

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THEODORE RISHARD KIRK,

Defendant-Appellant.

UNPUBLISHED

April 20, 2004

No. 246625

Wayne Circuit Court

LC No. 02-000478

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of first-degree premeditated murder, MCL 750.316(1)(a). The trial court sentenced him to life imprisonment without the possibility of parole. We affirm.

Defendant first argues that the prosecutor presented insufficient evidence regarding premeditation and deliberation to support his first-degree murder conviction. We disagree. We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could 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).

“In order to convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate.” *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation and deliberation may be proven by (1) the previous relationship between the defendant and victim, (2) the defendant’s actions before and after the killing, and (3) the particular circumstances of the killing. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998).

Defendant told numerous witnesses that he killed the victim. According to the testimony at trial, defendant stated that he threw the victim down a set of stairs and was interrupted when his neighbor knocked on his door. Defendant answered the door, got rid of his neighbor, took the victim back up the stairs, and continued to beat her. He then threw the victim over the fence in the back of the house. Defendant then had to run back into the house to answer the door again. Upon returning to the victim, defendant noticed that she was gasping for air, so he

jumped on her head. Defendant clearly had sufficient time to take a second look and reconsider what he was doing.

Moreover, after the killing, defendant hid the victim's body and the van in which he had transported it, and he took money out of the victim's purse and pocket to make it look like she had been robbed. A defendant's attempts to conceal a killing can be used as evidence of premeditation. *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003).

Viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence for the jury to convict defendant of first-degree premeditated murder.

Defendant also argues that the trial court erred by denying his motion for a new trial. Under MCR 2.611(A)(1)(e), a trial court may grant a motion for a new trial if a verdict is against the great weight of the evidence. Such a motion should be granted only when the evidence preponderates so heavily against the verdict that it would be a serious miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Moreover, "absent exceptional circumstances, issues of witness credibility are for the jury[.]" *Id.* No exceptional circumstances are present here. The evidence in this case does not preponderate so heavily against the verdict that a miscarriage of justice would result if the verdict was allowed to stand. *Id.* The court did not abuse its discretion in denying the motion for a new trial. See *People v Daoust*, 228 Mich App 1, 17; 577 NW2d 179 (1998) (setting forth the standard of review).

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood