STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 16, 2000
v	No. 207356 Oakland Circuit Court
ERDINC YUCEL, Defendant-Appellant.	LC No. 96-147973-FC

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316; MSA 28.548, and sentenced to life imprisonment without parole. He appeals as of right. We affirm.

Defendant claims that the trial court improperly admitted the victim's statement that she was afraid of defendant. We disagree. The statement is admissible under MRE 803(3) as a statement of the victim's then existing state of mind or emotion. *People v Fisher*, 449 Mich 441, 450; 537 NW2d 577 (1995). Defendant's position that the victim's state of mind must itself be at issue was not the approach taken by our Supreme Court in *Fisher*. See *People v Riggs*, 223 Mich App 662, 705; 568 NW2d 101 (1997); *People v King*, 215 Mich App 301, 309; 544 NW2d 765 (1996). In any event, evidence that the victim was afraid of defendant was relevant and material to counter defendant's claim that he killed the victim on a sudden impulse after she "lit his fuse" by telling him that she had recently met with her ex-husband. The victim's fear of defendant would tend to negate defendant's theory that the victim, knowing of his jealous nature, informed him of her meeting with her ex-husband, thereby "lighting his fuse."

Next, defendant claims that the evidence was insufficient to support his conviction of first-degree premeditated murder. Specifically, defendant claims that there was insufficient evidence of premeditation. We disagree. Viewing the evidence in a light most favorable to the prosecution, there was ample evidence from which the jury could reasonably infer that the element of premeditation had been proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "Premeditation and deliberation require sufficient time to

allow the defendant to take a second look." *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Non-exclusive factors that may be considered to establish 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. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998), citing *People v Coddington*, 188 Mich App 584, 600; 470 NW2d 478 (1991).

Viewed in a light most favorable to the prosecution, *Wolfe, supra*, the evidence in this case indicated that the victim was manually choked, with her neck being twisted and hyperextended. "[E]vidence of manual strangulation can be used as evidence that a defendant had an opportunity to take a 'second look.'" *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). Additionally, the victim suffered blunt force trauma to her head. This evidently resulted from being struck nine times by a barbell. Since the fatal blows were inflicted with the barbell, the evidence that defendant also manually strangled the victim supports the conclusion that defendant had time for a "second look." – "[i]n between each method of assault, the killer had the opportunity to reflect upon his actions." *Kelly, supra* at 642. Additionally, the fact that defendant struck the victim repeatedly in the head with the barbell indicates that this killing was premeditated and deliberate. *Coddington, supra* at 600-601; *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995).

We also note that defendant had scratches on his back and right arm and the victim had defensive wounds on her hands. "[D]efensive wounds suffered by a victim can be evidence of premeditation." *Johnson, supra* at 733, citing *People v Anderson*, 209 Mich App 527, 538; 531 NW2d 780 (1995). Additionally, defendant's threats to the victim and others in the days and weeks prior to the victim's death that she would "die [his] wife" support a finding that defendant planned to kill the victim if she tried to leave him. This was further evidence of premeditation and deliberation. *Coddington, supra* at 600. Finally, "defendant's attempt to clean up the blood after the killing could be used to infer that he acted with deliberation and premeditation." *Haywood, supra* at 230. In sum, the above evidence was sufficient to support defendant's conviction of first-degree premeditated murder.

Defendant next claims that the trial court erred in refusing to suppress his statements to the police, which were made shortly after the victim's body was found in the apartment that she shared with defendant. According to defendant, the statements are not admissible because the officer did not advise him of his *Miranda*[1] rights before the questioning. We disagree. *Miranda* warnings need only be given in cases involving custodial interrogation. *Anderson, supra* at 532. Here, the trial court properly determined that *Miranda* warning were not required at the time defendant made the statements in question because defendant had not been arrested and no formal restraint had been placed on his freedom of movement. *People v Hill*, 429 Mich 382, 400; 415 NW2d 193 (1987); *People v*

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

Peerenboom, 224 Mich App 195, 198; 568 NW2d 153 (1997). Since "the issue whether a person is in custody for purposes of *Miranda* is a mixed question of law and fact that must be answered independently after review de novo of the record," *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999), we will briefly review the facts elicited at the hearing below.

Officer Jay Reynolds testified that after observing the scene, he attempted to speak with defendant, but had a difficult time understanding him because of his accent and the distractions inside the apartment. Officer Reynolds therefore asked defendant to step outside the apartment to continue the conversation. The most convenient place to conduct the conversation was at Reynolds' police cruiser, so defendant was allowed to sit on the back seat with the door open and his feet hanging outside. Defendant asked for, and was given a cigarette. Defendant was cooperative; he did not appear to be intoxicated or under the influence of any substance and he appeared to understand Officer Reynolds. When defendant displayed wounds on his wrists, Reynolds obtained treatment for the wounds from a paramedic. Officer Reynolds did not threaten defendant or make any promises to him. Defendant was not formally arrested or handcuffed, and Reynolds never indicated that defendant was not free to leave. After defendant made several statements that caused Reynolds to suspect that defendant was involved in the victim's death, Reynolds stopped the conversation and informed defendant of his constitutional rights.

Defendant's general description of the conversation did not differ greatly from Officer Reynolds'. However, defendant testified that he did not believe he was free to leave, and he also claimed that, because of his limited fluency in English, he did not fully understand what Reynolds was saying to him. Defendant's subjective feelings were irrelevant to the trial court's determination of whether custody existed. *Zahn, supra* at 449. The trial court, which was in the best position to evaluate the relative credibility of the witnesses, concluded that Reynolds' testimony concerning the events was more credible and we defer to the trial court's determination since it is supported by the testimony. *People v Givans,* 227 Mich App 113, 124; 575 NW2d 84 (1997). We therefore concur with the trial court's determination that defendant was not in custody when Officer Reynolds questioned him and thus Reynolds was not required to inform defendant of his constitutional rights pursuant to *Miranda*.

Lastly, defendant claims that the trial court erred in instructing the jury that it must infer defendant's intent from his use of a dangerous weapon. However, contrary to what defendant argues, the trial court did not indicate that defendant's state of mind *must* be inferred from the use of a dangerous weapon or that the requisite intent *must* be presumed from the use of a dangerous weapon. Rather, the jury was merely instructed that the defendant's state of mind "may" or could be inferred from the use of a dangerous weapon. The court's instruction was proper. CJI2d 16.21; *People v Martin,* 392 Mich 553; 221 NW2d 336 (1974); *People v Williams,* 75 Mich App 53, 54-55; 254 NW2d 649 (1977); *People v Jackson,* 63 Mich App 249, 252; 234 NW2d 471 (1975).

Affirmed.

/s/ William B. Murphy
/s/ Jeffrey G. Collins
/s/ Donald S. Owens