STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 28, 2010
v	No. 292457 Bay Circuit Court
CHRISTOPHER KEN WILSON, Defendant-Appellant.	LC No. 08-010569-FC

Before: MURPHY, C.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Following a bench trial, defendant was found guilty but mentally ill (GBMI) of first-degree premeditated murder, MCL 750.316(1)(a). The trial court sentenced defendant to life imprisonment. Defendant appeals as of right. Because we conclude that the trial court did not clearly err in finding that defendant was not legally insane at the time of the killing, and because the trial court's verdict was supported by sufficient evidence and was not against the great weight of the evidence, we affirm.

I. BASIC FACTS

On June 16, 2008, defendant visited his brother Stephen Wilson at the Traveler's Inn in Bay City. According to Wilson, defendant told him that he had killed a woman in his apartment while she was sleeping by hitting her in the face with a rock. Defendant explained to Wilson that the rock was from the Opportunity Center and had his name written on it. Wilson also testified that defendant wrote a letter. Wilson went to the inn's front desk and asked the receptionist to call 911.

Police officers were dispatched to defendant's apartment, where they found the body of Pamela Wilson. The body, which was at a high level of decomposition, was lying on a mattress in the living room. A large rock, weighing 11 pounds, with the name "Chris" written on it was found next to the victim's head. According to the medical examiner, the victim died from blunt force head trauma; she had been struck at least four times in the head or face with a blunt object. The victim also suffered three superficial stab wounds to the chest. There was no evidence of defensive wounds.

Defendant was arrested at the Traveler's Inn. When he was searched, a letter addressed to his father was found on him. The letter read, in part:

> I am not well. Dad, I killed a crack head whore[.] . . . I need help!!! Noone [sic] even know that she id [sic] dead except me. Stephen doesn't even now [sic]. Right now she is in my mental health based apartment with maggots crawling all over her!!! I didn't mean it!! She was offering me crack. I gave her a place to sleep. She fell asleep. For [sic] I knew what hit me I hit her in the head with a rock I stole from the Opportunity Center that says Chris on it about 20 times. Then I went into Bay Med for the third time because I honestly was hearing voices and seeing Demons again. When I got home I decided to write you at Steve's house. He is completely unaware of all this or what I am writing. I was in Bay Med for six days.

Defendant reported to Priya Rao, Ph.D., a forensic psychologist at the Center for Forensic Psychiatry, the events that led to the victim's death. Defendant met the victim at "the log cabin," where AA meetings were held. The victim needed a place to stay, and defendant said that she could stay with him. That night, as defendant was lying next to the victim, he began to hallucinate. He began seeing and hearing demons in the apartment. He believed that the victim was possessed by demons. He also believed that the victim, who had earlier asked him about the 11-pound rock, was going to kill him. He returned to the living room and picked up the rock and hit the victim with it. Defendant reported that, even after the victim was dead, the demons were still there, so he placed a Bible on the victim to get rid of them. He also placed a sandwich next to the victim.

Defendant admitted to Charles Clark, Ph.D., an independent forensic psychologist, that after he hit the victim with the rock, he stabbed her three times with a steak knife. He stabbed the victim for the same reason that he placed the Bible on her, to stop the demons. Defendant reported that he took a shower after stabbing the victim. He claimed that he needed the shower to relax, to allow him to think clearer. He was also getting himself ready to go to Bay Medical Center. He then left the apartment, locking the door because he did not want anybody to come in because the victim was there, and walked to a friend's house. On the way, he stopped at a laundromat where he left his bloodied clothing. He arrived at the friend's house approximately an hour to an hour and a half after killing the victim, and there, defendant, or someone on his behalf, called 911 and said that they better get him before he decapitated himself. Defendant was eventually transported to Bay Medical Center.[1]

At trial, defendant presented an insanity defense. Rao, who was called to testify by defendant, opined that defendant was mentally ill and that, because of his mental illness, defendant was legally insane, as defined by MCL 768.21a(1), at the time he killed the victim.

[1] Defendant was admitted into Bay Medical Center on June 10, 2006, where he stayed for six days. During his stay, he never disclosed to anyone that he had killed the victim. After defendant was released on June 16, 2006, his caseworker dropped him off at the Opportunity Center. He then walked to his apartment, where he saw the victim's body. He left the apartment, again locking the door because he did not want anybody to discover the victim, and went to his brother's room at the Traveler's Inn.

Clark, who was called by the prosecution, testified that defendant was not mentally ill, but that even if defendant was mentally ill, defendant was not legally insane at the time of the murder.

The trial court found that defendant hit the victim with the 11-pound rock, and did so with the intent to kill her. The trial court also found that the killing was done with premeditation and deliberation. It "highlight[ed]" defendant's acts of arming himself with a large rock and "ambush[ing]" the victim, explaining that defendant hit the victim several times while the victim was "not awake or cognizant." The trial court found that defendant suffered from a mental illness. It stated that Clark's testimony that defendant was not mentally ill was "not believable" because it was "contrary" to the opinions of all the doctors who had previously examined defendant and "all concluded at least he has some mental illness." However, the trial court found that, based on defendant's conduct after the murder, the defense failed to prove by a preponderance of the evidence that defendant lacked substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct or to conform his conduct to the requirements of the law. Thus, concluding that defendant was not legally insane at the time of the murder, the trial court found defendant guilty but mentally ill of first-degree premeditated murder.

II. LEGAL INSANITY

Defendant claims that the trial court erred in finding that he was not insane when he killed the victim. According to defendant, Rao's testimony established that he was legally insane at the time of the killing and that the prosecution failed to present sufficient evidence to rebut Rao's testimony. We disagree.

Following a bench trial, we review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Lanzo Constr Co*, 272 Mich App at 473. We will not interfere with the trier of fact's role in determining the weight of the evidence, *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005), or the inferences to be drawn from the evidence, *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

"It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense." MCL 768.21a(1). An individual is legally insane if, as a result of mental illness or mental retardation, the person "lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law." MCL 768.21a(1). A defendant has the burden to prove the insanity defense by a preponderance of the evidence. MCL 768.21a(3); *People v Lacalamita*, 286 Mich App 467, 470; 780 NW2d 311 (2009).[2]

[2] Defendant mistakenly relies on *People v Stephan*, 241 Mich App 482; 616 NW2d 188 (2000), for the proposition that the prosecution had the burden to prove that he was not legally insane. In *Stephan*, the Court explained that, pursuant to MCL 768.36(1)(a), the GBMI verdict statute, the
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Mental illness, as defined by the Mental Health Code, MCL 330.1001 *et seq.*, is "a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." MCL 330.1400(g). The trial court found that defendant was mentally ill. In doing so, it rejected the opinion of Clark, the prosecution's expert, stating that Clark's testimony concerning the issue of mental illness was "not believable." Defendant claims that because the trial court disregarded Clark's testimony regarding mental illness, it should have disregarded all of Clark's testimony. However, the trial court, as the fact-finder, was free to reject portions of Clark's testimony and accept other portions. See CJI2d 3.6(1). There is no clear error in the trial court's decision to accept portions of Clark's testimony while rejecting other portions.

Defendant argues that the trial court erred in finding that he had the capacity to appreciate the nature and quality or the wrongfulness of his conduct, because it determined that defendant appreciated the wrongfulness of the killing "within that week," rather than at the time of the offense. A defendant, to establish the insanity defense, need only prove that he was legally insane at the time he "committed the acts constituting the offense." MCL 768.21a(1); see also CJI2d 7.13, 7.14. However, a defendant's mental condition before and after the crime may assist the trier of fact in its determination of the defendant's mental state at the time of the crime. CJI2d 7.13.

The trial court found that, based on defendant's statements to his brother, the contents of the letter to his father, and his interactions with the police, all of which occurred on June 16, 2008, defendant "[a]t least within th[e] week" following the killing appreciated the nature and quality and the wrongfulness of his actions. However, the trial court also found that based on defendant's conduct immediately following the killing, such as leaving his apartment and washing his clothing, defendant appreciated the nature and quality and the wrongfulness of his actions at the time of the killing.

After the killing, defendant took a shower because he claimed that he needed time to relax. He subsequently left his apartment and locked the door so that no one could find the victim. He walked a mile and a half to a friend's house, but on the way he stopped at a laundromat where he placed his bloodied clothing. At the friend's house, defendant, or someone on his behalf, called 911, and he was subsequently transported to Bay Medical Center. Defendant, however, never informed anyone at Bay Medical Center that he had killed the victim.

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prosecutor has "the burden of proving that the defendant was not legally insane and should not be exculpated on the basis of mental infirmity. *Id.* at 493. The Court stated that MCL 768.36(1)(a) conflicted with MCL 768.21a, but left it to the Legislature to resolve the conflict. *Id.* at 493-494, 508. The Legislature subsequently amended MCL 768.36(1)(a), which now provides that a trier of fact may find a defendant guilty but mentally ill if the defendant is guilty of the offense beyond a reasonable doubt, the defendant has proven by a preponderance of the evidence that he was mentally ill at the time of the offense, and the defendant has not established by a preponderance of the evidence that he lacked the substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct or to conform his conduct to the requirements of the law. Thus, MCL 768.36(1)(a) no longer conflicts with MCL 768.21a(3). Each statute requires a defendant to prove the insanity defense by a preponderance of the evidence.

According to Clark, defendant "came around immediately, and understood what he had done." Clark stated that if defendant "was capable of such an appreciation so quickly, it is not clear why he would not have been capable of it at the time of the murder." He explained that the shock of murdering someone "can scarcely be invoked" as a reason for why defendant snapped out of a psychotic state and realized that he needed treatment, as "[m]ental illness . . . cannot be expected to turn on and off in that manner." Clark also testified that nothing defendant told him or anything that happened during defendant's hospitalization at Bay Medical Center suggested that defendant was ever out of touch with reality such that he was not able to appreciate the nature or the wrongfulness of the killing. Based on defendant's actions immediately following the killing, from which one could infer that defendant was attempting to conceal the crime or lessen his culpability, and Clark's testimony, the trial court did not clearly err in determining that defendant, at the time of the killing, did not lack substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct.

Defendant also argues that the trial court erred in determining that he had the capacity to conform his conduct to the law. Again, in making its determination, the trial court focused on defendant's conduct immediately following the killing. It stated that defendant's conduct, such as bringing his clothing to the laundromat and not going directly to Bay Medical Center, suggested that defendant "was formulating some plan." Clark testified that defendant never described a general loss of control during the time of the killing. Clark stated that, based on defendant's own report, defendant always remained capable of behaving in "a conscious, purposeful and goal-directed manner." He explained that defendant struck the victim with the rock because he believed that the victim would kill him, that defendant placed the Bible on the victim to stop the demons, that defendant took a shower to give him time to relax, and that defendant left the apartment to call 911 in order to get himself admitted to Bay Medical Center. Based on the inferences that the trial court drew from defendant's conduct immediately following the killing and on Clark's testimony, we find no clear error in the trial court's finding that defendant failed to establish that he lacked substantial capacity to conform his conduct to the requirements of the law.

Under the trial court's questioning, Rao admitted that defendant's conduct could be interpreted in different ways. The trial court interpreted defendant's conduct, especially his conduct occurring immediately after the killing, as evidence that defendant was able to appreciate the nature and quality or the wrongfulness of his conduct and that he had the ability to conform his conduct to the requirements of the law. The trial court's findings were supported by Clark's testimony. Accordingly, we affirm the trial court's finding that defendant was not legally insane at the time of the killing.

III. SUFFICIENCY OF THE EVIDENCE

Defendant claims that his conviction is not supported by sufficient evidence because the evidence did not establish that he acted with premeditation and deliberation. A claim of insufficient evidence is reviewed de novo. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). We must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*

"The elements of premeditated murder are (1) an intentional killing of a human being (2) with premeditation and deliberation." *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009). "To show first-degree premeditated murder, some time span between the initial homicidal intent and ultimate action is necessary to establish premeditation and deliberation. The interval between the initial thought and ultimate action should be long enough to afford a reasonable person time to take a second look." *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003) (quotations and internal citations omitted). Premeditation and deliberation may be inferred from the circumstances surrounding the killing, *People v Unger*, 278 Mich App 210, 229; 749 NW2d 272 (2008), but the inferences must have support in the record and not be mere speculation, *People v Plummer*, 229 Mich App 293, 301; 581 NW2d 753 (1998). Premeditation may be established through evidence of the parties' past relationship, the defendant's conduct before and after the killing, and the circumstances of the killing itself. *Unger*, 278 Mich App at 229.

We initially note that, pursuant to statute, any statements that defendant made to Rao or Clark may not be used to determine whether defendant acted with premeditation and deliberation. MCL 768.20a(5) provides:

> Statements made by the defendant to personnel of the center for forensic psychiatry, to other qualified personnel, or to any independent examiner during an examination shall not be admissible or have probative value in court at the trial of the case on any issues other than his or her mental illness or insanity at the time of the alleged offense.

Rao was a forensic psychologist at the Center for Forensic Psychiatry, while Clark, under order of the trial court, performed an independent examination of defendant. Thus, any statements defendant made to Rao and Clark were only admissible to establish defendant's mental state at the time of the killing.

However, viewing defendant's statements to his brother and the statements in his written letter in the light most favorable to the prosecution, we conclude that there was sufficient evidence from which the trial court could conclude that the killing was premeditated and deliberate. Defendant told his brother and admitted in his letter that he killed the victim while she was sleeping. From this statement, a rational trier of fact could infer that defendant had "time to take a second look," as the killing did not occur "during an affray whose nature would not permit cool and orderly reflection." *Plummer*, 229 Mich App at 300 (quotation omitted). In addition, defendant stated in his letter that he hit the victim 20 times. Although the medical examiner testified that the victim suffered four lacerations to her head, he testified that the victim may have been struck more than four times if she was struck in the same area more than once. While the brutal nature of a killing alone is not sufficient to show premeditation, *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999), evidence that the victim suffered multiple violent blows can support an inference of premeditation and deliberation because "the time required to inflict multiple blows affords an assailant sufficient time to . . . take a second look," *Unger*, 278 Mich App at 231 (quotation omitted). Thus, based on the inferences arising from defendant's statements that he killed the victim by striking her with a rock more than 20 times while she was sleeping, we conclude that defendant's conviction for first-degree premeditated murder is supported by sufficient evidence.

In the alternative, defendant argues that his conviction for first-degree premeditated murder is against the great weight of the evidence. He claims that the evidence presented in the prosecution's case-in-chief weighed heavily against a finding of premeditation and deliberation and that expert testimony of Rao, who opined that defendant was legally insane and incapable of deliberation, "only added to that weight." We disagree.

A verdict is against the great weight of the evidence if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Lacalamita*, 286 Mich App at 469. "Generally, a verdict may be vacated only when the evidence does not reasonably support it and it was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence." *Id.*

As already discussed, the prosecution presented sufficient evidence in its case-in-chief to support a finding that defendant acted with premeditation and deliberation. The two experts disagreed regarding whether defendant was legally insane at the time of the killing. However, conflicting testimony is not a sufficient ground for granting a new trial. *People v Lemmon*, 456 Mich 625, 647; 576 NW2d 129 (1998). Moreover, "[u]nless it can be said that directly contradictory testimony was so far impeached that it was deprived of all probative value or that the [fact-finder] could not believe it, or contradicted indisputable physical facts or defied physical realities," we must defer to the fact-finder's determination. *Id.* at 645-646 (internal quotations and citation omitted). Here, the trial court weighed the evidence and the testimony of the experts and, based on defendant's conduct immediately following the killing, it accepted Clark's testimony that defendant was not legally insane at the time of the killing. Clark's testimony was not impeached to the extent that it was deprived of all probative value. Accordingly, the evidence does not preponderate so heavily against the GBMI verdict that it would be a miscarriage of justice to allow it to stand.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens