# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>October 23, 2001 |
| v | No. 225053<br>Kent Circuit Court |
| EDDIE ROLANDUS WILLIAMS,<br><br>Defendant-Appellant. | LC No. 99-004043-FC |

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), first-degree felony-murder, MCL 750.316(1)(b), and larceny in a building, MCL 750.360. The trial court subsequently sentenced defendant as a second-offense habitual offender, MCL 769.10, to the mandatory term of life imprisonment for the first-degree murder conviction, to be served concurrently with the four- to six-year term of imprisonment for the larceny in a building conviction. We affirm, but remand to the trial court for correction of the judgment of sentence.

This appeal arises from the beating death of Alexander Jones at an adult video store in Grand Rapids in the early morning hours of February 24, 1999. On appeal, defendant first raises a challenge to the sufficiency of the evidence at trial. Specifically, defendant claims there was insufficient evidence of premeditation and deliberation to support his conviction of first-degree premeditated murder. We review de novo a challenge to the sufficiency of the evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001); *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). In *People v Nowack*, 462 Mich 392; 614 NW2d 78 (2000), our Supreme Court recently articulated the well-settled standard for reviewing sufficiency challenges.

> [W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in the 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.
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> The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial.

> "'Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.'" *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). [*Nowack, supra* at 399-400, quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).]

A conviction of first-degree premeditated murder requires proof beyond a reasonable doubt that the killing was intentional, deliberate, and premeditated. *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995). Premeditation and deliberation may be inferred from the surrounding circumstances, including the prior relationship of the parties and the defendant's actions before and after the killing. *Id*. The circumstances of the killing itself, including the type of weapon used and the location of the wounds, may also provide evidence of premeditation and deliberation. *People v Thomas Berry (On Remand)*, 198 Mich App 123, 128; 497 NW2d 202 (1993). Further, if the defendant had time to take a "second look," then there was sufficient time to premeditate and deliberate. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998); *People v Morrin*, 31 Mich App 301, 330; 187 NW2d 434 (1971).

"[W]hile the brutality of a killing does not itself justify an inference of premeditation and deliberation," *People v Hoffmeister*, 394 Mich 155, 159; 229 NW2d 305 (1975), we believe the circumstances of the killing itself, including the locations of the victim's wounds, support the jury's determination that defendant killed Jones with premeditation and deliberation. For example, David Alan Start, M.D., the forensic pathologist who conducted the autopsy, testified that Jones suffered multiple fractures all over his face. Start further testified that these injuries were caused by a tremendous amount of force applied to Jones' face. According to Start, Jones also suffered extensive lacerations to the back of his head that were consistent with blunt force trauma being applied while he was lying facedown on the floor. In our view, the location of these multiple wounds on both the front and back of Jones' body support the inference that defendant had an opportunity to take a "second look." See, e.g., *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999).

Further, the evidence adduced at trial demonstrated that defendant used two weapons to beat Jones. The use of multiple weapons and the length of the beating the victim sustained can also support an inference of deliberation and premeditation because "[the] defendant [had] time to take a second look and reconsider his decision." *Haywood, supra* at 230. At trial, defendant admitted striking Jones repeatedly with both a paint can and a tire iron. Moreover, the physical evidence at trial supported the prosecutor's hypothesis that the initial assault occurred in one location, near the sales counter and VCR room, and that the fatal assault occurred in another location, a dimly-lit viewing room. Specifically, blood and paint smears on the floor and the pathologist's testimony that abrasions on Jones' shoulder and legs was consistent with being dragged, supported the prosecutor's theory that Jones was first rendered unconscious and then dragged to another location. Movement of the victim to a more secluded area also supports an inference of premeditation and deliberation. *Johnson, supra* at 733.

Moreover, as the trial court observed when denying defendant's motion for directed verdict, the evidence also indicated that the murder occurred during the commission of a larceny and that defendant had a motive to kill Jones because he was the only witness to the crime. Specifically, the video store's cash register was pried open, and the key to the cash register was

seized from defendant's clothing after the murder. Motive is always relevant in a murder case. *People v Rice (On Remand)*, 235 Mich App 429, 440; 597 NW2d 843 (1999). While motive alone is not sufficient, it may support an inference of premeditation and deliberation when combined with other evidence. See e.g., *People v Sowders*, 164 Mich App 36, 42-43; 417 NW2d 78 (1987); *Morrin, supra* at 331.

Finally, the prosecutor also presented evidence showing that defendant attempted to conceal his involvement in the murder by lying to his cousin Robert Earl Pompey about how his clothes became paint-splattered,[1] washing off the paint and changing into Pompey's clothes, and fleeing Grand Rapids shortly after the murder.[2] A defendant's evasive conduct following a homicide will also support an inference of premeditation and deliberation. *Haywood*, *supra* at 230; *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). At trial, defendant testified that the victim's murder was not the result of premediation and deliberation, and that he acted only in self-defense. However, "[i]t is the province of the jury to . . . assess the credibility of witnesses." *People v Kris Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). Based on the foregoing, we are satisfied that the trial court properly concluded that the prosecutor presented sufficient evidence from which the jury could conclude that the elements of first-degree premeditated murder were proven beyond a reasonable doubt.

Defendant's second issue on appeal concerns challenges to the trial court's instructions to the jury. We review de novo a defendant's claim of instructional error. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996).

> We review jury instructions in their entirety to determine if error requiring reversal occurred. *People v Brown*, 239 Mich App 735, 746; 610 NW2d 234 (2000). The instructions must not be "'extracted piecemeal to establish error.'" *Id.*, quoting *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992). Even if the instructions are somewhat imperfect, reversal is not required as long as they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Brown*, *supra* at 746. [*Aldrich*, *supra* at 124.]

Defendant first contends that the trial court erred in not instructing the jury on the law of imperfect self-defense. We disagree.

In Michigan, the doctrine of imperfect self-defense originated, by way of footnote, in an opinion authored by then Judge Levin in *Morrin*. See *Morrin, supra* at 311 n 7. Specifically, the *Morrin* Court held that murder may be mitigated to manslaughter "when the actor kills in self-defense but was not entitled to do so under the circumstances, either because he was not free from fault or his belief that he was in danger was not justified." *Id.* Since *Morrin*, however, this

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[1] Defendant told his cousin that his clothes became splattered at work. However, Jeffrey Foutch, a warehouse coordinator where defendant worked temporarily, testified that defendant's work during the time the murder occurred did not involve using gray paint.

[2] The police apprehended defendant traveling on a Greyhound bus to Muskegon around 11:00 a.m. on February 24, 1999.

Court has consistently limited application of the doctrine to cases where the defendant would be able to assert self-defense but for his action as the initial aggressor. *People v Kemp*, 202 Mich App 318, 327; 508 NW2d 184 (1993); *People v Butler*, 193 Mich App 63, 67; 483 NW2d 430 (1992); *People v Amos*, 163 Mich App 50, 56-57; 414 NW2d 147 (1987); *People v Vicuna*, 141 Mich App 486, 493; 367 NW2d 887 (1985).

Testifying on his own behalf, defendant recounted the circumstances leading to Jones' death. According to defendant, he visited the adult video store where Jones was a store clerk to watch videos. After watching videos for a period of time, defendant left the store to step outside and smoke a marijuana cigarette. Defendant testified that after he reentered the store to continue watching videos, he was questioned by Jones and asked to pay an admission fee again. Defendant testified that an argument ensued, and that "all of a sudden, [Jones] just hit me." Therefore, by defendant's own express admission, he was not the initial aggressor in the altercation that led to Jones' death.[3] Thus, the evidence does not support defendant's claim for an imperfect self-defense instruction.[4] Because defendant claimed Jones initiated the altercation, the doctrine of imperfect self-defense was not applicable. See *Amos, supra* at 57; *Vicuna, supra* at 493. Further, to the extent that defendant claims that the doctrine of imperfect self-defense is applicable because defendant used excessive force in defending himself, this Court has held otherwise. *Kemp, supra* at 327, see also *People v Deason*, 148 Mich App 27, 32; 384 NW2d 72 (1985), abrogated on other grounds *People v Heflin*, 434 Mich 482, 503 n 16; 456 NW2d 10 (1990) (opinion of Riley, C.J.). After reviewing the jury instructions, we are satisfied that the trial court properly instructed the jury on defendant's self-defense theory. Thus, we do not find any error requiring reversal.

Defendant's second challenge to the jury instructions concerns the trial court's decision to not instruct the jury on voluntary manslaughter. However, "where a defendant is convicted of first-degree murder, and the jury rejects other lesser-included offenses, the failure to instruct on voluntary manslaughter is harmless." *People v Sullivan*, 231 Mich App 510, 520; 586 NW2d 578 (1998), aff'd by equally divided Supreme Court, 461 Mich 992 (2000). The trial court instructed the jury on the law concerning first-degree premeditated murder, first-degree felony murder, second-degree murder, and larceny in a building. Because the jury rejected the lesser included offense of second-degree murder, any error arising from the trial court's decision to not instruct on voluntary manslaughter is harmless. *Sullivan, supra* at 520. Thus, no further review is necessary.

Finally, defendant correctly notes that the judgment of sentence erroneously reflects that defendant was convicted of larceny at a fire, MCL 750.358, when the jury actually convicted defendant of larceny in a building, MCL 750.360. We therefore remand for the limited purpose

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[3] A review of defense counsel's opening and closing addresses to the jury further reveals that the defense theory at trial was that Jones was the initial aggressor.

[4] "[A] trial court is required to give requested instructions only if the instructions are supported by the evidence or the facts of the case." *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998).

of correcting the judgment of sentence. See *People v Avant*, 235 Mich App 499, 521; 597 NW2d 864 (1999).

Defendant's convictions and sentences are affirmed. However, we remand for the ministerial purpose of correcting the judgment of sentence. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Kathleen Jansen
/s/ Peter D. O'Connell