

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC D. TRUELOVE,

Defendant-Appellant.

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UNPUBLISHED

December 14, 2004

No. 250154

Wayne Circuit Court

LC No. 03-002455-01

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his conviction by a jury of second-degree murder, MCL 750.317, for which he was sentenced to a prison term of twenty years, six months to thirty-one years, seven months. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant first argues that the trial court erred by denying his motion for a directed verdict on the charged offense of first-degree premeditated murder. We disagree.

In assessing whether a defendant's motion for a directed verdict should have been granted, the evidence presented by the prosecution is considered in a light most favorable to the prosecution to determine whether a rational factfinder could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Riley (After Remand)*, 468 Mich 135, 139-140; 659 NW2d 611 (2003). All conflicts in the evidence are resolved in favor of the prosecution. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

First-degree premeditated murder consists of an intentional killing of a victim that is premeditated and deliberated. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001). Premeditation and deliberation may be inferred from the circumstances surrounding a killing. *Id.* Minimal circumstantial evidence is sufficient to prove an actor's state of mind. *Id.*

As noted by the trial court in denying defendant's motion, there was evidence that defendant came out of the house with a knife, went down the street to the scene of the altercation, and stabbed the victim multiple times, although the victim was trying to retreat. This is sufficient to support a finding of premeditation and deliberation.

Defendant also argues that the trial court erred by failing to instruct the jury on involuntary manslaughter. However, although defense counsel initially asked for a jury instruction on involuntary manslaughter, when the trial court asked him, “You’re asking for involuntary manslaughter?,” he replied, “I’ll go with voluntary manslaughter.” This can only be reasonably understood as a withdrawal by defense counsel of the request for an instruction on involuntary manslaughter. This constituted a waiver of an instruction on involuntary manslaughter that extinguished any possible error based on the lack of such an instruction. See *People v Adams*, 245 Mich App 226, 239-240; 627 NW2d 623 (2001) (holding that change of venue issue was waived where request was withdrawn before trial court ruled on it and the waiver extinguished any error).

Defendant also argues that the trial court erred by denying his request for a jury instruction on defense of another. This request was based on evidence that the victim had thrown liquor in defendant’s girlfriend’s face. We review this claim of instructional error de novo. *People v Fennell*, 260 Mich App 261, 264; 677 NW2d 66 (2004). With regard to a claim of self-defense, a defendant “is not entitled to use any more force than is necessary to defend himself.” *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). It is apparent that the same principle must apply in the context of a claim of defense of another, i.e., a person is not entitled to use more force than is necessary to defend another person. Defendant inflicting multiple stab wounds on the victim cannot reasonably be viewed as necessary to defend his girlfriend under the circumstances. Indeed, if that was the motivation for defendant to stab the victim, then the stabbing was not done in defense of another, but rather was an act of vengeance. Thus, the trial court did not err by denying defendant’s request for an instruction on defense of another.

Finally, to the extent defendant argues that the evidence showed the possibility of imperfect self-defense or imperfect defense of another and that the trial court erred by failing to instruct the jury in that regard, we observe that this issue is not properly presented for review because it is not in the scope of defendant’s statement of the questions presented. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). Further, from our review of the record, defendant never requested a jury instruction on imperfect self-defense or imperfect defense of another.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Kirsten Frank Kelly