

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLIE ANTHOM WASHINGTON,

Defendant-Appellant.

UNPUBLISHED

May 13, 2004

No. 247127

Wayne Circuit Court

LC No. 02-011228-01

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

I

Defendant appeals his jury trial conviction of first-degree murder, MCL 750.316(1)(a), and his sentence of life imprisonment without parole, and we affirm.

Defendant's conviction arises from the stabbing death of Donald Thomas. Defendant denied stabbing Thomas or possessing a knife, and theorized that Thomas fell on his own knife as he was running away from defendant.

II

A. DEFENDANT'S REQUEST FOR SUBSTITUTE COUNSEL

Defendant argues that the trial court erroneously denied his request for substitute counsel. A trial court's decision regarding substitution of counsel will not be disturbed absent an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). As this Court stated in *Traylor*, *supra* at 462:

An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced. Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic. [Quoting *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).]

The record discloses that defendant did not establish good cause for substitution, nor did he show that substitution would not have unreasonably disrupted the judicial process. Defendant's request for substitute counsel was made on the first day of trial. Thus, substitution would have required an adjournment, thereby disrupting the judicial process. Further, although defendant and counsel claimed that there had been a breakdown in communication, neither indicated that a "fundamental" issue was involved. And, while defendant complained that he had just recently received his discovery materials, counsel explained that this was because defendant did not ask for them earlier, and defendant did not explain below, nor does he indicate on appeal, how his allegedly untimely receipt of the discovery materials affected the case. Counsel explained that he had met with defendant several times and was making efforts to find a possible defense witness that defendant identified. Nothing in the record suggests that there was "a legitimate difference of opinion" between defendant and counsel over any "fundamental trial tactic" in the case. Defendant's general dissatisfaction and lack of confidence were not enough to establish good cause for substitute counsel. *Id.* Accordingly, the trial court did not abuse its discretion in denying defendant's request for substitute counsel.

B. PREMEDITATION

Defendant also asserts that there was insufficient evidence of premeditation and specific intent to kill to support his conviction of first-degree murder. We review claims that the prosecution failed to present sufficient evidence to support a conviction de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). The standard of review is deferential and this Court is required to draw all reasonable inferences and make credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000); *People v Griffin*, 235 Mich App 27, 31; 597 NW2d 176 (1999). "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). "Although there is no specific time requirement, sufficient time must have elapsed to allow the defendant to take a 'second look.'" *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Among the factors that may be considered to establish premeditation are the previous relationship between defendant and the decedent, the defendant's actions before and after the crime, and the circumstances of the killing, including the weapon used and the location of the wounds. *Id.*

The evidence established that defendant had a history of animosity with Thomas, who was involved in an intimate relationship with defendant's former girlfriend. Defendant's relationship with his former girlfriend had ended and she obtained a personal protection order against him. Nevertheless, defendant arrived at her house; he had been drinking and was armed with a knife. Defendant ignored requests to leave, and defendant and Thomas exchanged angry words. Testimony indicated that Thomas damaged defendant's van, and that defendant subsequently pulled out a knife and chased Thomas into a nearby field. Thomas slipped and fell as he was running from defendant. While Thomas was lying on his back, he told defendant "to stop," but defendant stabbed him in the chest. The single stab wound was forceful enough to collapse Thomas' lung and bisect his heart. According to the medical examiner, Thomas' wound was inconsistent with a fall on a knife held in his own hand. When the police arrived, defendant

fled the scene and subsequently left the state. Viewed in the light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant had sufficient time for a “second look” before he pulled out a knife and also while he chased Thomas. He also had another opportunity to pause when Thomas fell and asked him to “stop.” The single, slicing wound that bisected Thomas’ heart also supports an inference that defendant acted with a specific intent to kill. Thus, there was sufficient evidence to support defendant’s conviction of first-degree murder.

Further, defendant maintains that he was denied the effective assistance of counsel. Because defendant did not raise this issue in a motion for a new trial or request for a *Ginther*¹ hearing, our review is limited to mistakes apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). To establish ineffective assistance of counsel, the burden is on defendant to show that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed by the Sixth Amendment and that the deficient performance so prejudiced the defense as to deprive defendant of a fair trial. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997). There is a strong presumption that counsel’s conduct was reasonable. *Id.*

Although defendant asserts that counsel failed to call witnesses, investigate the case, or produce documentary evidence to bolster his claim that Thomas fell on his own knife, he does not indicate what additional evidence was available that was not produced, nor does he explain what other witnesses were available to testify who were not called, except for Rocky Manuel. With regard to Manuel, defendant did not make a record, or submit an affidavit, to show what testimony Manuel could have provided, and it is not apparent from the record that Manuel could have provided testimony favorable to defendant. Neither defendant nor any of the witnesses suggested that Manuel was in a position to observe Thomas’ fatal injury. Additionally, the record indicates that defense counsel did not call Manuel as a witness because he could not be located. Counsel informed the court that he began looking for Manuel two or three weeks before trial, and was informed that he “lives on the street.” Even Manuel’s mother had no idea where he could be found. On this record, defendant has not overcome the presumption that counsel’s conduct was reasonable, nor has defendant shown that he was prejudiced by counsel’s failure to present any evidence or call any witnesses.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Karen M. Fort Hood

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).