

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EPIGMENIO GOMEZ,

Defendant-Appellant.

UNPUBLISHED
February 19, 2009

No. 280808
Wayne Circuit Court
LC No. 07-006974-01

Before: Saad, C.J., and Davis and Servitto, JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a), and the trial court sentenced him to life imprisonment without parole. We affirm.

Defendant killed the victim by stabbing her multiple times and strangling her. At trial, defendant admitted that he was involved in a physical struggle with the victim, but he denied that he intentionally killed her.

I. Premeditation

In reviewing a challenge to the sufficiency of the evidence, this Court reviews the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). The standard of review is deferential and this Court is required to draw all reasonable inferences and make credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

To convict a defendant of first-degree murder, the prosecution must prove beyond a reasonable doubt that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Youngblood*, 165 Mich App 381, 386-387; 418 NW2d 472 (1988). As this Court explained in *Youngblood*:

Premeditation and deliberation may be inferred from the facts and circumstances surrounding the killing, including: motive, as the result of a prior relationship between the parties, a weapon acquired and positioned in preparation for the homicide, circumstances and events surrounding the killing, and organized

conduct prior to or subsequent to the killing suggesting the existence of a plan.
[*Id.* at 387.]

Here, defendant called an escort agency and arranged for the victim to come to his apartment. The evidence showed that during the few hours the victim was at defendant's apartment, she was savagely beaten and most likely tortured. The cause of death was determined to be two deep stab wounds and manual strangulation. In addition to these injuries, the victim had cuts, bruises and abrasions over her entire body, which were too numerous to count. There was evidence that at least two different knives were used. According to the medical examiner, the cuts, bruises, and abrasions were all inflicted while the victim was still alive, thereby supporting an inference that she was tortured over a prolonged period of time. Further, the strangulation would have required three to five minutes of continued pressure. The evidence also showed that defendant attempted to cover up the crime by discarding evidence, throwing the victim's body out his apartment window, and by setting his apartment on fire. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that there was a long enough interval between the initial homicidal thought and the ultimate action to afford a reasonable person time to take a second look. *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003). Thus, there is sufficient evidence of premeditation and deliberation to support defendant's conviction of first-degree murder.

II. Jury Instructions

Defendant also says that the trial court erred by refusing to instruct the jury on self-defense, accident, and manslaughter. We disagree.

The trial court's jury instructions must include all elements of the charged offenses and any material issues, defenses, and theories if supported by the evidence. *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005), lv pending. A trial court's decision whether an instruction applies to the facts is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

"In Michigan, the killing of another person in self-defense is justifiable homicide if the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm." *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). In order to act in justifiable self-defense, there must be evidence that the defendant acted intentionally, but that his actions were justified by the circumstances. *Id.* at 503.

Defendant argues that a self-defense instruction was warranted in light of his own testimony that he was involved in a struggle with the victim after she attacked him armed with a knife. According to defendant, he grabbed the victim around the throat during the struggle, but stated that she did not lose consciousness. Defendant also testified that he pushed the woman against the wall and then saw that she was bleeding from her belly, but defendant denied ever holding a knife.

Initially, we note that defendant's testimony failed to account for much of the undisputed physical evidence. Defendant's version of events did not explain the numerous cuts, bruises, and abrasions that were all over the victim's body, which the medical examiner testified were

inflicted while she was still alive. It also failed to account for the evidence that the victim was strangled to unconsciousness, or the horizontal and vertical T-shaped stab wounds to her chest. The cause of death was determined to be two deep stab wounds and manual strangulation, but defendant denied stabbing the victim or holding a knife, and also denied choking the victim to unconsciousness. Accordingly, the trial court did not err by refusing to instruct the jury on self-defense.

A criminal homicide that includes intent as an element is excusable if the killing is accidental. *People v Hess*, 214 Mich App 33, 37-38; 543 NW2d 332 (1995). Here, however, the trial court determined, and we agree, that it was “factually impossible” for the victim’s fatal injuries to have been caused accidentally. As previously indicated, the cause of death was determined to be two deep stab wounds and manual strangulation. The two stab wounds were lengthy and deep, and were in a T-shaped pattern, one vertical and one horizontal. There were also pinpoint hemorrhages (petechiae) in the victim’s eyes, resulting from high pressure during manual strangulation. Defendant’s testimony of his struggle with the victim did not account for these injuries, and there was no other evidence explaining how the injuries could have occurred accidentally. Accordingly, the trial court did not err by refusing to instruct the jury on the defense of accident.

Voluntary manslaughter is an intentional killing, committed in the heat of passion, caused by adequate provocation and without a lapse of time during which a reasonable person could control his passions. *People v Pouncey*, 437 Mich 382, 388; 471 NW2d 346 (1991). “Involuntary manslaughter is the unintentional killing of another, without malice, during the commission of an unlawful act not amounting to a felony and not naturally tending to cause great bodily harm; or during the commission of some lawful act, negligently performed; or in the negligent omission to perform a legal duty.” *People v Mendoza*, 468 Mich 527, 536, 541; 664 NW2d 685 (2003).

Considering the savage nature of the victim’s numerous injuries, a rational view of the evidence does not support a finding that this was either a heat of passion killing caused by adequate provocation, or that the victim was killed under circumstances that would amount to only involuntary manslaughter. Moreover, as previously indicated, defendant denied causing the injuries that resulted in the victim’s death. Accordingly, the trial court did not err by refusing to instruct the jury on either voluntary or involuntary manslaughter.

Affirmed.

/s/ Henry William Saad
/s/ Alton T. Davis
/s/ Deborah A. Servitto