

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLEN KEITH CHISOM JR,

Defendant-Appellant.

UNPUBLISHED

April 20, 2004

No. 246027

Wayne Circuit Court

LC No. 02-002776

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

The prosecution charged defendant Allen Keith Chisom, Jr. with one count of first-degree premeditated murder, MCL 750.316(a), one count of felony first-degree murder, MCL 750.316(b), and one count of armed robbery, MCL 750.529, in connection with the death of James Shaw. The trial court granted defendant's motion for a directed verdict with respect to the armed robbery charge, and the jury convicted him on both the first-degree and felony murder counts. The trial court merged the two counts for sentencing, and sentenced defendant to a mandatory term of life in prison without the possibility of parole. Defendant appeals his first-degree murder conviction and sentence and we affirm.

Defendant says the trial court erred in allowing the prosecutor to refer to defendant's prior criminal acts during opening statements, and in admitting evidence of these acts, because the prosecution did not give notice of its intent to introduce such evidence as required by MRE 404(b). We disagree. A trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). If there is an underlying question of law, such as whether admissibility is precluded by a rule of evidence, then we review that question of law de novo. *Id.* Evidence of other crimes is not admissible to show that a defendant had a propensity to commit the charged crime; however, such evidence is admissible for other purposes, such as proof of intent, motive, preparation, or a scheme or plan for doing an act. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004), citing MRE 404(b)(1). The prosecution is required to give defendants notice before trial, or, with good cause, during trial, of its intent to elicit testimony of other bad acts. *People v Hawkins*, 245 Mich App 439, 453; 628 NW2d 105 (2001), citing MRE 404(b)(2). However, the "res gestae exception" to MRE 404(b) allows the admission of evidence of other crimes or acts if they are connected to the charged crime in such a way to require the admission of the evidence to give the jury "the complete story." *People v Sholl*, 453 Mich 730, 741-742; 556 NW2d 851 (1996), citing

People v Delgado, 404 Mich 76, 83; 273 NW2d 395 (1978); see also *People v Robinson*, 128 Mich App 338, 340; 340 NW2d 303 (1983).¹

Defendant argues that the prosecution failed to give notice as required by MRE 404(b)(2) of its intent to elicit testimony concerning defendant's misappropriation and fraudulent use of credit cards issued in Shaw's name.² The prosecution counters that this evidence was necessary to show how and why the relationship between defendant and Shaw³ had soured. We agree with the prosecution that the evidence, including defendant's testimony at trial, shows that defendant had gambling problems, problems paying his bills, and that Shaw had demanded repayment from defendant. We conclude that the evidence relating to the fraudulent use of credit cards issued in Shaw's name was material to explaining defendant's motives for committing murder and that it fell under the *res gestae* exception to MRE 404(b). Accordingly, the trial court did not err in admitting the evidence, nor did it err in allowing the prosecution to discuss the evidence in its opening statement.

Furthermore, errors relating to the admission of evidence pursuant to MRE 404(b) can be harmless if there is other, sufficient evidence of a defendant's guilt. *People v Williamson*, 205 Mich App 592, 596; 517 NW2d 846 (1994). Though the trial court's ruling was not erroneous, were we to rule otherwise, the error was harmless in light of the other evidence of defendant's guilt, not the least of which is his admission, during his testimony at trial, that he had killed Shaw.

Defendant also contends that the prosecution failed to present sufficient evidence of premeditation to support his conviction of first-degree murder under MCL 750.316(a). We disagree. Where a defendant challenges the sufficiency of the evidence supporting his conviction, we review the evidence *de novo* in the light most favorable to the prosecution to determine whether sufficient evidence exists to allow a rational trier of fact to find the defendant guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999), citing *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748, amended 441 Mich 1201 (1992).

¹ In which this Court stated:

Under [the *res gestae*] exception, evidence of prior "bad acts" is admissible where those acts are "so blended or connected with the (charged offense) that proof of one incidentally involves the other or explains the circumstances of the crime." *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). Alternatively, "*res gestae*" has been defined as "the facts which so illustrate and characterize the principal fact as to constitute the whole one transaction, and render the latter necessary to exhibit the former in its proper effect." *People v Castillo*, 82 Mich App 476, 479-480; 266 NW2d 460 (1978). [*Robinson*, *supra* at 340.]

² Defendant admitted while testifying in his own defense that he had fraudulently obtained credit cards in Shaw's name, without Shaw's knowledge, and used them for his own gain.

³ Shaw was defendant's father's stepfather, and defendant considered Shaw to be his grandfather, and Shaw treated defendant like a grandson.

Defendant argues that the number of wounds inflicted and the fact that defendant merely had time to reflect are insufficient to establish premeditation and deliberation. “To establish first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and the act of killing was deliberate and premeditated.” *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995), citing MCL 750.316. A finder of fact may infer deliberation and premeditation “from all the facts and circumstances surrounding the incident, including the parties’ prior relationship, the actions of the accused both before and after the crime, and the circumstances of the killing itself.” *Id.* “Premeditation and deliberation require sufficient time to allow the defendant to take a second look.” *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999).

Here, defendant gave a statement to police in which he stated that he had been thinking about his need to get money to repay certain people, and that he decided to go into the kitchen to get a frying pan to knock Shaw unconscious. Defendant told police that this took a while, because he was scared. He then testified that he hit Shaw in the head until the frying pan broke, and then went into the kitchen to get a knife, at which point he began stabbing Shaw until he stopped moving. The medical examiner testified that Shaw had sustained at least two blunt force injuries to his head, and that he had been stabbed a total of eighty-one times, sustaining forty wounds to his head, thirteen wounds to his neck, eleven wounds to his chest, and seventeen wounds to his back. Some of the wounds penetrated Shaw’s heart, his right coronary artery, and his stomach. Defendant told police that he had taken money from Shaw’s pants, Shaw’s mobile phone, and approximately nine dollars in dimes. The prosecution presented evidence that Shaw liked to collect coins, as well as testimony from defendant’s girlfriend that he had exchanged five dollars worth of dimes for paper money. Viewing the evidence in the light most favorable to the prosecution, we conclude that sufficient evidence was presented to allow a rational jury to conclude that defendant killed Shaw with deliberation and premeditation.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette