

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee, Cross-Appellant,

v

AHMAD R. WILLIAMS,

Defendant-Appellant, Cross-
Appellee.

UNPUBLISHED

May 25, 2001

No. 220405

Kent Circuit Court

LC No. 98-001616-FC

Before: Hoekstra, P.J., and Whitbeck and Cooper, JJ.

PER CURIAM.

Defendant was convicted by jury of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court, however, set aside the jury verdict of first-degree murder and entered a conviction of second-degree murder, MCL 750.317; MSA 28.549. The trial court then sentenced defendant to two years' imprisonment on the felony-firearm conviction and to a consecutive term of twenty-three to forty-eight years' imprisonment on the murder conviction. Defendant appeals as of right and plaintiff cross-appeals as of right. We reverse and remand.

We first address plaintiff's argument on cross-appeal that the trial court erred in reducing defendant's first-degree murder conviction to a second-degree murder conviction.¹ Plaintiff argues that the several seconds between the first gunshot and the subsequent three gunshots was a

¹ At oral argument, defendant contended that plaintiff's claim was frivolous, arguing that after a court finds insufficient evidence, higher courts are precluded from addressing the sufficiency of the evidence on the basis of double jeopardy principles, and citing *People v Vincent*, 455 Mich 110; 565 NW2d 629 (1997), *People v Mehall*, 454 Mich 1; 557 NW2d 110 (1997), and *People v Nix*, 453 Mich 619; 556 NW2d 866 (1996). We find the cited cases distinguishable on the facts. Here, double jeopardy is not implicated. Plaintiff's appeal does not subject defendant to a second trial, but rather reinstatement of the jury's verdict of guilty of first-degree murder. *People v Hutchinson*, 224 Mich App 603, 606-607; 569 NW2d 858 (1997), quoting *People v Jones* 203 Mich App 74, 78-79; 512 NW2d 26 (1993), citing *People v Anderson*, 409 Mich 474, 483, n 10; 295 NW2d 482 (1980), citing *United States v Wilson*, 420 US 332; 95 S Ct 1013; 43 L Ed 2d 232 (1975).

sufficient interval to justify a jury verdict of premeditated first-degree murder, and thus the trial court erred in reducing defendant's conviction to second-degree murder. We agree.

In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether there was sufficient evidence for a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). With regard to first-degree murder, this Court has explained:

To constitute first-degree murder, it must be established that a defendant's intentional killing of another was deliberate and premeditated. While the length of time needed to measure and evaluate a choice before it is made is incapable of precise determination, there must be some interval in which a "second look" can be contemplated. Premeditation and deliberation may be inferred from the facts and circumstances established on the record. Though not exclusive, factors which may be considered to establish premeditation include: (1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. [*People v Daniels*, 192 Mich App 658, 665-666; 482 NW2d 176 (1991) (internal citations omitted), quoting *People v Coddington*, 188 Mich App 584, 599-600; 470 NW2d 478 (1991).]

In the present case, the evidence showed that defendant and the victim had a hostile relationship, defendant was carrying a loaded weapon, and after shooting the victim once, which made the victim fall to the ground, defendant hesitated for three seconds before shooting the victim three more times, until his gun apparently jammed, while the victim was lying on the ground. The victim sustained wounds from four gunshots, two of which would have been fatal in themselves. When taken in the light most favorable to the prosecution, these circumstances are sufficient for a rational trier of fact to find that the essential elements of first-degree murder were proven beyond a reasonable doubt. Accordingly, the trial court erred in reducing the jury verdict and the jury verdict should be reinstated.

In his appeal, defendant first argues that the trial court erred when it declined to give a jury instruction on voluntary manslaughter. However, "where a defendant is convicted of first-degree murder, and the jury rejects other lesser included offenses, the failure to instruct on voluntary manslaughter is harmless." *People v Sullivan*, 231 Mich App 510, 520; 586 NW2d 578 (1998), aff'd by equally divided Supreme Court 461 Mich 992 (2000), citing *People v Beach*, 429 Mich 450, 481, 490-491; 418 NW2d 861 (1988), and *People v Zak*, 184 Mich App 1, 16; 457 NW2d 59 (1990). Here, the jury rejected the lesser included offense of second-degree murder, and thus any error is harmless. *Sullivan, supra*. No further review is necessary.

In light of our previous finding that the jury's verdict of first-degree murder should be reinstated, we decline to review defendant's claim that the sentencing court improperly scored the sentencing guidelines for a conviction of second-degree murder.

We reverse the decision of the trial court and reinstate the jury's verdict of guilty of first-degree murder. This matter is remanded for resentencing.

Reversed and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ William C. Whitbeck

/s/ Jessica R. Cooper