He believed that Floyd was taking so long because she needed a towel; therefore, he opened his bedroom door to walk to a nearby closet when Floyd simultaneously opened the bathroom door while holding a butcher knife that she had taken from the kitchen. Nelson then explained:

So I went out there and opened my door, and when I opened my door the bathroom door opened, and when the door opened, you know, I seen she had a knife in her hand, and I was like, "What is this for, you know, what you got a knife for?" And she was just telling me she—"Ricky, you know, we done looked for your car, and

now I'm just fixin' to go." I said, "I just want my car. I got to get to work. I got to go to and from. I just need my car." I said, "You know, but the knife—you ain't got to go there. It ain't like that between me and you."

She took a step forward to leap out of the bathroom, and I just reached to get the knife, because I said, "You know, you ain't leaving here with my knife," and she just pulled the knife back, and we just go to tussling.

Nelson and Floyd began struggling for the knife in the bathroom, continued struggling for the knife from the hallway into the dining room, and stopped struggling in the living room, where Floyd died. Nelson did not remember at what point he gained control of the knife or when he first stabbed Floyd; however, he testified that he cut his palm while trying to take the knife from Floyd, and that he eventually gained control of the knife.

On cross-examination, the prosecutor attacked Nelson's version of how he killed Floyd. For example, the prosecutor asked Nelson why Floyd felt the need to take a knife from the kitchen if she did not feel threatened by him. Nelson responded that he ordered Floyd to return his car and he was angry, but he did not threaten Floyd or give her any reason to display a knife. Also, the prosecutor elicited testimony from Nelson emphasizing that he did not attempt to take the knife from Floyd in self-defense. Rather, Nelson admitted that he blocked the bathroom door and grabbed the knife because he did not want Floyd to leave his apartment with his knife. Therefore, the prosecutor suggested that Nelson could have avoided the struggle with Floyd if he had merely allowed Floyd to leave the bathroom.

Nelson did not remember when he first stabbed Floyd; however, the prosecutor asked:

Q. [Y]ou do remember her saying, "Please stop, please stop," correct?

A. Ma'am, when all of this was over she was—she was down on the floor, and she said, "Please stop," and I was just trying to help her. She told me that she was cold, and I said, "You don't be cold, you know, I'll blanket you. Don't be cold. It's going to be all right, just don't be cold." She went to sleep. I tried to wake her up. She just went—

* * *

Q. You stopped stabbing her when she stopped struggling, when she stopped fighting. Then and only then is when you stopped, correct?

A. I stopped because we stopped struggling, and when we stopped struggling she asked me to stop.

* * *

- Q. Now you are telling the jury that you stopped stabbing her when she said, “Please stop, please stop,” and that was the exact same time when she stopped fighting, happened about the same time, correct?
- A. Ma’am, that’s exact same time we both stopped struggling with one another.
- Q. So you don’t remember anything about the stabbing, but right after the stabbing you do remember that you dragged her body back to the bedroom, correct? Did you drag her body back to the bedroom after you finished stabbing her?
- A. Yes, ma’am.

Nelson stated that when he noticed that Floyd was bleeding, he realized that he had done something wrong; therefore, he covered Floyd with a blanket, he dragged her corpse to his bedroom, and he covered up the blood stains in his dining room/living room area. Although Nelson’s testimony is unclear concerning the sequence of all the following events, he testified that he laid the knife on the floor, he smoked crack cocaine in his apartment, threw his bloodstained clothing and torn shirt into the living room, he closed his living room blinds, and covered the blood stains.

Following Nelson’s testimony, the parties gave their closing arguments and the trial court read the jury its instructions. Specifically, the trial court instructed the jury that, although Floyd received numerous fatal wounds, Nelson’s premeditation must have existed at the time the fatal wounds were inflicted. The jury found Nelson guilty of first-degree premeditated murder. Thereafter, Nelson moved to set aside the jury’s verdict but the trial court denied this motion and imposed a mandatory sentence of life in prison without parole.

II. Sufficiency Of The Evidence

A. Legal Standard

Nelson’s sole argument on appeal is that his conviction should be reversed because there was insufficient evidence to allow the jury to conclude that he had premeditated Floyd’s murder. When determining whether the prosecution has presented sufficient evidence to sustain a conviction, we “‘must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.’” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), quoting *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748, amended 441 Mich 1201 (1992).

As a concept, a challenge to the sufficiency of the evidence “focuses on whether the evidence, taken as a whole, justifies submitting the case to the trier of fact or requires judgment as a matter of law.” *People v Clark*, 172 Mich App 1, 6; 432 NW2d 173 (1988). The jury convicted Nelson of first-degree premeditated murder under MCL 750.316(1)(a); MSA 28.548(1)(a), which required the prosecutor to prove beyond a reasonable doubt “that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate.” *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). “Premeditation and deliberation require sufficient time to allow the defendant

to take a second look[,]" and "[t]he elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing." *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998).

B. Deliberation and Premeditation

The prosecutor may rely on evidence of the following four factors to establish premeditation: "(1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide." *Anderson, supra* at 537. "Circumstantial evidence and the reasonable inferences arising from the evidence can constitute sufficient proof of the elements of the crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

C. Analysis

At trial, Nelson's sole defense was that he accidentally stabbed Floyd while struggling to gain control of a knife that Floyd was holding. Nelson did not deny that he killed Floyd; however, he claimed that he did not premeditate killing her. Quite clearly, the prosecutor used the four factors discussed in *Anderson, supra*, in order to prove Nelson's intent at the time of the killing and his guilt beyond a reasonable doubt.

Under the first and second factors, the prosecutor introduced evidence that, although Nelson and Floyd knew each other for only three days, Nelson had a motive to kill Floyd. One witness spoke with Nelson shortly before Nelson murdered Floyd, at which time Nelson was upset about losing his car. Also, a police detective testified that Nelson admitted in his taped confession that he was angry at Floyd.

The third factor addresses the circumstances of the killing. The present case is not a case where the defendant used more than one weapon or object to kill the victim, thus, providing a break between each method in which the defendant would have an opportunity to coolly reflect on his actions before killing the victim. See *Kelly, supra* at 642. Therefore, the prosecutor focused on the brutality of Floyd's murder in order to prove deliberation and premeditation. See *People v Ortiz-Kehoe*, 237 Mich App 508, 520; 603 NW2d 802 (1999). Indeed, the evidence showed that Floyd received numerous stab wounds during her struggle with Nelson, some of which were defensive wounds. The evidence demonstrated that Nelson inflicted the knife wounds in a particularly violent manner. For example, the medical examiner testified that the tip of the knife was found lodged in Floyd's neck.

The Michigan Supreme Court has held that "[t]he brutality of a murder does not itself justify an inference of premeditation and deliberation." *People v Hoffmeister*, 394 Mich 155, 159; 229 NW2d 305 (1975). The *Hoffmeister* Court adopted the reasoning of LaFave & Scott, Criminal Law, § 73, p 565:

"The mere fact that the killing was attended by much violence or that a great many wounds were inflicted is not relevant (on the issue of premeditation and deliberation), as

such a killing is just as likely (or perhaps more likely) to have been on impulse.” [*Id.* at 159 & n 4.]

Further, the *Hoffmeister* Court held that, although use of a lethal weapon, such as a knife, may support a finding of second-degree murder, use of a knife alone is not sufficient to prove the premeditation that is necessary to support a first-degree murder conviction. *Id.* at 160.

Contrary to the facts in *Hoffmeister*, the number of wounds in this case permitted an inference that Nelson had an opportunity to premeditate killing Floyd. See *Hoffmeister, supra* at 159-160. Medical testimony indicated that Floyd’s wounds could have been inflicted within several minutes or over thirty minutes. Two of Nelson’s neighbors testified that they heard screaming that lasted between five and twenty minutes on May 11, 1998 at the time Floyd was murdered. There was also ample evidence that the struggle between Nelson and Floyd extended throughout Nelson’s apartment. Each of these factors pointed to a period of time in which Nelson had an opportunity and did decide to kill Floyd, rather than leaving her unharmed or merely inflicting the less serious wounds.

The fourth factor addresses Nelson’s conduct after the homicide. The crime scene investigators’ testimony supported the prosecutor’s theory that Nelson’s post-murder conduct was circumstantial evidence of deliberation and premeditation: there was evidence that someone dragged Floyd’s bloody body from the living room to the bedroom and covered it with a blanket; someone hid the blood stains in the living room with a quilt and concealed Nelson’s bloody pants and underwear in the bedroom underneath a bedspread; and someone put Nelson’s ripped T-shirt behind the television in the living room. This sort of “evidence of defendant’s attempt to clean up the blood after the killing could be used to infer that he acted with deliberation and premeditation.” *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995).

Based upon the direct and circumstantial evidence viewed in a light most favorable to the prosecution, a jury could find beyond a reasonable doubt that Nelson committed first-degree premeditated murder because there was sufficient evidence to establish the elements of premeditation and deliberation. *Kelly, supra* at 642.

Affirmed.

/s/ Richard A. Bandstra
/s/ Kathleen Jansen
/s/ William C. Whitbeck

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).