

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ANDREW WOODBECK,

Defendant-Appellant.

UNPUBLISHED

September 20, 2002

No. 233366

Genesee Circuit Court

LC No. 00-006316-FC

Before: O’Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his conviction, following a bench trial, of first-degree murder, MCL 750.316(1)(a), first-degree home invasion, MCL 750.110a(2), and safe breaking, MCL 750.531. Defendant was sentenced to life in prison for first-degree murder, 140 to 240 months’ imprisonment for first-degree home invasion, and 100 to 240 months’ imprisonment for safe breaking. We affirm.

Defendant first argues the trial court erred in denying his motion for directed verdict regarding the charge of first-degree premeditated murder. Defendant contends the prosecution failed to present sufficient evidence regarding the element of premeditation. We review the trial court’s decision on a motion for directed verdict de novo to determine whether the evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime were proven beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). Circumstantial evidence and the reasonable inferences drawn from that evidence may be sufficient to prove elements of a crime. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001). However, an appellate court cannot determine the weight of the evidence or the credibility of witnesses. *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997).

Premeditation requires sufficient time to permit a defendant to take a second look and can be inferred from the circumstances surrounding the killing. *People v Coy*, 243 Mich App 283, 315; 620 NW2d 888 (2000), citing *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). The brutality of a killing and the number of wounds inflicted does not itself justify an inference of premeditation and deliberation. *People v Hoffmeister*, 394 Mich 155, 159; 229 NW2d 305 (1975), quoting Lafave & Scott, Criminal Law, § 73, p 565. However, “[d]efensive wounds suffered by a victim can be evidence of premeditation.” *Coy, supra* at 316, quoting *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). Circumstances of the killing,

whether a weapon was used, and the location of the wounds are factors that can be considered to establish premeditation. *Coy, supra* at 316, quoting *People v Coddington*, 188 Mich App 584, 600; 470 NW2d 478 (1991). The fact that a victim suffered different methods of assault can support a finding of premeditation. *Coy, supra* at 316; *Kelly, supra* at 642. Further, “evidence of manual strangulation can be used as evidence that a defendant had the opportunity to take a ‘second look.’” *Johnson, supra* at 733, quoting *People v Furman*, 158 Mich App 302, 308; 404 NW2d 246 (1987).

Defendant specifically argues the trial court erred in denying his motion for directed verdict by relying solely on the extent and nature of the victim’s wounds. We disagree. Although the court based its decision in part on the nature and extent of the victim’s wounds, the court also based its decision on evidence that defendant wrestled with the victim, attempted to suffocate her to prevent her from identifying him, and then made the decision to find a knife, and stab and kill her. See *Johnson, supra* at 733 (manual strangulation evidence is evidence of premeditation). The victim had twenty-nine wounds on her body, some of which could have been defensive wounds. Consequently, defendant had ample time to make the decision to kill the victim. See *Coy, supra* at 315, 316. Viewing the evidence in the light most favorable to the prosecution, the essential elements of the crime were proven beyond a reasonable doubt. See *Aldrich, supra* at 122. Thus, the trial court did not err when it denied defendant’s motion for directed verdict.

Defendant next argues there was insufficient evidence of malice to convict him of felony murder. In reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *Johnson, supra* at 723. Questions of credibility and intent must be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

The elements of felony murder include: (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with the knowledge that death or great bodily harm will be the probable result (malice), (3) while committing, attempting to commit, or assisting in the commission of any of the felonies enumerated in the felony-murder statute, MCL 750.316(1)(b). *People v McCrady*, 244 Mich App 27, 30-31; 624 NW2d 761 (2001). A murder committed during first-degree home invasion is felony murder. *Id.* at 31.

There was sufficient evidence to convict defendant of felony murder in this case. Defendant admitted to breaking into the victim’s house to obtain money. Defendant heard the victim in the house, and rather than leave, went to the victim’s bedroom. He attempted to suffocate the victim and then found a knife and stabbed her. Viewing the evidence in the light most favorable to the prosecution, the prosecution presented sufficient evidence of malice to convict defendant. See *Johnson, supra* at 723.

Finally, defendant argues there was insufficient evidence to convict him of safe breaking. The elements of safe breaking are: (1) the defendant broke into a safe; and (2) at the time of the breaking, the defendant intended to commit a larceny. MCL 750.531. Defendant argues there was witness testimony that the victim left the safe open on a previous occasion, and, thus, there was insufficient evidence to prove defendant broke into the safe.

This argument is without merit. A witness testified that the victim kept the safe in her bedroom and that the victim never left the safe open. This witness also testified that she saw the safe open on one occasion when the victim showed the safe to her, but that she never again saw the safe open. Because there was testimony that the victim always kept the safe closed and the safe was found open and empty, a rational trier of fact could infer defendant broke into the safe. See *Avant, supra* at 506. Therefore, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to convict defendant of safe breaking. See generally *Johnson, supra* at 723.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra