

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GORDON MARTIN LYONS,

Defendant-Appellee.

UNPUBLISHED
November 2, 2004

No. 250581
Kent Circuit Court
LC No. 02-010334-FC

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316, and of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life in prison for the murder conviction and to two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant argues that the trial court erred in denying his motion for a directed verdict because there was insufficient evidence presented from which a rational trier of fact could have found beyond a reasonable doubt that defendant killed the victim, William Drummond, and that the killing was premeditated and deliberate. We disagree.

I. FACTS

On October 25, 2001, at around 11:00 p.m., the victim, William Drummond, left the Family Fare grocery store where he worked. At around 11:30 p.m., his truck was found crashed into a car dealership. The vehicle was empty except for a brown paper sack with empty beer cans on the driver's side floorboard. A short while later, between six and ten people, including the victim's wife Valerie, arrived at the accident scene. The victim's wife walked up to the truck, saw the beer cans in it, and became "hysterical." She asked the detective to "do more," stating that her husband does not drink beer and that she thought something was wrong. Shortly thereafter, Valerie's two cousins discovered the body lying in a ditch.

Just after midnight on October 25, 2001, Jason James Dougherty, who was in charge of answering non-emergency phone calls at the Grand Rapids police department, received a call on the Silent Observer phone line from a toll phone. The caller told Dougherty that he had seen two individuals, who were both covered in blood, on the corner of Goodrich and Division, and that one was carrying a knife and the other a gun. Before the tape was played for the jury, the

defense stipulated that defendant was the one who placed the call. Upon investigating the area in question, an officer saw that there was a wallet partially sticking out of a flower pot. Defendant later testified to having placed it there.

Defendant and the victim's wife had a significant relationship. The victim's wife testified to having been friends with defendant, and that they had been having an affair for over a year prior to her husband's murder. During that time period, defendant and the victim's wife would often see one another and speak on the phone. On the night of the murder, at around 11:18p.m., the victim's wife testified she was having a conversation with defendant, when he suddenly stated that he was coming to a place where he will lose service and must hang up. The victim's wife found this odd because, usually, when he would come to a place where he lost reception during a trucking run, he would just turn around and go back to a place where he could talk, or he would stop his truck on the side of the road. The conversation came to an abrupt end.

Defendant testified that on the night of the murder, he went to meet the victim to tell him he would be staying out of his marriage and that he is leaving town. However, on his way to meet the victim, defendant testified to picking up two young individuals, one African American and one Hispanic, whom he paid \$50.00 a piece to "look tough." Defendant testified that his intent was to let the victim know that if he ever struck Valerie, defendant could get others to harm him even though defendant himself would be out of town. Defendant followed the victim's truck out of the Family Fare parking lot after the victim left work and, at a stoplight, requested that the victim follow him to a place where defendant's friends had gotten their car stuck.

At that point, the Hispanic male that defendant had picked up began lunging at the victim and stabbing him with a knife. After the victim "whacked" the Hispanic male, the black male that defendant had picked up shot the victim in the back. The two men then got the victim off of the road, took his wallet, got in the victim's truck and drove off. Defendant got in his truck, and, as he passed the vacant car dealership on 68th Street, he saw that the victim's truck had been driven into a building and that an officer was there investigating. Defendant pulled into the driveway of a home. As he was backing out, his passenger doors flew open and the two guys he had picked up earlier got into his truck and told him to take them downtown to the Herkimer Hotel. However, the men had left the victim's wallet on the seat of defendant's truck; that is when he placed it in a flower pot and made the call to the Silent Observer phone line.

The victim was discovered with a stab wound on his right thigh, two bullet wounds to the back, an "incised wound" in the upper neck, and a bruised left eye. Defendant's prints never appeared on any of the collected materials, and he was eliminated as a source of the DNA evidence obtained from the crime scene. At the close of the prosecution's case, defendant moved for a directed verdict; the motion was denied. The jury returned a guilty verdict.

II. STANDARD OF REVIEW

When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

III. ANALYSIS

The prosecutor presented sufficient evidence from which a rational trier of fact could have found all of the essential elements of first-degree premeditated murder proven beyond a reasonable doubt. The elements of first-degree premeditated murder are that defendant killed the victim and that the killing was “willful, deliberate, and premeditated.” *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002), quoting MCL 750.316(1)(a).

It is well settled that circumstantial evidence and reasonable inferences therefrom may constitute sufficient evidence to find all of the elements of an offense beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Here, evidence was presented showing that defendant had a motive to kill the victim, and evidence of a defendant’s motive is relevant to establish identity, actus reus, and mens rea. *People v Sabin (After Remand)*, 463 Mich 43, 68; 614 NW2d 888 (2000).

Evidence was introduced at trial substantiating that defendant had been having an extramarital affair with the victim’s wife for over a year before the murder occurred. In addition, the victim’s wife testified that she told defendant that the only way she could have a life with him was if her husband died or divorced her. Yet, the victim’s wife made it clear to defendant on several occasions, including the night of the victim’s murder, that she remained committed to staying in her marriage and planned on ending her illicit relationship with defendant. Thus, the prosecutor presented evidence that defendant had a motive to kill Drummond because he was having an extramarital affair with Drummond’s wife and because the wife was not going to leave Drummond or continue her involvement with defendant while Drummond was alive.

The prosecutor also presented evidence that defendant had a financial motive to kill Drummond. The victim’s wife testified that, a month before Drummond’s murder, she took out a free three-month life insurance policy on Drummond for one million dollars. She then told defendant about the policy. There was also testimony that, the month before Drummond’s murder, the State of Michigan had a multi-million dollar judgment against defendant in connection with a tire recycling business that he was running, and that defendant had lost a lot of money in that business. The prosecutor also presented evidence that despite his dire financial situation, defendant, perhaps believing that he was going to come into some money in the fall of 2001, entered into a contract with a company for \$98,000 worth of land clearing services on a parcel of land that his family owned. After the work began in November 2001 and the company demanded partial payment, defendant never paid the company for \$19,600 worth of land clearing services already performed. Thus, as proof that defendant had a financial motive to murder Drummond, the prosecutor presented evidence that defendant was in financial trouble, that there was a one-million-dollar life insurance policy on Drummond, and that defendant believed he would be coming into some money in November 2001.

The prosecutor also presented circumstantial evidence placing defendant at the crime scene around the time of the murder. There was testimony that defendant placed a call to the Silent Observer phone line just one hour after Drummond was last seen alive. Defendant, disguising his voice, informed the operator that he had just witnessed two young males, one African American and one Hispanic, wearing dark clothing and sweatpants, near Division and Goodrich who were “covered in blood” and carrying a knife and a gun. Defendant further

informed the operator that the two men were near some flowerpots by the Herkimer Hotel. Treating the call as a legitimate tip, the Grand Rapids Police Department had an officer investigate the area, and the officer discovered the victim's wallet in a flowerpot near the hotel. Various officers and detectives looked for people matching the Silent Observer description in local homeless shelters and missions, but the investigation resulted in no leads. Further, the police received no other calls that night from people having seen these two individuals roaming the streets of downtown Grand Rapids armed and "covered in blood."

The jury could have concluded from the evidence surrounding the Silent Observer call and the lack of viable leads resulting from that call that defendant knew what particular weapons were used to murder Drummond, that he knew where Drummond's wallet was, and that he felt it necessary to disguise his voice in order to avoid being identified. The evidence of the phone call suggests that defendant was with Drummond at the time of his murder because he had specific information about the murder weapons used and because he knew where the victim's wallet was hidden.

Furthermore, Drummond's wife testified at trial that defendant lied to her when he told her he had cancer and feigned undergoing various cancer treatments in an effort to garner sympathy. Defendant also told the victim's wife that, if it turned out his cancer was terminal, he planned on killing himself and making it look like an accident so that his wife could collect insurance money. Thus, defendant had discussed staging events with Drummond's wife in the past.

There was also testimony that the accident involving the victim's truck was staged. An accident reconstructionist testified that the victim's truck, which was still in proper working condition when it was found, had been deliberately driven straight into a building at a low rate of speed. Moreover, despite defendant's theory that two other individuals robbed and murdered Drummond, only one set of footprints were detected leading away from and back towards the victim's crashed truck, even though those footprints were never positively identified as defendant's. Further, there was testimony that defendant's wallet was only missing one or two credit cards and that no activity was found on those accounts after the wallet was recovered. Thus evidence of defendant's Silent Observer phone call, coupled with evidence that the victim's car accident and robbery were staged, could have led the jury to conclude beyond a reasonable doubt that defendant tried to stage the events in order to discourage the police from concluding that defendant was a suspect.

In addition to the evidence that the crime scene was staged and the special knowledge that defendant shared with the Silent Observer operator regarding the murder weapons used shortly after Drummond's death, other circumstantial evidence that implicated defendant were various cell phone reports that a sheriff's detective obtained. There was evidence that defendant's cell phone was in use in the vicinity of the victim's workplace at 11:18 p.m., when Drummond was last seen alive by a fellow employee. Further, the victim's wife testified that she had a telephone conversation with defendant on his cell phone the night her husband was murdered and that the call lasted from 9:48 p.m. until 11:18 p.m. Although defendant had led Drummond's wife to believe that he was calling her from Oklahoma because he was on a trucking run, the cell phone reports indicate that defendant was actually at or near Drummond's workplace just before he disappeared. Further, Drummond's body was found just 3.6 miles from his workplace.

Additional evidence that supported the conclusion that defendant was the perpetrator is defendant's lack of a solid alibi, and evidence that defendant fled from Grand Rapids just after Drummond was murdered. The Saturday after the murder, detectives asked defendant where he was the night of the murder and, although defendant told the detectives that he left his home at 6:00 p.m. and returned at 10:00 or 10:30 a.m. the next day, defendant refused to tell the detectives where he had been and only stated he was "with a woman." When the detectives pressed the issue, defendant refused to respond, became upset, and began yelling at one of the detectives. After the murder, defendant approached one of his friends and asked her to say that she was with him on the night of the murder, but she refused. Further, although there was a great deal of testimony regarding a Coopersville gas station receipt that defendant possessed showing he was in Coopersville on the evening of the murder, the prosecutor presented evidence from a credit card transaction company showing that the gas station transaction occurred at 6:22 p.m., some five hours before Drummond's murder. Thus, despite defendant's attempts to fashion an alibi, there was no evidence that defendant was anywhere other than near the crime scene at the time of the murder.

Likewise, defendant's cell phone records and subsequent appearances reveal that he headed up the lakeshore to the town of Pentwater just after the murder, which the jury could conclude was evidence of flight. Evidence of flight is admissible to show consciousness of guilt. *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001). There was testimony that defendant's cell phone signal was picked up at a Nunica cell tower at 12:54 a.m. on the night of the murder. Other cell phone reports indicated that a call was placed from defendant's cell phone at 5:55 a.m. the next day near the Pentwater cell tower. Likewise, Pentwater morning radio show host Matt Sly testified at trial that, on October 26, 2001, at around 5:30 a.m., defendant pulled into the Chamber of Commerce parking lot across the street from the radio station and asked Sly where he could get his taillight fixed and get something to eat. Thus, the prosecution presented evidence from which the jury could have concluded that defendant fled the crime scene.

Likewise, testimony regarding mutual threats between defendant and Drummond in the days before the murder provided additional circumstantial evidence from which the jury could have resolved the question of identity. For example, Drummond's wife testified that, after she and defendant engaged in some sexual contact, she felt guilty and told her husband about her feelings for defendant. Drummond became "irate" and told his wife that if he caught defendant on the property again, he would "smash defendant's teeth down his throat and kill him." When the victim's wife told defendant about Drummond's statement, defendant replied "I could whip him with one hand tied behind my back. I'm not afraid of him." Further, the day of the murder, the victim's wife reiterated that Drummond was "violently angry" with defendant.

Although there was no direct evidence presented that established defendant was the killer, identity may be proven by circumstantial evidence and reasonable inferences drawn from that evidence. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999); *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). All of the circumstantial evidence combined could have convinced a rational jury to conclude beyond a reasonable doubt that defendant was the killer. There was evidence that defendant had more than one motive to kill the victim, evidence that placed defendant at the crime scene during the murder, evidence that defendant fled the area after the murder was committed, and evidence of mutual threats exchanged between

defendant and the victim in the days leading up to the murder. There was also evidence that defendant staged the events surrounding the crime to make it look as if others were responsible, and that he tried but failed to establish an alibi regarding his whereabouts on the night of the murder. Taken together, this evidence was sufficient to convince a rational factfinder that it was defendant who killed Drummond.

Further, there was sufficient evidence presented from which the jury could have concluded beyond a reasonable doubt that the killing was deliberate and premeditated. The prosecution presented evidence that, in the days leading up to the murder, defendant was trying to establish an alibi, and was taking other action to conceal his ongoing relationship with the victim's wife. For example, the victim's wife testified that, based on the statements defendant made to her in conversations with him during the week of the murder, she believed defendant was on a trucking run in Oklahoma on the night of the murder. Further, a detective testified that, during a police interview, defendant admitted lying to his wife and telling her that he was "trucking" on the night of the murder. Likewise, as October 2001 approached, defendant made arrangements to send his cell phone bill to the Drummond residence so that defendant's wife would not know he and Drummond's wife were still calling each other. There was also evidence that, a few days before the murder, defendant placed twenty telephone calls to the victim's wife using "*67", a feature that blocks identification of the caller, and that defendant made two calls to the victim's workplace also using the "*67" feature. From this evidence, the jury could have inferred that, in the days before the murder, defendant was lying about where he would be on the night of the murder, and was concealing his continued involvement with the victim's wife because he was planning to kill the victim.

There was also evidence that defendant was in the area of Family Fare, the victim's workplace, during the afternoon of the murder because his cell phone records indicate that he called from that area around 3:14 p.m. and that he again called from the Family Fare area between 9:48 p.m. and 11:18 p.m. that evening. The fact that defendant was in the area where the victim was working several hours before the victim left from work provides some evidence that defendant was looking for the victim that day and planning an encounter with him.

The forensic pathologist's testimony provides further evidence that the killing itself was both deliberate and premeditated. Although the brutal nature of a killing alone is insufficient to show premeditation, evidence that a victim sustained defensive wounds can be evidence of premeditation. *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). The forensic pathologist testified that the victim sustained a number of defensive cuts on his hands, as well as a superficial cut to his neck, a stab wound on his right thigh, and a bruised eye. Because none of the stab wounds, cuts, or bruises that the victim sustained were fatal or contributed to the cause of death, their existence indicates that defendant had time to take a second look or to reflect upon his actions, before shooting the victim twice in the back. Thus, in light of this evidence, we conclude that the prosecution presented sufficient evidence from which the jury could conclude, beyond a reasonable doubt, that defendant killed the victim with premeditation and deliberation.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Bill Schuette