STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 10, 2011
v	No. 294354 Berrien Circuit Court
JONATHAN CASTILLO, Defendant-Appellant.	LC No. 2009-015174-FC

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a). The trial court sentenced defendant to a mandatory term of life imprisonment without parole. Defendant appeals as of right, and we affirm.

Defendant's conviction stems from the February 2009 stabbing death of Michael Evans, the victim, in Niles. In June 2008, defendant learned that the victim had begun dating Danielle Watson, who had previously cohabited with defendant for at least nine years and had three children with him. Watson testified that she parted ways with defendant due to his "abusiveness" and drug use. In the morning of February 2, 2009, Watson drove to defendant's sister's residence in Niles to retrieve two of her children from a visit with defendant. The victim and Dekoven Evans, a cousin, accompanied Watson because defendant had threatened her. Shortly after Watson arrived at defendant's sister's home, defendant approached the victim, engaged the victim in a fistfight, then fatally stabbed the victim.

I

We initially address defendant's suggestion that insufficient evidence supported his premeditated murder conviction. Although defendant did not contest that he inflicted the victim's fatal knife wound, defendant insisted that he had done so in self-defense, and that he had killed the victim neither intentionally nor with premeditation. When reviewing a criminal defendant's challenge to the sufficiency of the evidence, this Court considers all the evidence presented in the light most favorable to the prosecution to determine whether a reasonable juror could find the defendant's guilt proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). This Court must draw all reasonable inferences and make credibility choices in support of the jury's verdict; the Court should not interfere with the factfinder's role in determining witness credibility or the weight of the evidence. *Id*. at 400;

People v Elkhoja, 251 Mich App 417, 442; 651 NW2d 408 (2002), vacated in part on other grounds 467 Mich 916 (2003).

To convict a defendant of first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim, and that the act of killing was premeditated and deliberate. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002). Premeditation and deliberation require sufficient time to permit the defendant to take a second look. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999); *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation and deliberation may be established by evidence of (1) the prior relationship between the defendant and the victim, (2) the defendant's actions before the murder, (3) the circumstances of the killing itself, including the type of weapon used and the location of the wounds inflicted, and (4) the defendant's conduct after the murder. *Abraham*, 234 Mich App at 656; *People v Berry (On Remand)*, 198 Mich App 123, 128; 497 NW2d 202 (1993). Circumstantial evidence and the reasonable inferences arising therefrom may suffice to prove the elements of a crime, and "[m]inimal circumstantial evidence is sufficient to prove an actor's state of mind." *Ortiz*, 249 Mich App at 301; *Abraham*, 234 Mich App at 656.

Our review of the record reveals ample evidence establishing that defendant intentionally killed the victim. On the afternoon immediately before the stabbing, February 1, 2009, Superbowl Sunday, Watson had gone shopping while the victim stayed at Watson's house with Evans. Evans and Watson both testified that defendant called and spoke with the victim that afternoon. And, as Watson shopped, defendant called her and declared that "he was going to be on his way to my home . . . to kick [the victim's] ass." Watson recalled that defendant had made clear to her his dislike for the victim, including by referring to the victim as a "n***er" and Watson as "a n***er lover." On the morning of the stabbing, February 2, 2009, Watson described that she called defendant's sister to advise that Watson "was getting ready to leave" to pick up two of her children, and Watson heard defendant "in the background" announce, "[B]itch, I'm going to crack your head open when you get here." A forensic examiner testified that a fatal stab wound had penetrated the victim's abdomen at a depth of "seven or eight inches," reached the "front of the spinal cord where the aorta is," and ruptured the aorta. A second stab wound appeared in the victim's back near a shoulder. The number, locations, and the nature of the victim's stab wounds, especially the fatal, deep wound to the victim's abdomen, reasonably convey that defendant stabbed the victim intentionally, not accidently. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational jury could have found beyond a reasonable doubt that defendant intended to kill the victim.

With respect to premeditation and deliberation, the evidence revealed that defendant had a prior relationship with the victim, specifically that defendant resented the victim's relationship with Watson. The evidence showed that defendant had repeatedly expressed his resentment concerning the victim and threatened violence toward the victim, including on the day before the stabbing. This Court has long recognized that "prior threats or ill feelings between the defendant and the deceased" constitute "indicia of premeditation." *People v Lewis*, 95 Mich App 513, 515; 291 NW2d 100 (1980).

Regarding defendant's actions before the killing, minutes before the victim and Evans accompanied Watson to pick up her children from their visit with defendant, defendant

threatened Watson, "[B]itch, I'm going to crack your head open when you get here." The testimony of Watson and Evans reflects that when Watson's car arrived at defendant's sister's residence, defendant walked out the front door and approached the victim while he stood in the street behind Watson's car, and that defendant and the victim engaged in fisticuffs immediately before the stabbing occurred. Although neither Watson nor Evans observed from where defendant retrieved the knife that he used to stab the victim, at least some evidence reasonably suggests that defendant took a knife with him when he confronted the victim on the morning of February 2, 2009. Forensic evidence confirmed that defendant's deoxyribonucleic acid (DNA) profile matched the major DNA profile on the knife handle, while the victim's DNA profile appeared only on the knife blade. Evans recalled that defendant and the victim punched each other for some period of time, before Evans saw defendant "making a stabbing motion," and that "as [defendant] walked away that's when [Evans] saw the knife fall." Evans denied that the victim had possessed a weapon on the morning of February 2, 2009, or that the victim and Evans had planned in any respect to confront or attack defendant. Watson repeatedly confirmed her understanding that the victim and Evans accompanied her to defendant's sister's residence solely to protect Watson, and Watson elaborated when asked about any knives in the victim's possession that morning:

> I think I can fairly say that [the victim] was with me for the weekend and never left the home that morning to go anywhere to get anything. And it was not anything that we anticipated was going to happen. So I can fairly say that I don't believe he had any weapons when we left my home.

The evidence thus reasonably establishes that defendant armed himself with a knife before confronting the victim, an act indicating premeditation and deliberation. *Lewis*, 95 Mich App at 515 (observing that "evidence that the defendant procured a weapon to effectuate the crime" is another "indicia of premeditation"). The stab wounds to the victim's front and back sides, and the depth of the fatal stab wound through the victim's aorta, comprise additional factors evidencing the premeditated and deliberated nature of the killing. *People v Unger*, 278 Mich App 210, 231; 749 NW2d 272 (2008) (reiterating the proposition that "[t]he nature and number of a victim's wounds may support a finding of premeditation and deliberation").

Defendant's conduct after the stabbing also tends to prove the premeditated and deliberated nature of the killing. Seconds after the stabbing, defendant and his sister immediately fled Michigan for Indiana, nearly running over the victim's prone body at the outset of their journey. When the police eventually located defendant at a home in Elkhart, defendant attempted to jump out a second-story window. Evidence that defendant ran away or tried to conceal his involvement in a killing points toward premeditation and deliberation. *People v Gonzalez*, 178 Mich App 526, 534; 444 NW2d 228 (1989).

In summary, viewing the evidence in the light most favorable to the prosecution, a rational jury could also have found beyond a reasonable doubt that defendant premeditated and deliberated the killing of the victim.

II

Defendant additionally challenges on appeal the efficacy of his trial counsel, characterizing trial counsel as ineffective for failing "to have . . . defendant independently evaluated and to raise and preserve properly an insanity or temporary insanity defense." Defendant avers that record evidence suggesting the potential for a feasible insanity defense included the nature "of the offense, . . . his anger issue(s), his domestic violence past, . . . his substance abuse history (i.e., alcohol, THC[,] . . . marijuana, hashish, . . . and cocaine)," and "his serious mental diseases and/or defects (i.e., suicidal tendencies and bipolar disorder . . . .)." Whether a defendant has received the effective assistance of counsel comprises a mixed question of fact and law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review for clear error a trial court's findings of fact, if any, regarding the conduct of defense counsel, while we consider de novo questions of constitutional law. *Id*.

"'[I]t has long been recognized that the right to counsel is the right to the effective assistance of counsel.'" *United States v Cronic*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984), quoting *McMann v Richardson*, 397 US 759, 777 n 14; 90 S Ct 1441; 25 L Ed 2d 763 (1970). In *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984), the United States Supreme Court held that a convicted defendant's claim of ineffective assistance of counsel includes two components: "First, the defendant must show that counsel's performance was deficient. . . . Second, the defendant must show that the deficient performance prejudiced the defense." To establish the first component, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). With respect to the prejudice aspect of the test for ineffective assistance, the defendant must demonstrate a reasonable probability that but for counsel's errors, the result of the proceedings would have differed. *Id*. at 663-664. The defendant must overcome the strong presumptions that his "counsel's conduct falls within the wide range of professional assistance," and that his counsel's actions represented sound trial strategy. *Strickland*, 466 US at 689. A defense counsel possesses "wide discretion in matters of trial strategy." *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). This Court may not "substitute our judgment for that of counsel on matters of trial strategy, nor will we use the benefit of hindsight when assessing counsel's competence." *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009) (internal quotation omitted).

Michigan law recognizes that a criminal defendant may present at trial an affirmative defense of insanity. MCL 768.20a, MCL 768.21a. The defendant bears the burden "of proving the defense of insanity by a preponderance of the evidence." MCL 768.21a(3). The Legislature defined as follows the scope of insanity for purposes of the affirmative defense:

> An individual is legally insane if, as a result of mental illness as defined in section 400a of the mental health code, Act No. 258 of the Public Acts of 1974, being section 330.1400a of the Michigan Compiled Laws, or as a result of being mentally retarded as defined in section 500(h) of the mental health code, Act No. 258 of the Public Acts of 1974, being section 330.1500 of the Michigan Compiled Laws, that 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. Mental illness or being mentally retarded does not otherwise constitute a defense of legal insanity. [MCL 768.21a(1).]

Our review of the instant record reveals no evidence tending to substantiate that defendant labored under any mental illness, mental retardation or involuntary intoxication, either when he stabbed the victim or at any other period in his life. The fact that defendant has engaged in angry and violent behavior in this case and previously, standing alone, does not reasonably signal that he "lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his . . . conduct or to conform his . . . conduct to the requirements of the law." MCL 768.21a(1). Nor does defendant's imbibing of alcohol or illicit substances strengthen his contention that his trial counsel should have investigated an insanity defense. "An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances." MCL 768.21a(2). Furthermore, the presentence investigation report (PSIR) nowhere documents defendant's suggestion that he exhibited suicidal tendencies or signs of bipolar disorder. Instead, the PSIR denotes that defendant had "[n]o" psychiatric history, "[n]o" mental health treatment, and that "[m]entally, the defendant reports no health problems." Despite the absence of mental health history or current complaints by defendant, the PSIR author "felt . . . that the defendant could benefit from . . . mental health counseling, referrals and/or examinations to determine whether the defendant has any underlying psychological issues, especially in the area of controlling his emotions and anger." However, the entirety of the instant record does not reasonably signal that defendant labored under a mental disease or defect cognizable under MCL 768.21a(1).

In conclusion, defendant's trial counsel did not perform below an objective standard of reasonableness when he neglected to further investigate or present an insanity defense that did not have an adequate foundation in the record. *Solmonson*, 261 Mich App at 663; *People v Mack*, 265 Mich App 122, 130; 695 NW2d 342 (2005) ("Counsel is not ineffective for failing to advocate a meritless position.") (internal quotation omitted). Moreover, defendant has not demonstrated that any reasonable likelihood exists that the outcome of his trial would have differed if his counsel would have investigated or raised an insanity defense. *Solmonson*, 261 Mich App at 663-664.

III

Defendant next complains that the trial court violated his constitutional rights to due process and equal protection when the court denied a defense request to remove Prospective Juror 60 for cause.

> A four-part test is used to determine whether an error in refusing a challenge for cause merits reversal. There must be a clear and independent showing on the record that (1) the court improperly denied a challenge for cause, (2) the aggrieved party exhausted all peremptory challenges, (3) the party demonstrated the desire to excuse another subsequently summoned juror, and (4) the juror whom the party wished later to excuse was objectionable. [*People v Lee*, 212 Mich App 228, 248-249; 537 NW2d 233 (1995).]

In this case, the record does not reflect that the trial court incorrectly denied defense counsel's request that the court excuse Prospective Juror 60 for cause. Neither this juror's

expression of concern about the potentially unpleasant nature of a murder trial, nor the juror's belief that another prospective juror might have better qualifications to sit on the jury amounts to a ground for excusing the prospective juror for cause. MCR 2.511(D); MCR 6.412(D)(1). Additional voir dire by the trial court elicited Prospective Juror 60's concession that he felt willing and able to fulfill the duties of a juror with fairness and impartiality.[1] Furthermore, defendant did not exhaust all of his peremptory challenges; although defendant possessed 12 peremptory challenges, MCR 6.412(E)(1), he only exercised five peremptory challenges. Moreover, defendant did not express a desire to excuse an objectionable juror summoned after Prospective Juror 60. Therefore, we discern no error in the trial court's denial of the defense motion to excuse Prospective Juror 60 for cause.

IV

Defendant finally submits that the trial court erred in admitting Watson's unfairly inflammatory testimony that defendant called the victim a "n***er" and Watson a "n***er lover." Given that defendant lodged no objection at trial to the allegedly improper testimony, we review this unpreserved issue only to ascertain whether any plain error affected defendant's substantial rights. *People v Coy*, 243 Mich App 283, 286-287; 620 NW2d 888 (2000).

Watson's now-challenged testimony had probative value toward establishing the nature of defendant's relationship with the victim before the killing, a fact of consequence in light of the first-degree premeditated murder charge against defendant. MRE 401, MRE 402; *Abraham*, 234 Mich App at 656; *Berry (On Remand)*, 198 Mich App at 128. Watson's testimony additionally tended to make more probable than not that defendant possessed a motive to kill the victim, always a relevant topic in a murder prosecution. MRE 401; *Unger*, 278 Mich App at 223. Taking into account the significant probative value of Watson's testimony, we detect no likelihood that any danger of unfair prejudice or jury confusion substantially outweighed the high probative value inherent in Watson's testimony. MRE 403; *People v Vasher*, 449 Mich 494, 502; 537 NW2d 168 (1995) (explaining that for purposes of MRE 403, "prejudice means more than simply damage to the opponent's cause," "[w]hat is meant . . . is an undue tendency to move the tribunal to decide on an improper basis, commonly . . . an emotional one," or to

[1] We reject defendant's suggestion that Prospective Juror 60 indicated that jury service would be unfair and a disservice to him. The record reveals that defense counsel made the statements concerning unfairness and disservice in the course of explaining the concept of peremptory challenges to Prospective Juror 60.

threaten the concepts of accuracy and fairness). We conclude that the trial court correctly allowed this portion of Watson's testimony, and, consequently, we find no error, plain or otherwise.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ William C. Whitbeck
/s/ Donald S. Owens