

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 124,804

STATE OF KANSAS,
Appellee,

v.

MICAELA LEE SPENCER,
Appellant.

SYLLABUS BY THE COURT

1.

When challenged, the State must prove a defendant voluntarily made incriminating statements to law enforcement by a preponderance of the evidence based on the totality of the circumstances involved.

2.

An appellate court reviews a district court's determinations about the voluntariness of a defendant's incriminating statements to law enforcement by using a two-step standard of review. First, the appellate court decides whether substantial competent evidence supports the factual underpinnings of the district court's decision. Second, the reviewing court views the district court's ultimate legal conclusion drawn from those facts de novo. In this process, the appellate court must not reweigh evidence or reassess witness credibility.

3.

A defendant's incriminating statements to law enforcement are not involuntary simply because the defendant was tired or under the influence of drugs. Any such condition must have rendered the defendant confused, unable to understand, unable to

remember what had occurred, or otherwise unable to knowingly and voluntarily waive the right to remain silent.

4.

When a defendant challenges sufficiency of the evidence supporting a conviction, an appellate court looks at all the evidence in the light most favorable to the prosecution to decide whether a rational fact-finder could have found the defendant guilty beyond a reasonable doubt. In this process, the reviewing court must not reweigh evidence, resolve evidentiary conflicts, or reassess witness credibility.

5.

As an element of first-degree murder, premeditation is the process of thinking about a proposed killing before engaging in the homicidal conduct. It need not be proved by direct evidence. It can also be established by circumstantial evidence, provided any inferences made from that evidence are reasonable.

Appeal from Sedgwick District Court; DAVID L. DAHL, judge. Opinion filed April 28, 2023.
Affirmed.

Ryan J. Eddinger, of Kansas Appellate Defender Office, argued the cause and was on the brief for appellant.

Matt J. Maloney, assistant district attorney, argued the cause, and *Marc Bennett*, district attorney, and *Derek L. Schmidt*, attorney general, were with him on the brief for appellee.

The opinion of the court was delivered by

BILES, J.: A jury convicted Micaela Spencer of first-degree premeditated murder, selling sexual relations, and two counts of felony theft. On appeal, she argues sleep deprivation and drug use tainted her early morning consent to an interview with law

enforcement officers when she confessed to the murder. She also argues insufficient evidence supports the premeditation element required for her murder conviction. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

William Callison worked as a lot attendant for PayDay Motors in Wichita. He lived in a fifth wheel camper across the street. On Monday, May 13, 2019, he did not show up for work. His boss, Nelson Tucker, received an unexpected and suspicious text message from Callison's phone saying he was going to Colorado on vacation. Later that day, Tucker spotted Callison's truck pulling a car trailer owned by Tucker that contained a restored 1963 Corvette. Suspicious, Tucker followed and eventually stopped the truck. He found Royce Thomas driving and Spencer in the passenger seat. They claimed Callison sent them to pick up the trailer. Tucker called 911; but before police arrived, the pair unhooked the trailer, left it on the street, and drove off in the truck.

Officers eventually found the pair, along with the truck and the camper belonging to Callison, parked in a residential driveway. When asked, Spencer acknowledged the truck belonged to Callison but claimed the camper was hers. She said Callison was not with them, so police tried to call his cell phone. The call went straight to voicemail. Officers then entered the camper as a welfare check. They discovered Callison's body with "approximately 40 sharp force injuries." His penis also had been mutilated.

The State charged Spencer with first-degree premeditated murder, selling sexual relations, and two counts of felony theft. A jury convicted her as charged, and the district court sentenced her to life in prison without the possibility of parole for 50 years. This is her direct appeal.

Spencer raises two issues: (1) the voluntariness of her statements to police; and (2) the sufficiency of the premeditation evidence. Jurisdiction is proper. See K.S.A. 60-2101(b) (Supreme Court jurisdiction over direct appeals governed by K.S.A. 22-3601); K.S.A. 2022 Supp. 22-3601(b)(3)-(4) (life sentence and off-grid crime cases permitted to be directly taken to Supreme Court); K.S.A. 2022 Supp. 21-5402(b) (first-degree murder is off-grid person felony).

SPENCER'S STATEMENTS TO POLICE

When challenged, the State must prove a defendant voluntarily made incriminating statements to law enforcement by a preponderance of the evidence based on the totality of the circumstances involved. *State v. Sesmas*, 311 Kan. 267, 275, 459 P.3d 1265 (2020). The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires a trial judge to make a preliminary examination as to a confession's voluntariness, resolve evidentiary conflicts, and submit to a jury only those confessions the judge believes to be voluntary. *State v. Canaan*, 265 Kan. 835, 839-40, 964 P.2d 681 (1998).

An appellate court uses a two-step standard of review when examining a district court's determination about a defendant's willingness to speak with law enforcement. First, the appellate court decides whether substantial competent evidence supports the factual underpinnings of the district court's decision. Second, the reviewing court considers the ultimate legal conclusion drawn from those facts de novo. In this process, the appellate court does not reweigh evidence or reassess witness credibility. *Sesmas*, 311 Kan. at 275.

Spencer's interviews with police

Officers took Spencer into custody on a Monday evening and put her in an interview room alone at 8:03 p.m., where she waited about seven and half hours (around 3:33 a.m., Tuesday) before Detective Michelle Palmer and her partner began questioning. Spencer acknowledged where she was and provided her biographical information, including current and previous addresses, date of birth, social security number, height, weight, medical history, and mother's phone number. She said she slept Sunday night about four hours but not since. She complained of a stomachache.

Palmer explained Spencer could stop the interview at any time and needed to make sure Spencer was "sober" and "clearheaded" before administering *Miranda* rights. Spencer said the drugs she had taken on Sunday (the day of the murder) had worn off and said she had not consumed alcohol or drugs during the previous 24 hours. Spencer agreed to speak with the officers after they advised her of her rights. This early morning interview took about two and a half hours with two breaks, each lasting between 40 and 45 minutes. Spencer napped while alone in the room.

Spencer said she had not planned to kill Callison but only intended to exchange money for sex. She acknowledged a green knife used to stab Callison was hers. She said her thought just before stabbing him was that she was going to "hit him with the window breaker portion of the pocketknife, and then it unfolded differently from there." She "was seeing red and began stabbing him."

About 48 hours later, Palmer returned to question Spencer around noon on Thursday. Palmer asked Spencer, who was still in custody, if she had enough sleep. Spencer said she went to bed around 8 p.m. the night before and woke up around 7 a.m. She again acknowledged being sober and clearheaded. Palmer repeated the *Miranda*

warnings and Spencer agreed to keep talking. She told Palmer largely the same story as before, other than "she remembered that when she went to get the knife out, she was thinking about where to stab [Callison]." This differed from her previous statement that she had only wanted to hit Callison with the knife's handle. She also said the night "played out" her "fantasy murder plan" for him. Otherwise, she did not change or alter her description of the incident.

The district court's ruling on admission of the incriminating statements

The State filed a pretrial motion to determine the admissibility of Spencer's statements under *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964). At the hearing, Palmer testified Spencer was allowed to use the restroom and offered food and water during the first interview. She described Spencer as appearing "pleasant, and calm, and awake." The detective said Spencer was "responsive" and "[a]ware of her surroundings," as well as able to intelligibly answer questions, clarify any misunderstandings, and correct herself when needed. She said Spencer told her she had a GED and could read, write, and understand English. Palmer acknowledged her police experience made her familiar with people who are either intoxicated or under the influence of drugs, and that she had concluded Spencer's behavior showed no signs of impairment.

Transitioning to the Thursday interview, Palmer said Spencer was crying but "still able to communicate and respond." And at no time, the detective continued, did Spencer ask for an attorney or to stop the questioning. Defense counsel argued Spencer's statements were not voluntary, noting the total time she spent in the interview room, her waiting time before the interview, her drug use before the interview, and her complaints about stomach pains.

When the hearing finished, the court said it would watch the recorded interviews before ruling. At trial, it read into the record its decision that had been sent earlier to the parties:

"In my e-mail to all of you I said . . . Ms. Spencer's comments during the first two interviews are admissible. The defendant was properly Mirandized, and had been Mirandized previous times on unrelated matters. She spoke freely, was under no alcoholic or chemical influence. She had a GED, was cogent, and was intellectually capable of understanding what she was doing. She was mentally and physically capable of understanding her rights under Miranda. She understood what she was saying and doing. She remembered background factual information flawlessly. Ms. Spencer's statements were freely, voluntarily, and knowingly given, and are admissible."

Defense counsel lodged a continuing objection to admitting Spencer's statements into evidence, which the court overruled.

Discussion

The question is whether the district court erred in determining Spencer's incriminating statements were made voluntarily. See *State v. Swanigan*, 279 Kan. 18, 23-24, 106 P.3d 39 (2005) ("In determining whether a confession is voluntary, a court is to look at the totality of the circumstances. . . . The essential inquiry in determining the voluntariness of a statement is whether the statement was the product of the free and independent will of the accused."). To resolve this, the following nonexclusive factors are typically considered:

"(1) the accused's mental condition; (2) the manner and duration of the interview; (3) the accused's ability to communicate on request with the outside world; (4) the accused's age, intellect, and background; (5) the officer's fairness in conducting the interview; and (6) the accused's fluency with the English language.

"In addition,

""[t]hese factors are not to be weighed against one another with those favorable to a free and voluntary confession offsetting those tending to the contrary. Instead, the situation surrounding the giving of a confession may dissipate the import of an individual factor that might otherwise have a coercive effect. Even after analyzing such dilution, if any, a single factor or a combination of factors considered together may inevitably lead to a conclusion that under the totality of circumstances a suspect's will was overborne and the confession was not therefore a free and voluntary act.' [Citation omitted.]" *Sesmas*, 311 Kan. at 276.

The district court found Spencer was mentally and physically able to understand her *Miranda* rights and what she was saying and doing. It concluded her confessions were freely, voluntarily, and knowingly given. The court's ruling follows our precedent.

In *State v. Galloway*, 311 Kan. 238, Syl. ¶ 2, 459 P.3d 195 (2020), the court observed, "A statement is not involuntary simply because a defendant was tired or under the influence of drugs; the condition must have rendered the defendant confused, unable to understand, unable to remember what had occurred, or otherwise unable to knowingly and voluntarily waive the right to remain silent." And nothing in the video evidence shows Spencer confused or unable to understand what was going on or to remember what had happened. Instead, it shows her calm and cogent—consistent with Detective Palmer's testimony. For example, the detective obtained Spencer's detailed biographical information before advising her of her rights and asking questions. See *State v. Gonzalez*, 282 Kan. 73, 101-06, 145 P.3d 18 (2006) (noting defendant had not slept for two days and "he was 'strung out' on marijuana"; holding defendant's confession was voluntary when looking at the totality of the circumstances).

Spencer characterizes her confinement in the interview room as coercive. But the evidence supports the district court's finding that it was not. She was alone for the first seven and a half hours before questioning began. And once the officers arrived, their first round of questioning lasted only about an hour and 45 minutes before taking a break for 40 minutes, then returning to question Spencer for another 20 minutes, before taking another 45-minute break. The third segment lasted another 35 minutes. The rest of Spencer's time came as she waited for transport to the jail, but that does not affect her previous willingness to talk with investigators. By our count, the combined police interviews took about two hours and 40 minutes. Granted, from Spencer's perspective, she was in the interview room longer, but she had breaks to nap, rest, drink water, eat food, and use the restroom.

Finally, we note the evidence reflects that while she might have experienced some abdominal issues, there is no showing it impaired her understanding or free will in deciding to speak to the detectives. And Palmer testified that when Spencer suggested some stomach pain, she told her: "[I]f she needed anything to let me know or if she needed a break to let me know, so I didn't terminate anything, but left it up to her to tell me."

We hold substantial competent evidence supports the district court's finding that Spencer's statements during the early morning interview were voluntary. See *State v. Makthepharak*, 276 Kan. 563, 567, 78 P.3d 412 (2003) ("If there is substantial competent evidence to support the trial court's findings that the defendant voluntarily, knowingly, and intelligently waived his rights, such findings will not be disturbed on appellate review."). As the district court found, she had a GED, spoke freely, showed no alcohol or chemical influence, appeared cogent and intellectually able to understand what she was doing, and was mentally and physically able to understand what she was saying and doing.

The district court correctly held Spencer's statements were freely, voluntarily, and knowingly given, and admissible at trial. This holding resolves Spencer's remaining challenge to the incriminating statements made in the second interview.

SUFFICIENCY OF THE PREMEDITATION EVIDENCE

As an element of first-degree murder, premeditation is the process of thinking about a proposed killing before engaging in the homicidal conduct. *State v. Hilyard*, 316 Kan. 326, 331, 515 P.3d 267 (2022). Spencer claims the State offered insufficient evidence of premeditation to support her murder conviction.

Standard of review

When a defendant challenges the evidence's sufficiency, an appellate court looks at all the evidence in the light most favorable to the State to decide whether a rational fact-finder could have found the defendant guilty beyond a reasonable doubt. In doing so, the court does not reweigh evidence, resolve evidentiary conflicts, or reassess witness credibility. *State v. Harris*, 310 Kan. 1026, 1030, 453 P.3d 1172 (2019).

The State's premeditation evidence at trial

The State's premeditation evidence consisted of text messages between Spencer and Callison before the murder, video recordings, text messages between Spencer and Thomas just before the murder, two knives found at the crime scene, medical and physical evidence about Callison's injuries, and Spencer's two interviews with Detective Palmer. Spencer did not testify or offer any evidence at trial.

Messages on Spencer's phone and Callison's phone showed that around noon on Saturday, May 11, 2019, the day before the murder, Spencer initiated contact with Callison by stating "a couple favors to ask" and "can ya get any dope?" When Callison expressed reluctance, she wrote she would "take care of" him if he got her dope, meaning methamphetamine. Spencer asked if she could bring her male "friend" who wanted to watch her "get punished . . . but wont get in the way." Other messages showed the three eventually met about 3 p.m. on Sunday, May 12.

Around 6 p.m., Spencer texted Thomas, who was in an adjoining room in the camper, that she did not think Thomas could hear her because of the music playing. Thomas replied, "I hear you good." Between 6:25 p.m. and 8 p.m., Thomas sent Spencer several text messages describing how to kill Callison, although it is not known if she saw them at the time because she did not reply. Thomas texted her:

"Look when we get ready to leave would you like to kill him. I'm feeling a sort of way get in front and I'll grab him from behind then just start stabbing.

". . . I'll start with mine. You want that babe?

. . . .

"Would you please make sure he is slightly facing away towards this end. . . .
Just bite down hard on his dick

". . . When you bite I'll come finish him off.

"Yes or no. Just show me what you want. My blade is ready whenever.

"Start the video I want to see it as it goes down once we clean up."

Police found two videos taken with Callison's cell phone that were played for the jury. The first showed Callison lying on his back on the bed with his penis exposed. Spencer positioned the phone to record their sexual encounter. The second depicted their sexual acts until about five minutes into the footage when the screen goes black, while the audio continues.

Callison can be heard suddenly screaming and moaning in pain. Thomas' voice can be heard for the first time. Over the next six minutes, as Callison moans and says he is dying, Spencer and Thomas accuse him of having inappropriately touched her siblings. Spencer asks Thomas several times where his "strap" is, and tells Thomas, "If you can't do it, let me know, I have mine." She directs him to "get the heart." At some point, Spencer becomes concerned about how loud their attack was, so she told Thomas to conceal the noise by making it sound like they were "fucking." While Callison is still alive and moaning, Thomas tells her to "hold his dick." In the final minutes, she repeatedly questions whether Callison is "still alive" and directs Thomas to "make sure he's not breathing." Detective Palmer, who watched the recordings several times, testified Spencer was "actively engaged in" the killing.

The police found two foldable knives at the crime scene: the green pocketknife found on Spencer's person, clipped into her pajama pants, and a red pocketknife in the sink inside the camper. Both had a mixture of three possible DNA contributors. For each knife, Thomas and Callison were major contributors, but tests were inconclusive as to whether Spencer was a minor contributor. Even so, a forensic scientist explained at trial that if a knife was used to stab a person, and the person loses "a lot of blood," it "could overwhelm the [DNA] profiles of other people that were present." The crime scene photos showed Callison lost a lot of blood.

A forensic pathologist testified Callison's body had two incised wounds on his face; a stab wound on the back of his neck; 14 stab wounds on his middle to upper chest in the front; a stab wound on the right side of his chest; two stab wounds on the right side of his upper and middle abdomen; four stab wounds on the left side of his abdomen; six sharp force injuries on the left side of his back and flank; two stab wounds on the right side of the back; five sharp force injuries on the right side of the lower back; two stab wounds on the right buttock; three sharp force injuries on the right thigh; seven sharp force injuries on the thigh; and many other injuries including the amputated penis. Some of those injuries went into the ribs, lungs, liver, kidney, pulmonary artery, and heart. The pathologist testified "the penile injury especially is certainly consistent with the green knife as opposed to the red one" and noted "it's possible that any of the wounds on the body are one of the [two] knives or a mixture of both."

Spencer also told Detective Palmer the green knife was hers, and that her thought just before stabbing Callison was that she was going to "hit him with the window breaker portion of the pocketknife, and then it unfolded differently from there." Instead, "she was seeing red and began stabbing him." Two days later, during Palmer's second interview, Spencer said the night "played out" her "fantasy murder plan" for Callison.

Discussion

There is no specific time required for premeditation, but the concept of premeditation requires more than the instantaneous, intentional act of taking another's life. *State v. Moore*, 311 Kan. 1019, 1040, 469 P.3d 648 (2020). Consistent with this, the district court gave the jury the following instruction:

"Premeditation means to have thought the matter over beforehand, in other words, to have formed the design or intent to kill before the act. Although there is no

specific time period required for premeditation, the concept of premeditation requires more than the instantaneous, intentional act of taking another's life."

Premeditation can be established by circumstantial evidence, provided any inferences drawn from that evidence are reasonable. A court typically considers five factors when deciding whether circumstantial evidence gives rise to an inference of premeditation: (1) the nature of the weapon used; (2) lack of provocation; (3) the defendant's conduct before and after the killing; (4) the defendant's threats or declarations before and during the occurrence; and (5) the dealing of lethal blows after the deceased was rendered helpless. *Hilyard*, 316 Kan. at 331. "[T]he analysis of what inferences can be reasonably drawn is not driven by the number of factors present in a particular case because in some cases one factor alone may be compelling evidence of premeditation." *State v. Hillard*, 315 Kan. 732, 787, 511 P.3d 883 (2022).

Spencer argues her statements to police do not show premeditation because her only plan was to get some money and "dope" in exchange for sex. She asserts the direct evidence proved her intention before the stabbing was merely to "batter [him] in an aggravated manner." But this ignores her confession that the night played out her fantasy murder plan for the victim. And unlike typical premeditated cases, in which "[b]y its very nature, premeditation 'is most often proved by circumstantial evidence,'" in this instance, there is both direct and circumstantial evidence supporting premeditation. See *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021). The five factors strongly suggest premeditation.

First, Spencer used a knife and stabbed Callison multiple times for at least six minutes without a break. See *State v. Navarro*, 272 Kan. 573, 580, 35 P.3d 802 (2001) ("[t]he circumstantial evidence in this case supporting the inference of premeditation includes . . . [defendant's] use of the knife, a deadly weapon"). And Spencer brought her

own knife to the crime scene, which suggests premeditation and an intent to use the knife to carry out her "fantasy murder plan." Spencer claims that if she had thought about killing Callison beforehand, it would be reasonable to expect her DNA to be conclusively present on at least one knife. But the forensic scientist explained that if a knife is used to stab a person, and the person loses a lot of blood, it could overpower the DNA profiles of other people. So at best, the DNA is inconclusive in proving or disproving premeditation.

Second, as to provocation, Spencer asserts "the overall situation [was] one of provocation and exploitation." She argues "the entire coercive and deviant arrangement" amounted to provocation. But a contrary conclusion is that Callison's death resulted from Spencer's own intentional acts. She initiated the text messaging to him asking for "dope" and when he expressed reluctance, she offered him sex. And while the evidence does not show who proposed recording the sexual encounter, it is reasonable to infer she did because Thomas asked her to "[s]tart the video" so he could watch it later. Viewing the evidence in the light most favorable to the State, nothing suggests provocation.

Third, Spencer contends her conduct before and after the killing does not support the jury's finding that she thought over the killing beforehand. She asserts she merely wanted drugs and that after the incident, she "obviously lacked a plan as to what to do with [the victim's] body." But when looking again at the record in the light most favorable to the prosecution, her conduct—e.g., texting Callison to insist on meeting; bringing Thomas to their meeting; taking her knife to the scene; and calmly lying about Callison's whereabouts to Tucker and the police—supports premeditation in Spencer's conduct before and after the killing.

Finally, Spencer does not mention the fourth and fifth factors, but the State does. It notes the jury heard the audio that leaves no doubt Spencer and Thomas acted in a coordinated, premeditated manner. They spoke to each other throughout the stabbing,

with Spencer often questioning whether Callison was still alive, and, at one point, telling Thomas to make sure he stopped breathing. When Spencer questioned if they got his heart, Callison said, "You did," and implored them to leave him alone and told them to just go. Yet they continued stabbing and their blades went into many organs including the victim's heart and lungs. Spencer even accused Callison of having inappropriately touched her siblings.

In *State v. Scott*, 271 Kan. 103, 108-09, 21 P.3d 516 (2001), the court held death by a "prolonged" attack can be a strong indicator of premeditation. It noted evidence of a struggle, beating, and then strangulation sufficiently demonstrated premeditation, reasoning that an extended attack gives a defendant time to reflect. See 271 Kan. at 108 ("Premeditation is the time of reflection or deliberation."). In Spencer's case, the killing took about six minutes—more than enough time for reflection. Callison was screaming and moaning for several minutes. And Spencer's declarations during the attack show she formed her intent to kill before she ended the victim's life. See *Hilyard*, 316 Kan. at 331.

We hold ample evidence supports the jury's premeditation finding.

Affirmed.