

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES HAROLD WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

November 19, 1996

No. 183737

LC No. 94-005924

Before: Bandstra, P.J., and Neff and M. E. Dodge,* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of first-degree premeditated murder, MCL 750.316; MSA 28.548. Defendant was sentenced to life in prison without parole. We affirm.

I

Defendant's first issue on appeal is that the prosecution failed to present sufficient evidence to allow a reasonable jury to find that defendant had premeditated and deliberated the victim's murder. We disagree.

First-degree murder is the intentional killing of another, done with premeditation and deliberation. *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993). Premeditation and deliberation may be inferred from the circumstances, including the defendant's behavior before and after the crime. *Id.* Premeditation and deliberation require sufficient time to allow the defendant to take a second look. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation may be established through evidence of the following factors: 1) the prior relationship of the parties; 2) the defendant's actions before the killing; 3) the circumstances of the killing itself; and 4) the defendant's conduct after the homicide. *Id.*

Viewing the evidence presented by the prosecution up to the time that defendant's motion for a directed verdict was made in a light most favorable to the prosecution, *People v McKenzie*, 206 Mich

* Circuit judge, sitting on the Court of Appeals by assignment.

App 425, 428; 522 NW2d 661 (1994), we hold that the prosecution presented sufficient evidence to allow the jury to find defendant premeditated and deliberated the victim's murder. Defendant knew the day before the murder that the victim owed him money. Defendant and his associate sent a friend to the victim's house to tell him that defendant and his associate wanted to talk to him about the debt. Defendant's first act on seeing the victim was to grab him and start "bhammering" his head against the front of a house. The victim pleaded with defendant to stop beating him. Defendant did not stop.

Defendant kicked and knocked the victim to the floor, saying that he was "gonna teach this bitch a lesson." Defendant paused during the beating to change his clothes. When defendant returned, he kicked the victim in the head while wearing "pointy black shoes." Defendant was seen outside the house several times during a lull in the beating. After the beating, defendant told his associate to take the victim's false teeth and use them to extort money from his family. Two people heard defendant boast after the beating that defendant had beaten someone up. This evidence is more than enough to have allowed the jury to find that defendant premeditated and deliberated the intentional killing of the victim.

II

Defendant's second issue on appeal is that the trial court erred in allowing the mid-trial endorsement of a key prosecution witness without a showing of good cause. Again, we disagree.

Under MCL 767.40a; MSA 28.980(1), the prosecution may add to the list of witnesses it intends to call at trial "at any time upon leave of the court and for good cause shown." *People v Burwick*, 450 Mich 281, 290; 537 NW2d 813 (1995). Endorsement or deletion from the prosecution's witness list is within the discretion of the trial court, reversible only for an abuse of discretion. *Id.* at 291. Violation of § 40a does not require automatic dismissal. Rather, the trial court must exercise its discretion in fashioning a remedy for non-compliance with a discovery statute, rule, order or agreement. *People v Lino (After Remand)*, 213 Mich App 89, 92; 539 NW2d 545 (1995).

We hold that the trial court did not abuse its discretion in allowing the witness to testify. The prosecutor told the trial court that she did not discover this witness until reviewing the homicide bureau's file on the case the morning of the second day of trial. She turned over the witness' statement to the trial court at the beginning of that day's proceedings and told the trial court that the statement had not been intentionally suppressed. The trial court fashioned a remedy to protect defendant's rights by allowing both the prosecutor and defense counsel an opportunity to interview the witness and present objections before the trial court ruled on admitting the witness' testimony. In any event, no prejudice to defendant's case resulted from the trial court's ruling.

III

Defendant's final issue on appeal is that the trial court denied him due process of law when it refused to allow him to participate in voir dire. Defendant contends that the trial court's refusal to allow defendant, through counsel, to question potential jurors directly made it impossible for defense counsel to get enough information to intelligently exercise his preemptory challenges. We disagree.

The function of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially. *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). In reviewing the trial court's conduct during voir dire, this Court must determine whether the trial court conducted a voir dire "sufficiently probing . . . to uncover potential juror bias." *Id.* at 187.

We hold that the trial court did not abuse its discretion in opting to conduct voir dire itself. *People v Tyburski*, 445 Mich 606, 619; 518 NW2d 441 (1994). The trial court questioned potential jurors about their jobs, their criminal records, if any, their feelings about narcotics, and whether they recognized the name of any potential witness. The trial court also questioned potential jurors about their relationships with law enforcement officers. Two potential jurors were excused when they told the trial court that their relationships with law enforcement officers rendered them unable to be impartial. Several other potential jurors were excused because either they or a loved one had been the victim of a crime, and thus could not be impartial. Defense counsel was also free to exercise peremptory challenges against the two jurors that defendant contends the trial court talked into staying on the jury. Defendant did not do so, even though he had not used all of his peremptory challenges. On the record presented, we find the trial court's voir dire of the jurors elicited sufficient evidence to allow defendant to intelligently exercise his peremptory challenges. *Id.*

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Michael E. Dodge