

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTIAN D. MCNEIL,

Defendant-Appellant.

UNPUBLISHED

November 30, 1999

No. 209231

Oakland Circuit Court

LC No. 96-146514 FC

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of first-degree murder (premeditated), MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life without parole for his first-degree murder conviction and two years in prison for his felony-firearm conviction. We affirm.

Defendant's sole issue on appeal is that the prosecution failed to present sufficient evidence to convict defendant of first-degree, premeditated murder. Defendant specifically contends that the prior actions and derogatory words directed toward defendant by the victim and his friends were sufficient provocation to reduce defendant's actions from first-degree murder to second-degree murder. We disagree.

When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Patterson*, 428 Mich 502, 514-515; 410 NW2d 733 (1987). "In order to convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation requires that sufficient time must have elapsed to allow the defendant to take a "second look." *Id.*; *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Factors relevant to establishing premeditation include (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, including the weapon used and the location of the wounds inflicted. *Id.* at 300. As the *Plummer* Court further explained, *supra* at 301-302:

When the evidence establishes a fight and then a killing, there must be a showing of “a thought process undisturbed by hot blood” in order to establish first-degree, premeditated murder. [*People v*] *Morrin*, [31 Mich App 301; 187 NW2d 434 (1971)], *supra* at 329-330. The critical inquiry is not only whether the defendant had the time to premeditate, but also whether he had the capacity to do so. “Without such evidence, the sequence of events is as consistent with an unpremeditated killing – following hard on the outset of the argument – as it is with a premeditated killing after an interval during which there was an opportunity for cool-headed reflection.” *People v Gill*, 43 Mich App 598, 606-607; 204 NW2d 699 (1972).

In this case, the victim, Nathan Harris, was present at an altercation a few days before the shooting when defendant’s brother, Adam, was assaulted by Chris Pierson, a friend of Nathan’s, and other individuals. Although he did not participate in the beating, Nathan did nothing to stop it. As a result of the fight, Adam had a chipped tooth, a gash in his head, and scars. Defendant was aware that Nathan had been present during the fight and, according to witnesses, was upset with Nathan for not trying to stop it.

Nathan Harris was fatally shot by defendant four days later. Defendant’s actions during this interim period certainly support the jury’s finding of premeditation and deliberation beyond a reasonable doubt. Chris Pierson testified that shortly after the altercation with defendant’s brother, someone identifying himself as defendant called his house and said that Chris and all of his friends were going to die. Desiree Bielarz, who was living with defendant at the time, testified that defendant asked her for a gun, telling her several times that he wanted to use it to kill Chris Pierson and the other boys who had beaten up his brother.

The events on the night of the fatal shooting likewise support a finding of premeditation and deliberation. Pierson, Nathan Harris, and two others left Pierson’s apartment to rent a movie. Coming out of the store, the youths encountered defendant and a verbal altercation ensued. Pierson’s group then left the store and returned to his apartment. Later that evening, the same group of four youths drove to defendant’s trailer and yelled epithets at defendant. Defendant opened a window and told Pierson, Harris, and the two other boys that they should get a gun because they were all going to die. Defendant never came out of the trailer, however, and after more yelling back and forth, the group drove off and returned to Pierson’s apartment.

Shortly after 10 p.m. that same night, defendant appeared at Pierson’s apartment and sent another individual to the door to get Pierson, Nathan, and Brian Byrd, Pierson’s friend. The youths gathered in the alley behind the apartment, believing that a fist fight was about to occur. However, defendant reached into his pants and pulled out a pistol. As Nathan Harris and the others attempted to run away, defendant shot Nathan in the chest and the head. Although Byrd and Pierson both testified that Nathan had a knife with him, there was no evidence that defendant ever saw the knife. Nathan kept the knife in his pants and then put it by the dumpster when he walked into the alley. Byrd testified

that he never saw Nathan pull out a weapon, threaten defendant, or lunge toward defendant. Defendant shot Nathan a second time in the head while Nathan was lying on the ground. Defendant subsequently told Gerold Prince, a fellow inmate, that he shot a sixteen year old because he stood by and did not stop defendant's brother from being assaulted.

Premeditation and deliberation can be readily inferred from the circumstances surrounding the shooting. Defendant learned of the fight between Pierson and Adam *four days* prior to shooting Nathan Harris and expressed his intent, at that time, to kill Pierson and his friends. Defendant's argument that he was provoked by the profanities of Pierson and Harris immediately prior to the shooting does not nullify a finding of premeditation under these circumstances. Generally, words alone do not constitute adequate provocation. *People v Pouncey*, 437 Mich 382, 391; 471 NW2d 346 (1991). A rational trier of fact could certainly conclude that there was an interval during which there was an opportunity for cool-headed reflection and more than enough time for defendant to reconsider his decision to kill Pierson and his friends. Defendant, the only person with a gun, drew his weapon before the supposed fist fight even began and shot at the youths as they tried to flee, with tragic consequences. He then approached the victim, who had already been felled by at least one shot, and shot him again. In light of this evidence, regardless of what profanities Chris or Nathan may have used, the evidence adduced at trial strongly supports the jury's conclusion that these verbal hostilities did not constitute the requisite provocation ("that which would cause the reasonable person to lose control," *id.* at 389) necessary to mitigate the homicide from first-degree, premeditated murder to a lesser offense. Cf. *People v Tilley*, 405 Mich 38, 44-46; 273 NW2d 471 (1979). Accordingly, we conclude that the prosecution presented sufficient evidence of first-degree murder. *Wolfe, supra*.

Affirmed.

/s/ Roman S. Gibbs
/s/ William B. Murphy
/s/ Richard Allen Griffin