

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN	)	
	)	SUPREME COURT
Plaintiff-Appellant,	)	NO. 156241
	)	
v	)	COURT OF APPEALS
	)	NO. 329046
CHRISTOPHER ALLAN OROS	)	
	)	CIRCUIT COURT FILE
Defendant-Appellee.	)	NO. 2014-1711 FC
_____	)	

**PLAINTIFF-APPELLANT'S *CORRECTED*\* SUPPLEMENTAL  
BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL**

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\* Citations to the record have been corrected to refer to the relevant appendix page number(s) in accordance with MCR 7.312(B)(1).

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**QUESTION PRESENTED BY COURT**

**WHETHER THE COURT OF APPEALS PROPERLY VIEWED THE TRIAL RECORD FOR SUFFICIENT EVIDENCE OF PREMEDITATION AND DELIBERATION IN A LIGHT MOST FAVORABLE TO THE PROSECUTION, INCLUDING DRAWING ALL REASONABLE INFERENCES IN FAVOR OF THE JURY VERDICT, AND WHETHER THE RECORD EVIDENCE IS SUFFICIENT TO SUSTAIN DEFENDANT'S CONVICTION FOR FIRST-DEGREE PREMEDITATED MURDER?**

**Plaintiff-Appellant Answers:** Although the Court of Appeals acknowledged that it reviews the evidence in a light most favorable to the prosecution to determine whether any rational trier of fact could have found the defendant guilty beyond of reasonable doubt, and that circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of a crime, it did not in fact apply that standard in this case. The lower court instead limited its review to a small portion of the record—focusing only on the number of the victim's stab wounds rather than considering the evidence as a whole—and failed to draw all reasonable inferences (or any inferences at all) in favor of the jury verdict. A deferential review of the entire evidentiary record establishes that a rational jury could have found that Defendant's act of killing the victim was premeditated and deliberate.

**Defendant-Appellee Answers:** The only evidence introduced by the prosecution in an attempt to show premeditation and deliberation was the fact that the victim suffered multiple stab wounds. Case law holds, however, that the number of wounds or the brutality of a killing does not alone support an inference of premeditation and deliberation. Indeed, the number of stab wounds corroborates Defendant's theory that he acted in a heated frenzy, without time to cool down and reflect on his actions. The Court of Appeals correctly applied the law to the facts of this case and did not err when vacating Defendant's first-degree murder conviction for lack of sufficient evidence.

SUPPLEMENTAL ARGUMENT

**THE COURT OF APPEALS CLEARLY ERRED WHEN FINDING THAT THE EVIDENCE PRESENTED AT TRIAL—WHEN CONSIDERED IN A LIGHT MOST FAVORABLE TO THE PROSECUTION—WAS INSUFFICIENT FOR ANY RATIONAL JURY TO CONCLUDE THAT DEFENDANT ACTED WITH PREMEDITATION AND DELIBERATION WHEN KILLING THE VICTIM.**

**LOWER COURT DID NOT CONSIDER WHOLE BODY OF PROOFS IN A LIGHT MOST FAVORABLE TO THE PROSECUTION AND ITS REVIEW WAS NOT DEFERENTIAL TO THE JURY VERDICT**

“‘The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt.’ ‘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.’” *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003), quoting *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). “It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

[A]ppellate courts are not juries, and even when reviewing the sufficiency of the evidence they must not interfere with the jury’s role:

‘[An appellate court] must remember that the jury is the sole judge of the facts. It is the function of the jury alone to listen to the testimony, weigh the evidence and decide the questions of fact....’

[T]his Court determined long ago that when an appellate court reviews the evidence supporting a conviction, factual conflicts are to be viewed in a light favorable to the prosecution:

‘In testing this case we are not required to take that which respondent relies upon and that which would tend against him, and from a comparison thereof determine which was the stronger and better, or deducting the one from the other, say what, if anything, was left. This would be but a weighing of the evidence and was entirely within the province of the jury. Nor are we to take the evidence in the order, question and answer, in which it was given, but finding it where we may, and putting what was most favorable to the prosecution together, and discarding all other, can this Court say it fairly tended to establish the charge made?’

In short, when determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a 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. [*People v Wolfe*, 440 Mich 508, 514-515, modified 441 Mich 1201; 489 NW2d 748 (1992); internal citations omitted.]

“The scope of review is the same whether the evidence is direct or circumstantial.” *Nowack, supra*, at 400. Indeed, the evidence against a defendant may be entirely circumstantial and yet constitutionally sufficient to support a guilty verdict, as such evidence and the reasonable inferences arising therefrom may constitute satisfactory proof of the elements of the offense. *People v Unger*, 278 Mich App 210, 223; 749 NW2d 272 (2008); see also, *Wolfe, supra*, at 526. And, relevant here, a jury may reasonably infer premeditation and deliberation from *minimal* circumstantial evidence. *Unger, supra*, at 223; see also, *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001). “[C]ourts should view *all* evidence—whether direct or circumstantial—in a light most favorable to the prosecution to determine whether the prosecution sustained its burden.” *Hardiman, supra*, at 428; emphasis added.

Moreover, the prosecution is only required to produce evidence sufficient to find that the jury could reasonably draw the inferences that it did; “it is not required to negate every reasonable theory consistent with a defendant’s innocence.” *Id.* at 430-431. Simply because an equally plausible explanation or inference may be drawn from the evidence is not cause for reversal—certainly, such action would usurp the jury’s role as the trier of fact, permitting the reviewing court to ask “whether any reasonable juror could have found the defendant innocent” rather than “whether any reasonable juror could have found the defendant guilty.” *Wolfe, supra*, at 533 (Justice Boyle, concurring). Again, “[a]t the appellate level, all reasonable inferences must be drawn in favor of the prosecution, and then, if any reasonable juror could have found guilt beyond a reasonable doubt, the verdict must be upheld.” *Id.* The appellate court cannot sit as the “thirteenth juror weighing inferences against the prosecution.” *Id.* at 534.

Thus, when a reviewing court is presented with a record of historical facts that could support more than one inference, an appellate court is obligated to accept the inference drawn by the trier of fact and defer to that resolution as long as *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [*Id.* at 536-537; emphasis in original.]

The Court of Appeals acknowledged in general terms that it must view the evidence in a light most favorable to the prosecution and that circumstantial evidence and reasonable inferences arising from that evidence can be sufficient to establish the elements of a crime, but it clearly did not apply that standard when considering the facts of this case. Instead, it limited its review to a small portion of the record—focusing only on the number of the victim’s stab wounds rather than considering the evidence as a whole—and failed to draw all reasonable inferences (or any inferences at all) in favor of the jury verdict. Simply put, there was no deferential review.

The Court of Appeals’ analysis first consisted of a cursory consideration of Defendant’s conduct before arriving at the victim’s apartment—wherein it quickly discounted it as “yield[ing]

no support for a finding of premeditation” because he had not been violent toward any other resident—and of Defendant’s behavior hours after the murder when he returned to the scene (with which Plaintiff admittedly does not necessarily take issue). Then, with regard to the circumstances surrounding the killing itself, the Court of Appeals considered only the fact that the victim suffered a great number of stab wounds, stating, “The prosecution argues that given the number of stab wounds defendant had adequate time to consciously reconsider his actions in a ‘second look’ and decide whether to continue, i.e., to have premeditated some of the later blows.” *People v Christopher Oros*, 320 Mich App 146; \_\_\_ NW2d \_\_\_ (2017), slip op, 4 (see also, Appendix, 101a). Although that was certainly one of many points argued by Plaintiff after the close of proofs (see Appendix, 76a-81a) and on appeal, the Court of Appeals treated it as if it was Plaintiff’s sole argument or evidence in favor of a finding of premeditation and rejected it as a matter of law based on an overly broad application of this Court’s ruling in *People v Hoffmeister*, 394 Mich 155; 229 NW2d 305 (1975), wherein the Court found that there was no basis *on that record* to infer “that between the successive, potentially lethal blows the killer calmly, in a cool state of mind...subjected the nature of his response to a second look.” *Oros, supra*, at 4-5, quoting *Hoffmeister, supra*, at 157-158 (see also, Appendix, 101a-102a).

The Court of Appeals did not consider any other evidence presented—i.e., the type of weapon used and how Defendant gained possession of it, the fact that he assaulted the victim first with a ceramic mug and with his fist, a probable motive Defendant had for killing the victim, Defendant’s own claim that the two struggled with one another, the nature of the wounds and the order and manner in which they were inflicted, the fact that there were two saturated blood stains within the living room, and evidence that immediately after stabbing the victim to death Defendant texted another individual that he was “on [his] way”—let alone the inferences that could be drawn

from that evidence in favor of the jury verdict. The lower court assumed, contrary to the inferences drawn by the jury, that Defendant acted in the heat of passion and without reflection.

**THE RECORD EVIDENCE IS SUFFICIENT TO SUSTAIN DEFENDANT’S FIRST-DEGREE PREMEDITATED MURDER CONVICTION**

Had the Court of Appeals actually considered the *whole* body of proofs in a light most favorable to the prosecutor, and drawn all reasonable inferences in support of the jury verdict, it would have come to a different conclusion.

As noted in the Application for Leave to Appeal filed with this Court, to “premeditate” is to “think about beforehand.” *People v Bass*, 317 Mich App 241, 265-266; 893 NW2d 140 (2016), quoting *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). “Some time span between the initial homicidal intent and the ultimate killing is necessary to establish premeditation and deliberation;” however, “the time required need only be long enough ‘to allow the defendant to take a second look.’” *Unger, supra*, 278 Mich App at 229 (internal citation omitted); see also, *Gonzalez*, 468 Mich at 641. Premeditation may be established through evidence of the defendant’s actions before the killing, the relationship (if any) between the defendant and the victim, the circumstances of the killing itself—including the type of weapon used and the location of the wounds inflicted—and the defendant’s conduct after the homicide. *Bass, supra*, 317 Mich App at 265-266; *Unger, supra*, at 229; *Plummer, supra*, at 300-301. And the fact that a defendant engaged in a slow means of death—during which he had time to rethink his actions—could also be used as evidence of premeditation, *Gonzalez, supra*, at 641-642, as could “[t]he *nature and number* of a victim’s wounds”—as the time required to inflict multiple wounds affords an assailant sufficient time to take a “second look,” *Unger, supra*, at 231; emphasis added. Finally, premeditation can be established by circumstantial evidence and reasonable inferences drawn from that evidence. *Unger, supra*, at 229.

The jury in this case was instructed in pertinent part as follows:

The Defendant was charged with open murder. To prove first degree premeditated murder, the Prosecutor must prove each of the following elements beyond a reasonable doubt.

First, that the Defendant caused the death of Marie McMillan, that is, that Marie McMillan died as a result of a stabbing. Second, that the Defendant intended to kill Marie McMillan. Third, that this intent to kill was premeditated, that is thought out beforehand. Fourth, that the killing was deliberate which means that the Defendant considered the pros and cons of the killing and thought about and chose his actions before he did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case. The killing cannot be the result of a sudden impulse without thought or reflection. Fifth, that the killing was not justified, excused or done under circumstances that reduce it to a lesser crime.<sup>1</sup> [Appendix, 86a-87a.]

The jurors were also instructed to consider all the evidence presented (both direct and circumstantial alike) and not let sympathy or prejudice influence their decision (Appendix, 82a-85a). The lower court stated, “[w]hat you decide about any fact in this case is final” (Appendix, 82a). With regard to Defendant’s intent, the jury was instructed that it “may be proved by what he said, what he did, how he did it or by any other facts and circumstances in evidence” (Appendix, 89a). Jurors are presumed to follow their instructions. *People v Stevens*, 498 Mich 162, 190; 869 NW2d 233 (2015). And here, in rendering a verdict for first-degree murder, the jury determined that the act of killing was premeditated and necessarily rejected Defendant’s self-defense claim and any notion that he acted in a frenzy or the heat of passion. Those conclusions are supported by the record.

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<sup>1</sup> The jury was instructed on self-defense, second-degree murder, and voluntary manslaughter, and rejected them all (Appendix, 87a-95a).

First, a reasonable juror could presume from the evidence that Defendant was desperate for money to purchase drugs and was willing to use force if he had the opportunity. He appeared to be coming down from a drug high, as some of the residents he had contact with described him as “jittery” and “tremoring” (Appendix, 12a-13a, 15a). He had been going door-to-door for more than four hours before he reached the victim’s apartment (Appendix, 4a, 12a, 16a). He was insistent of some residents to get money and tried to make his way into their apartments (Appendix, 5a-7a, 12a, 15a, 17a-20a). The Court of Appeals found that Defendant was not violent toward any of them, but one resident testified that based on Defendant’s behavior, he believed that Defendant would have resorted to force if the resident had been home alone (Appendix, 14a). The victim in this case lived alone and struggled physically and mentally (Appendix, 2a-3a, 28a, 45a-48a ). She was likely the first vulnerable person Defendant encountered—and the opportunity presented itself once he was inside her apartment. One female shut the door and refused him entry and another female had a pit bull that remained between her and Defendant (Appendix, 7a-11a). Even so, Defendant lingered in that woman’s apartment and inquired whether anyone else was present (Appendix, 7a-8a). The evidence also shows that Defendant commented on one of the resident’s expensive possessions (Appendix, 18a-19a). These facts suggest that Defendant had a motive.<sup>2</sup>

Next, a reasonable juror could presume premeditation from the fact that Defendant’s assaultive conduct toward the victim escalated from punching her in the face with his fist (hard enough to leave abrasions on the back of his hand), to forcibly striking her on the head with a ceramic mug (breaking the mug into many pieces—one of which contained the victim’s blood and her hair root), and then stabbing her (Appendix, 21a-22a, 24a, 27a, 30a, 34a-35a). It is also

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<sup>2</sup> When Defendant used a similar guise on a prior occasion, he did in fact steal from the homeowner (Appendix, 54a-56a). And here, when Defendant returned to the victim’s apartment, he took her purse, cell phone, and medication (Appendix, 29a, 51a-53a).

reasonable to presume that there was time for reflection when Defendant secured possession of the knife he used to stab the victim—whether the jury believed he gained control of it after struggling with the victim, or inferred that he retrieved it from the kitchen (where he confessed to leaving it after the murder) (Appendix, 23a-27a, 29a).

Third, based on Defendant’s confession to the police that he stabbed the victim in the “stomach area” and eventually got on her back (while she was face down) and stabbed her multiple times and in various locations (Appendix, 27a, 50a), as well as the fact that there were two distinct and separate saturated blood stains in the victim’s living room (Appendix, 31a-33a), a reasonable juror could conclude that the stab wounds were not all inflicted in rapid succession—allowing for a pause or an “intervening period for premeditative reflection.” *Hoffmeister, supra*, at 159 fn 4; see also, *Gonzalez, supra*, at 641-642 and *Unger, supra*, at 231. Defendant also confessed to investigating officers that “instinct took over and I was trying to kill her” (Appendix, 49a).

Fourth, a reasonable jury could infer premeditation from the nature, location, *and* number of the wounds. The medical examiner testified that there were at least 29 stab wounds that she was able to identify—others she could not count due to the condition of the victim’s body (Appendix, 57a-58a). The wounds were primarily in the neck, chest, and abdomen (Appendix, 57a-69a). She did not testified concerning any random outlying wounds. Instead, all appeared to be in those three vital locations. Two stab wounds were particularly peculiar in that they evidenced calculated and deliberate action on Defendant’s part. One was a stab wound to the back of the victim’s neck at the base of her skull, and another was a 4-inch-deep wound just under her chin that went up into her throat and oral cavity (Appendix, 72a-73a). Some of the wounds were three or four inches deep and one was as deep as five inches, striking ligaments, bone, and various organs (Appendix, 60a-63a, 70a-71a). The medical examiner testified that many would have required

some effort to not only insert the knife, but to withdraw it from the victim's body (Appendix, 74a-75a). The blade of the knife was bent two inches (Appendix, 24a). From this evidence, a reasonable juror could conclude that the killing was committed deliberately—as opposed to being committed in “a consuming frenzy or heat of passion” (compare *Hoffmeister, supra*, at 160) or “the result of sudden impulse”—and again, that Defendant had time to “think twice about his intent to kill” (see Appendix, 87a).

Finally, a reasonable jury could infer that Defendant's actions were cool and calculated based on his actions immediately after he killed the victim. Defendant admitted to police that after stabbing the victim the last time, he stared at her face for three minutes to make sure she was dead (Appendix, 28a). Immediately thereafter he texted a man named Gary Gulliver (presumably a drug “companion” based on the content of their texts to one another that day and the next)<sup>3</sup> that he was on his way (or “W-A”) (Appendix, 41a). Two minutes later Defendant texted his girlfriend that he was attacked and “I am on my way” (Appendix, 42a). He later added, “P.S. I hate crazy people” (Appendix, 43a).

Viewing this evidence in a light most favorable to the prosecution, drawing all reasonable inferences arising from that evidence in support of the jury verdict, and resolving all conflicts in favor of the prosecution, a rational trier of fact could have found sufficient evidence to conclude that Defendant acted with premeditation and deliberation when he killed the victim. *Gonzalez, supra*, at 640-641. The Court of Appeals erred in finding otherwise.

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<sup>3</sup> See Appendix, 36a-44a.

**RELIEF**

WHEREFORE, the People of the State of Michigan, Plaintiff-Appellant herein, respectfully request that this Honorable Court reverse the Court of Appeals and reinstate Defendant's first-degree premeditated murder conviction based on the arguments presented herein.

Respectfully submitted,

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DATED: 11/16/2017

(Corrected 11/21/2017)