STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 5, 2000
v	No. 204352 Monroe Circuit Court
DOMINIC AARON CAMPBELL, Defendant-Appellant.	LC No. 96-027285-FC

Before: Cavanagh, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

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

I. Facts

Defendant's conviction stems from the killing of his two month old daughter, Dymond. At around 1:15 a.m. on December 2, 1995, Dymond awoke and began to cry. Defendant told his wife, Kristen Savage-Campbell, that he would see to their daughter. At approximately 6:30 a.m., Kristen was awakened by defendant's screams. Rushing into the living room, Kristen found the child lying on the floor, dressed in her diaper and socks. Defendant was on the telephone, apparently making a 911 call. While waiting for help, defendant performed CPR on Dymond, following the instructions given to him over the phone by the 911 operator. On-scene emergency personnel were unable to revive the child. She was then transported by ambulance to Mercy Memorial Hospital in Monroe, Michigan, and later by helicopter to St. Vincent's Medical Center in Toledo, Ohio. Dymond was pronounced brain dead by doctors at St. Vincent's at approximately 4:30 p.m. Thereafter, all life support was terminated.

II. Defendant's Challenges to the Adequacy of the Evidence

Defendant first argues that because insufficient evidence was produced by the prosecution at trial on the issue of premeditation and deliberation, the trial court erred in denying defendant's motion for a directed verdict. Alternatively, defendant argues that due to this same alleged deficiency in the

evidence, reversal is required because the verdict is not supported by sufficient evidence. Finally, defendant argues that because the verdict was against the great weight of the evidence, the trial court's denial of his motion for a new trial resulted in a miscarriage of justice. Although his argument on this point is sketchy, it appears to us that this argument is also predicated on the alleged failure of the prosecution to establish that he acted with premeditation and deliberation. We reject each of these arguments.

A. Standards of Review

"This Court reviews de novo the trial court's decision on a motion for a directed verdict." *Braun v York Properties, Inc*, 230 Mich App 138, 141; 583 NW2d 503 (1998). "When evaluating a motion for a directed verdict, a court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in favor of the nonmoving party. Directed verdicts are appropriate only when no factual question exists upon which reasonable minds may differ." *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997) (citations omitted). We review "sufficiency of the evidence claims by considering the evidence in the light most favorable to the prosecution and determining whether a rational trier of fact could have found that the essential elements of the charged crime were proved beyond a reasonable doubt." *People v DeKorte*, 233 Mich App 564, 567; 593 NW2d 203 (1999). "A trial court's decision to grant a new trial is reviewed for an abuse of discretion." *People v Jones*, 236 Mich App 396, 404; 600 NW2d 652 (1999).

B. Premeditation and Deliberation

In Michigan, premeditation and deliberation are essential elements of the crime of first-degree murder. MCL 750.316; MSA 28.548; *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). "To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice . . . ." *People v Morrin*, 31 Mich App 301, 329; 187 NW2d 434 (1971) (footnote omitted). Premeditation and deliberation requires both sufficient time for a defendant to reflect on his choice, *Anderson, supra* at 537, as well as the capacity to reflect, *People v Plummer*, 229 Mich App 293, 301; 581 NW2d 753 (1998). Stated another way, deliberation "requires a cool mind that is capable of reflection," while premeditation "requires that one with the cool mind did in fact reflect, at least for a short period of time before his act of killing." LaFave & Scott, Criminal Law (Abridged ed, 1986), § 7.7(a), p 643. It is not often that direct evidence of premeditation and deliberation presents itself. Rather, these mental processes are usually established by circumstantial evidence and the reasonable inferences that arise therefrom. *People v Marsack*, 231 Mich App 364, 371; 586 NW2d 234 (1998).

C. Directed Verdict

At the time defendant made his motion for a directed verdict, a significant amount of medical testimony had been offered by the prosecution. Dr. Vipul Patel, Dymond's primary attending physician at St. Vincent's Medical Center, testified that by the time he saw her, Dymond's brain functions and brain stem activity had irreversibly ceased. He noted several head injuries, including subdural hematoma and retinal hemorrhages. He also testified about a linear skull fracture that ran all along the right side of

Dymond's head. Dr. Patel testified that this injury could have occurred only if Dymond's head had come into contact with an object. Dr. Patel indicated that it would take a tremendous blow to inflict such an injury.

Dr. Diane Barnett, who performed the autopsy on Dymond, testified that the cause of death was cranial cerebral injuries that resulted from child abuse. Dr. Barnett noted that the skull fracture was approximately nine centimeters, and that it ran around the right side of the child's head, around the back, and extended a little bit onto the left side. Dr. Barnett testified that it would take a force equivalent to that sustained in a high speed motor vehicle accident or a fall from the fourth or fifth story of a building to inflict such a fracture. She also rejected the assertion that such an injury could be caused by a five or six foot fall from a caregiver's arms. Dr. Barnett also testified that Dymond had eight older rib fractures that were in the process of healing when she died. Dr. Mark Sherrard, Dymond's pediatric physician, testified that in addition to the rib fractures, he had noted in October 1995 that Dymond had a fracture to her left tibia.

In addition to this medical testimony, the prosecution presented the testimony of John Howell, a jailhouse informant who had been in the Monroe County Jail with defendant. According to Howell, defendant told him that on the night Dymond was killed, "he had been in a rage, or something, and he was shaking his baby and had like slammed it against a wall or something or the floor. He said—that when he had the baby on the floor, he grabbed it by the face and like mashed it into the floor."

There was also the testimony of Detective Thomas Redmond of the Monroe County Sheriff's Department. Detective Redmond testified that on December 3, 1995, he spoke with defendant down at the station house. According to Detective Redmond, defendant admitted that he had killed Dymond, although he became defiant when Detective Redmond indicated his belief that the killing was deliberate. Detective Redmond also stated that defendant admitted to being jealous of the baby because Dymond got too much of her mother's attention.

Viewing this evidence in the appropriate light, *Meagher*, *supra* at 708, we conclude that the trial court did not err in denying defendant's motion for a directed verdict on the first-degree murder charge. We believe a reasonable juror could have concluded at this point in the proceedings that defendant had acted with premeditation and deliberation. It is reasonable to conclude from location of the skull fracture and the description of the force needed to inflict it, that defendant had acted with the requisite mens rea. Furthermore, there was evidence that the child's injuries were the result of both a violent shaking and the blow to the head, which leads to the reasonable inference that Dymond's abuse took two stages. This conclusion agrees with the testimony of Howell, who stated that defendant had admitted to first shaking the child, and then slamming her head against the floor. We believe that based on the evidence in record, the jury could reasonably conclude that in the moments leading up to the delivery of the blow to the head, defendant had stopped acting out of any rage, regained the capacity to reflect, before delivering a premeditated and deliberate blow to the child's head, which was intended to cause her death.

D. Sufficiency of the Evidence

Defendant was the only witness called to testify on his behalf. He testified that at approximately 5:00 a.m. on December 2, Dymond woke up after sleeping for some time in his arms while he slept in a living room chair. After initially going over and sitting on a couch, defendant stated he decided to put the child in her crib after she started to once again drift off to sleep. As he rose, Dymond suddenly moved and fell out of his arms to the carpeted floor. He indicated that the child was still conscious and alert after the fall. He then took her to her crib. When Dymond again started to cry, defendant testified that Kristen got up and attended to the child. Defendant indicated he then went into the living room. While he was sitting down, he stated he heard over the child intercom the sound of something hitting the waterbed in the bedroom. Kristen then brought the child out on a pillow and asked defendant to take care of her. Defendant stated he placed the child on the couch, and went into the kitchen to get a bottle. When he returned, defendant testified he saw the child stop breathing. Defendant denied ever talking to Howell or to delivering a blow to Dymond's head.

Viewing all of the evidence in a light most favorable to the prosecution, and deferring to the jury's superior ability to assess the credibility of witnesses, *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998), we conclude that a reasonable jury could conclude that defendant acted with premeditation and deliberation. *DeKorte, supra* at 564. The testimony of the medical witnesses presented by the prosecution remained unchallenged by defendant's case-in-chief.

As for defendant's story that implies that the fatal blow to the child's head occurred while the child was out of the room with her mother, we note that defendant admitted never having told anyone about those events prior to trial. He never reported that story to either the medical personnel caring for Dymond or the police officers investigating the killing. The story appears nowhere in the taped statement he gave to police. In fact, in that statement defendant says that he took care of the child when she woke up at 5:00 a.m. until she went back to sleep in his arms.[1] In her testimony, Kristen testified that she saw the child at around 1:15 a.m. and again at 6:30 a.m., when she was awakened by defendant's screams. Defendant never asked Kristen if she had awoken at 5:00 a.m. to care for the child.

We believe that when faced with the uncontroverted medical evidence and defendant's changing stories of what had happened, the jury could have reasonably rejected defendant's account and determined that he had acted with the requisite mens rea. Defendant never argued that he had acted while in a blind rage, so the jury was never presented with this possible theory of innocence. Instead, defendant steadfastly denied ever having struck the child, and even implied that the child may have died at the hands of her mother. Based on the evidence in the record, the jury could have reasonably rejected defendant's theory of innocence.

E. New Trial

"A new trial based upon the weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *Lemmon, supra* at 642 For the reasons stated above, we conclude that the evidence does not preponderate heavily against the verdict. Accordingly, we believe the trial court did not err in denying defendant's motion for a new trial.

III. Voluntariness of Taped Statement

Finally, defendant argues that the trial court erred in concluding that defendant's taped statement to the police was voluntary. We disagree. Defendant does not challenge the voluntariness of his *Miranda*[2] waiver. Instead, defendant raises what is essentially a due process challenge to the voluntariness of his statement. See *People v Sexton (On Remand)*, 236 Mich App 525, 536-543; 601 NW2d 399 (1999). After considering the totality of the circumstances, we conclude that the trial court did not err in finding the statement voluntary. There is nothing in the nature of the questioning, the circumstances in which defendant was held, nor in his personal make-up, that would render the statement involuntary. *Id.* at 540.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

[1] The relevant section of the taped statement is as follows:

> [Dymond] stayed laying on my chest and went to sleep. She got up again around five, or so. I got up, took [her] over to the changing table, changed her again. I was carrying her, walking around the apartment. She quieted down and went back to sleep. I was going to hold her. I sat down for a little bit. I was sitting down on the couch. I don't know, I, I, I might have dosed off myself.

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).