STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 4, 2004
v	No. 244724 Wayne Circuit Court
BRIAN JOSEPH BOURNE, Defendant-Appellant.	LC No. 02-003107-01

Before: Borrello, P.J., and White and Smolenski, JJ.

PER CURIAM.

Defendant was charged with alternative counts of first-degree premeditated murder, MCL 750.316(1)(a), and the murder of a police officer lawfully performing his duties, MCL 750.316(1)(c), in connection with the death of Detroit Police Officer Michael Scanlon. Following a jury trial, he was convicted of the first-degree murder of a police officer and sentenced to a term of life imprisonment without parole.[1] He appeals as of right, and we affirm.

Defendant first argues that the circuit court incorrectly admitted irrelevant and prejudicial testimony of his friend, Tom Gostias. Most of Gostias's testimony pertained to statements that defendant made regarding defendant's hatred of and intent to kill police officers. This Court reviews a trial court's decision whether to admit evidence for a clear abuse of discretion. *People v Coy* (After Remand), 258 Mich App 1, 3, 12; 669 NW2d 831 (2003). "'A decision on a close evidentiary question ordinarily cannot be an abuse of discretion.'" *Id*. at 13, quoting *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001).

Because defendant was charged with first-degree premeditated murder, the prosecutor was required to establish that defendant premeditated and deliberated killing the victim. *People v Coy*, 243 Mich App 283, 315; 620 NW2d 888 (2000). The testimony at issue was relevant to the issues of premeditation and deliberation. Gostias stated that he saw defendant three to four times a week between November 2001 and mid-February 2002. According to Gostias, during ninety percent of these encounters, defendant expressed his hatred for and intention to harm

[1] Defendant was also convicted of second-degree murder, MCL 750.317, as a lesser offense of the first-degree premeditated murder charge, but the trial court vacated that conviction at sentencing.

police officers, often in graphic terms. The testimony was relevant because it made it more probable that defendant's February 12, 2002, stabbing of the victim during a traffic stop was a course of action defendant had planned or thought about before engaging in it. Although Gostias failed to provide specific dates on cross-examination, this affected the weight rather than the admissibility of the evidence. Thus, the trial court did not err by admitting defendant's statements. See MRE 401; *Coy*, *supra* at 315.

Unlike *People v DeRushia*, 109 Mich App 419; 311 NW2d 374 (1981), cited by defendant, defendant's previous statements here had strong probative value because they involved defendant's hatred of and desire to stab, shoot, or attack police officers who pulled him over. Given that the victim was killed under very similar circumstances to those contemplated within defendant's statements — after the victim pulled over defendant's car, defendant fought with and repeatedly stabbed the victim – their probative value outweighed any prejudicial effect. Furthermore, defendant's previous statements were neither isolated nor uttered distant in time from the victim's death. In fact, Gostias testified that defendant continued to utter such threats repeatedly during the months immediately preceding the offense. We therefore find that the high probative value inherent in Gostias's testimony outweighed any prejudicial effect. See MRE 403. Consequently, we cannot conclude that the circuit court abused its discretion in admitting the testimony. *Aldrich*, *supra* at 113.

Defendant also raises the related arguments that the circuit court incorrectly denied his motions for a directed verdict with respect to the charges of first-degree premeditated murder and the murder of a police officer lawfully performing his duties and that insufficient evidence supported his convictions of second-degree murder and the murder of a police officer lawfully performing his duties. In reviewing a criminal defendant's challenge to the sufficiency of the evidence, or the trial court's denial of a motion for a directed verdict of acquittal, this Court considers all the evidence presented in the light most favorable to the prosecution to determine whether a reasonable juror could find the defendant's guilt proven beyond a reasonable doubt. *People v Riley*, 468 Mich 135, 139; 659 NW2d 611 (2003); *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Even though our standard of review of these issues is the same, we consider them individually for purposes of this appeal.

This Court must draw all reasonable inferences and make credibility choices in support of the jury's verdict, and this Court should not interfere with the fact finder's role in determining witness credibility or the weight of the evidence. *Nowack*, *supra* at 400; *People v Elkhoja*, 251 Mich App 417, 442; 651 NW2d 408 (2002), vacated in part on other grounds 467 Mich 916 (2003).

To convict a defendant of first-degree premeditated murder, MCL 750.316(1)(a), the prosecutor must establish that the defendant intentionally killed the victim and that the defendant premeditated and deliberated the act of murder. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). To convict on a charge of second-degree murder, the prosecutor must show that the defendant caused a death with malice and without justification or excuse. *Aldrich*, *supra* at 123. Conviction of the murder of a police officer requires proof that (1) "the defendant committed a murder"; (2) "the victim was a 'peace officer or corrections officer'"; (3) at the time of the murder, the officer was "'lawfully engaged in the performance of any of his or her duties as a peace officer or corrections officer'"; and (4) the defendant knew at the time of the murder that the officer was "'a peace officer or corrections officer engaged in the performance of his or

her duty as a peace officer or corrections officer.'" *People v Herndon*, 246 Mich App 371, 385-386; 633 NW2d 376 (2001), quoting MCL 750.316(1)(c).

With respect to the first-degree premeditated murder charge, defendant challenges the sufficiency of the evidence establishing that he premeditated and deliberated the victim's murder. Premeditation and deliberation may be established by evidence of (1) the prior relationship between the defendant and the victim; (2) the defendant's actions before the murder; (3) the circumstances of the killing itself, including the type of weapon used and the location of the wounds inflicted; and (4) the defendant's conduct after the murder. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999); *People v Berry (On Remand)*, 198 Mich App 123, 128; 497 NW2d 202 (1993). Circumstantial evidence and the reasonable inferences arising therefrom may suffice to prove the elements of a crime, and "[m]inimal circumstantial evidence is sufficient to prove an actor's state of mind." *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001); *Abraham*, *supra* at 656.

Defendant correctly notes that the number or location of a murder victim's wounds taken alone do not establish that a killing occurred in a premeditated and deliberated manner. Had this been the only evidence introduced against the defendant, his argument may be more convincing. However, there were a number of other factors introduced into evidence on the issue of premeditation. For example, during the months leading up to the killing, defendant made what Gostias estimated to be hundreds of statements regarding his hatred of and deathwish for police officers and his desire and plan to kill or harm the next officer who stopped him, and defendant demonstrated how he would stab the officer. Immediately before the victim was killed, the victim conducted what several witnesses described as a routine traffic stop of defendant, during which defendant elbowed the victim in the chest and then fled toward a backyard. The victim gave chase and tackled defendant once, and the victim and defendant scuffled before defendant managed to break free and run away again. The victim tackled defendant a second time, and after another scuffle defendant stabbed the victim's neck eight times, cutting his jugular veins, carotid artery, and trachea, and stabbed the victim's head and back. Each time defendant stabbed the victim he had an opportunity to think about his actions.

Viewed in the light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find that defendant planned in advance to stab to death the next police officer that pulled him over. Further, the evidence was sufficient for a reasonable jury to conclude that defendant had at least one moment during which he might have reconsidered his plan to stab the victim while fleeing from the victim who had pulled him over, during the first scuffle with the victim, and while running from the victim a second time. Instead, though, defendant repeatedly and fatally stabbed the victim, fled the scene, and attempted to cover up his commission of the crime. This evidence warranted the jury to conclude that defendant premeditated and deliberated the victim's murder beyond a reasonable doubt. The trial court therefore did not err in denying defendant's motion for a directed verdict with respect to the charge of premeditated murder. *Riley*, *supra* at 139; *Nowack*¸ *supra* at 399-400. Moreover, we note that defendant was convicted of second degree murder, not premeditated murder.

To the extent that defendant challenges the sufficiency of the evidence supporting his conviction of second-degree murder, the facts set forth above, when viewed in the light most favorable to the prosecution, permit a rational factfinder to conclude beyond a reasonable doubt

that defendant caused the victim's death with malice, without any excuse or justification. See *Aldrich*, *supra* at 123.

Last, defendant asserts that with respect to his conviction under MCL 750.316(1)(c), the evidence was insufficient to establish that the victim was lawfully performing his duties when he was killed. The victim's death occurred within the last hour of his February 12, 2002, shift in the Detroit Police Department's Eighth Precinct, during which the victim had traffic stop duty in an area of west Detroit near Six Mile Road, directly adjacent to Redford Township. The victim's activity log for February 12, which was found on the seat of his police car, reflected that he had performed various traffic stops within Detroit. The victim was killed within one mile of the Redford Township border with Detroit, and a Redford Township police officer testified that the Detroit Police Department eventually assumed control of the investigation because the incident began in the city of Detroit.

At the time the victim stopped defendant's car, the sound of the muffler of defendant's car was, as described by many witnesses, extremely or very loud, and a police officer who examined defendant's car opined that the exhaust system qualified as illegally loud. Defendant also had a half-full bottle of vodka inside his coat pocket at the time the victim stopped him.

All witnesses to the traffic stop, apart from defendant, recalled that the victim wore a police uniform and that the police car that pulled into the driveway behind defendant either had police markings on the outside or had turned on its flashing blue and red lights. The prosecutor introduced testimony and photographs of the victim's blood-soaked uniform into evidence and presented testimony describing the traffic enforcement markings and blue and red flashing lights on the victim's patrol car at the time the victim was killed. Several witnesses testified that the victim frisked or patted down defendant. Some witnesses specifically disavowed observing any aggressive behavior by the victim aside from the victim pushing defendant's head down onto his car during the pat down. Geoffrey Leverenz, in whose driveway defendant's car and the police car parked, heard defendant refuse the victim's request to place his hands on his car. Leverenz's girlfriend testified that defendant threw his elbow into the victim's chest while the victim frisked him. Leverenz testified that the victim had not drawn his gun when he began chasing defendant into the yards behind Leverenz's house and the house next door. The victim eventually tackled and wrestled with defendant briefly before defendant again escaped and began running away. As defendant again began to flee, the victim yelled at him to stop. The victim did not immediately fire his weapon at defendant but tackled and wrestled with defendant a second time before defendant repeatedly stabbed him. Defendant then drove away in the victim's police car.

We initially observe that defendant does not contend that the victim's traffic stop was unlawful on the basis that the victim lacked authority to conduct a traffic stop in Redford Township. *People v Van Tubbergen*, 249 Mich App 354, 364-365; 642 NW2d 368 (2002) (explaining that insufficiently briefed issues are deemed abandoned on appeal). In light of the testimony indicating that defendant's car had a very loud and illegal exhaust system, that on the evening of February 12 the victim was patrolling a precinct bordering Redford, that the victim's activity log documented that the victim's other traffic stops on February 12 had taken place in Detroit, and that the victim pulled over defendant within a mile of the Detroit border with Redford, it is reasonable to infer that the victim heard and observed defendant's loud vehicle near the Detroit-Redford border and followed him a short distance into Redford to perform a traffic stop. When an officer within his own jurisdiction observes a traffic violation, he may

pursue the violator into a different jurisdiction to issue a ticket. See MCL 117.34 and MCL 257.726a. Thus, the jury could reasonably conclude that at the time the victim was killed, he was a police officer lawfully performing his duties.

Defendant testified that he had no knowledge of the victim's identity as a true police officer and averred that the officer repeatedly bounced his head off his car for no apparent reason.[2] To the extent that defendant's testimony and two trial witnesses' prior statements suggested that the victim bashed defendant's head against the top of his car, the jury apparently rejected this evidence. This Court will not revisit the jury's determination concerning the credibility of the witnesses or the weight of the evidence. *Nowack*, *supra* at 400. For the same reason, we reject defendant's challenge of the testimony of Leverenz, Leverenz's girlfriend, and Donald Nelson on the basis that they left town after the crime because the court properly instructed the jury in this regard. *Elkhoja*, *supra* at 442.[3]

Affirmed.

/s/ Stephen L. Borrello
/s/ Helene N. White
/s/ Michael R. Smolenski

[2] Defendant acknowledged, however, that a photograph of his face taken at the hospital showed no bruises or marks.

[3] In light of our conclusion that sufficient evidence was presented during defendant's trial to support the charge of first-degree premeditated murder and defendant's conviction of the murder of a police officer, we need not consider the merits of defendant's argument that the evidence introduced during his preliminary examination did not support his bindover on the first-degree murder charges. *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002) (explaining that a magistrate's erroneous conclusion that sufficient evidence was presented at the preliminary examination becomes harmless after the presentation at trial of sufficient evidence to convict).