

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL SENSELY,

Defendant-Appellant.

UNPUBLISHED

May 14, 2009

No. 283054

Wayne Circuit Court

LC No. 07-007396-FC

Before: Servitto, P.J., and O’Connell, and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree premeditated murder, MCL 750.316, and sentenced to life imprisonment. He appeals as of right. We affirm.

Defendant’s conviction arises out of the murder of his former girlfriend. In the early morning hours on the day of the incident, Samson Wright agreed to provide defendant, whom he thought was stranded at a gas station, a ride to an apartment. During the car ride, defendant informed Wright that he had murdered the victim because she had been “cheating” on him with another man. Defendant told Wright that he beat the victim before choking her to death. Wright testified that defendant was laughing as he described the murder and that defendant pointed out emergency vehicles and news trucks near the crime scene in an effort to prove that he had in fact killed the victim. Defendant was eventually arrested and he gave a statement to police in which he confessed to the murder because he was angry that the victim wanted an open relationship with another man. Expert testimony established that the victim was strangled to death with either a forearm or hands to the neck.

The only issue on appeal is whether there was sufficient evidence to prove defendant acted with premeditation when he killed the victim. We review a challenge to the sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In determining whether the prosecution has presented sufficient evidence to sustain a conviction in a bench trial, we construe the evidence in a light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in finding all of the elements of the crime beyond a reasonable doubt. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

To prove premeditated first-degree murder, within the meaning of MCL 750.316(1)(a), the prosecution must prove beyond a reasonable doubt that “the 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), citing MCL 750.316(1)(a). To show premeditation, “[s]ome time span between [the] initial homicidal intent and ultimate action is necessary to establish premeditation and deliberation.” *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003), quoting *People v Tilley*, 405 Mich 38, 45; 273 NW2d 471 (1979). “The interval between the initial thought and ultimate action should be long enough to afford a reasonable person time to take a ‘second look.’” *Gonzalez, supra*. And, “[m]anual strangulation can be used as evidence that a defendant had an opportunity to take a ‘second look.’” *Id.* In addition, “[t]hough not exclusive, factors that may be considered to establish premeditation include the following: (1) the previous relationship between the defendant and the victim; (2) the defendant’s actions before and after the crime; and (3) the circumstances of the killing itself . . .” *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Furthermore, evidence of motive is one of the facts and circumstances surrounding a killing that can show premeditation and deliberation. *People v Youngblood*, 165 Mich App 381, 387; 418 NW2d 472 (1988). And, “[c]ircumstantial evidence and reasonable inferences drawn from the evidence may constitute satisfactory proof of premeditation and deliberation.” *People v Unger*, 278 Mich App 210, 229; 749 NW2d 272 (2008).

Here, the evidence supports beyond a reasonable doubt that defendant was guilty of premeditated first-degree murder. Defendant’s previous relationship and actions before the murder suggest that he acted with premeditation. *Plummer, supra*. Defendant was involved in a romantic relationship with the victim and this relationship led to a confrontation between defendant, the victim and another man several hours before the victim was murdered. Defendant informed Wright that he killed the victim because she was “cheating” on him, and defendant also told police that he argued with the victim the entire evening before he killed her early the next morning. This evidence, when coupled with defendant’s statement to police that he was angry with the victim for wanting an open relationship with another man, supports that defendant had motive to murder the victim, which is indicative of premeditation. *Youngblood, supra*.

In addition, the circumstances of the murder itself show that defendant had time for a “second look” before he completed the act of strangling the victim to death. *Gonzalez, supra*. Numerous hours intervened between the initial confrontation between defendant, the victim and the other man. More importantly, at trial an expert testified that death by strangulation “at minimum” takes up to two minutes. We find this length of time clearly gave defendant adequate opportunity to take a “second look” before he choked the victim to death. *Id.* In fact, defendant’s own statements support that defendant saw what was happening to the victim’s body and yet, he kept choking her until she died. Moreover, defendant’s actions following the murder also suggest he acted with premeditation and deliberation. *Plummer, supra*. Immediately after the murder, defendant checked on the victim’s young son, who was asleep, before leaving the apartment to make telephone calls in an attempt to remove himself from the crime scene. See *People v Berthiaume*, 59 Mich App 451, 461-462; 229 NW2d 497 (1975) (evidence of a defendant’s flight and attempts to conceal involvement in a crime may be considered by the factfinder in determining if a defendant acted with premeditation and deliberation). Furthermore, defendant was laughing and showed no remorse as he described to Wright how he had killed the victim. See *People v Paquette*, 214 Mich App 336, 342-343; 543 NW2d 342 (1995), (a defendant’s lack of remorse can be relevant to the determination of whether an individual acted with premeditation).

Although defendant testified at trial that he discovered the victim dead in the apartment, that he was coerced into making his inculpatory statement to police, and that Wright offered false testimony, it is not our role to interfere with the factfinder's determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Reviewing the evidence in the light most favorable to the prosecution, we find that there was sufficient evidence to convict defendant of premeditated first-degree murder. In reaching our conclusion, we reject defendant's contention that voluntary intoxication with cocaine is a defense. MCL 768.37. And, defendant did not present nor demonstrate the existence of a valid insanity defense. MCL 768.20a; MCL 768.21; MCL 768.21a. Thus, insanity was not a viable defense in this case.

Affirmed.

/s/ Deborah A. Servitto

/s/ Peter D. O'Connell

/s/ Brian K. Zahra