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STATE OF MINNESOTA

IN SUPREME COURT

STATE OF MINNESOTA,

Respondent,

vs.

LEONARD GOODLOE,

Appellant.

RESPONDENT'S BRIEF

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LEGAL ISSUES

I. DID THE EVIDENCE ADDUCED AT TRIAL MORE THAN AMPLY SUPPORT THE JURY'S VERDICT THAT APPELLANT WAS GUILTY OF FIRST DEGREE PREMEDITATED MURDER?

II. WAS THE TRIAL COURT'S USE OF CRIMJIG 11.02 PROPER?

III. DID THE COURT ERR IN NOT GIVING A NON-REQUESTED INSTRUCTION ON SECOND DEGREE INTENTIONAL MURDER?

STATEMENT OF FACTS

At approximately nine o'clock on July 22, 2004, A[redacted] B[redacted], a twenty-year old African-American male, was at the Big Stop Foods Convenience Store in north Minneapolis. Mr. B[redacted] and some other individuals were standing just outside the front door of Big Stop Foods when a person, later identified as Appellant, pulled up in his car at the corner near the store, stopped his car, reached under his seat and produced a gun and then began walking but not running (T. 355) toward the group at the front of the convenience store (T. 349-50, 433-34). As Appellant walked toward the front of the store, he partially extended his arm holding the gun and pointed it toward the individuals at the front of the store as he continued to walk toward them (T. 350). The other individuals ran (T. 350-51); A[redacted] B[redacted] ran back into the store.

Mr. B[redacted] ran toward the back of the store (T. 203). Appellant then came into the store saying to people in the store "where he at, where he at" (T. 246)—or, according to one witness, twice stating "where is that nigger at" (T. 206).

Appellant followed A[redacted] B[redacted] to the back of the store where he found him in the office at the rear of the store and shot him seven times with a .357 semi-automatic pistol (T. 270). Three of the .357 magnum bullets hit A[redacted] B[redacted] in the head (T. 610). Mr. B[redacted] died instantly. Analysis of the spent shell casings determined that they were fired from the .357 magnum later seized from Appellant's vehicle and from no other gun (T. 476).

Appellant was indicted by a Hennepin County Grand Jury with First Degree Premeditated Murder in violation of Minn. Stat. §§ 609.185(a)(1) and 609.11, and Felon in Possession of a Firearm in violation of Minn. Stat. §§ 624.713, subd. 1(b) and 609.11. After jury trial, before the Honorable Pamela Alexander, Judge of Hennepin County District Court, Appellant, on May 3, 2005, was found guilty of both offenses and sentenced to life in prison.

Appellant now appeals; it is the State's position that no error at all occurred that would necessitate a reversal of Appellant's convictions.

ARGUMENT

I. THE EVIDENCE ADDUCED AT TRIAL MORE THAN AMPLY SUPPORTED THE JURY'S VERDICT THAT APPELLANT WAS GUILTY OF FIRST DEGREE PREMEDITATED MURDER.

At trial, the sole defense theory was one of identification, i.e., that Appellant was not, in fact, the shooter. For example, as defense counsel stated in closing argument, "the issue in this case is one of identification" (T. 678). On appeal however, the theory has changed: Appellant is apparently conceding that he was the shooter; the argument now is that there was insufficient "appreciable time," and insufficient planning and execution of the crime, to qualify as premeditation. That may be true sometime, but not this time.

In State v. Moore, 481 N.W.2d 355, 360-61 (Minn. 1992), this Court stated that a prior holding which stated that premeditation may occur "virtually instantaneously" with intent being formed, "blurs the line between first and second degree murder when it is evident that the legislature intended the line to be sufficiently distinct to justify punishing persons convicted of the different crimes differently." This is not, however, the "whole story." This Court in Moore also held that "premeditation, by definition, requires *some amount of time* to pass between formation of the intent and the carrying out of the act." Id. 481 N.W.2d at 360 (emphasis added). In addition to holding, in Moore, that "some amount of time" or "some appreciable time passed," id. at 361, this Court also referenced Professor LaFave, noting as follows:

> On the basis of events before and at the time of the killing, the trier of fact will sometimes be entitled to infer that the defendant actually premeditated and deliberated his intentional killing. Three categories of evidence are important for this purpose: (1) facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing, that is, planning activity; (2) facts about the defendant's prior relationship and conduct with the victim from which motive may be inferred; and (3) facts about the nature of the killing from which it may be inferred that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a preconceived design. Illustrative of the first category are such acts by the defendant as prior possession of the murder weapon, surreptitious approach of the victim, or taking the prospective victim to a place where others are unlikely to intrude. In the second category are prior threats by the defendant to do violence to the victim, plans or desires of the defendant which would be facilitated by the death of the victim, and prior conduct of the victim known to have angered the defendant. As to the third category, the manner of killing, what is required is evidence (usually based upon examination of the victim's body) showing that the wounds were deliberately placed at vital areas of the body.

Id. at 361, citing W. LaFave & A. Scott, Handbook on Criminal Law § 73, at 564-65 (1972) (citations omitted).

Regarding the first LaFave prong, the facts clearly showed premeditation and deliberation and nothing less. For example, as witnesses testified, Appellant pulled his car up to the corner near the Big Stop Convenience Store, exited the car with what turned out to be a loaded gun, walked—but did not run—toward the front of the store with his arm extended pointing at the individuals including victim A[redacted] B[redacted] who were standing outside the front of the store. Moreover, after Mr. B[redacted] ran back into the store, Appellant proceeded into the store, took the time to ask "where he at, where he at" and then followed Mr. B[redacted], finally locating him in an office at the rear of the convenience store.

Regarding the third LaFave prong ("the manner of killing"), as Professor LaFave noted "what is required is evidence (usually based upon examination of the victim's body) showing that the wounds were deliberately placed at vital areas of the body." This more than amply shows premeditation in the instant case, and nothing less. The medical examiner testified that of the seven bullets fired, three were fired into the victim's head and that the victim died instantly.[1]

Finally, although there was no evidence regarding the second Professor LaFave factor, i.e., "motive," the presence or absence of a single factor is not determinative. "The evidence as a whole may support a finding of premeditation even if no single piece of evidence standing alone would be sufficient. What is required is that the circumstances lead so directly to a finding of premeditation as to exclude, beyond a reasonable doubt, any reasonable inference other than that of premeditated murder." Moore, 481 N.W.2d at 361, citing State v. Wahlberg, 296 N.W.2d 408, 411 (Minn. 1980).

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[1] And what Appellant is getting at in the statement that "B[redacted] was shot to death with a semi-automatic handgun, which automatically chambers the next bullet until the magazine is empty" (Appellant's Brief at 12) is unclear: If this is supposed to imply that upon the initial trigger-pull (which would have fired the first round) all of the subsequent six rounds fired themselves out of the weapon, this is inaccurate factually. What is true actually is that this was not a "full auto" pistol, rather it was a semi-automatic pistol in which after firing the initial round, a subsequent round would have been chambered, but in which it would take a trigger-pull to fire that round and each of the rounds subsequently chambered. See T. 471 ("there'll be another one chambered, and as soon as the trigger's pulled again, same process").

In the case at bar, there was more than ample "cool mind," Moore, 481 N.W.2d at 361 n.3, more than ample appreciable time, id. at 361, for premeditation. All of Appellant's actions, including the planning and the cold blooded placement of the multiple shots that killed A[redacted] B[redacted]—and the substantial time elapsed—show why no reasonable jury could have acquitted him of premeditated murder. The evidence was sufficient beyond a reasonable doubt to support the jury's conviction of premeditated murder in the first degree.

II. THE TRIAL COURT'S USE OF CRIMJIG 11.02 WAS PROPER.

Without any objection at all, the trial court gave the standard pattern jury instruction on First Degree Premeditated Murder found in CRIMJIG 11.02. This pattern instruction provides as follows:

> Premeditation means that the defendant considered, planned, prepared for, or determined to commit the act before the defendant committed it. Premeditation, being a process of the mind, is wholly subjective and hence not always susceptible to proof by direct evidence. It may be inferred from all the circumstances surrounding the event. It is not necessary that premeditation exist for any specific length of time. A premeditated decision to kill may be reached in a short period of time. However, an unconsidered or rash impulse, even though it includes an intent to kill is not premeditated.

Appellant alleges that because the last time this pattern instruction was considered was in State v. Martin, 261 N.W.2d 341, 345 (Minn. 1977), and that this was pre- this Court's decision in State v. Moore, supra,—and because the instruction was not modified to alter the phrase "short period of time"—it is somehow inaccurate. The State disagrees.

As an initial matter, it is true, as set forth in Argument I, supra, that this Court in State v. Moore, held that previous decisions, which used the time-compressing term "virtually instantaneously," blurred the line between first and second degree murder. However, this has nothing to do with the phrase "short period of time." For example, just two years prior to this Court's decision in State v. Moore, the Court of Appeals decided the case of State v. Brown, 455 N.W.2d

65 (Minn. 1990). In Brown, that court stated as follows: "regarding premeditation, the instructions were explicit that the premeditated decision to kill may be reached in a short period time. These jury instructions are clear enough and strong enough to require an inference from 'intelligent and practical people' that a premeditated intent to kill is necessary in order to convict for First Degree Murder." Id. 455 N.W.2d at 71. But nowhere in State v. Moore was there any disapproval or criticism of this recent Court of Appeals' holding, nor was there any criticism or disapproval of the phrase "short period of time."

Indeed, this Court in State v. Moore specifically *reaffirmed* that all that is necessary is "some amount of time" for premeditation to be formed. Moore, 481 N.W.2d at 360. A "short period of time" is, by definition, included in "some amount of time." It is also included in the phrase "some appreciable time." See Webster's Third New International Dictionary (1976) (defining "appreciable" as "capable of being perceived and recognized"). Accord Black's Law Dictionary (4th ed. rev. 1968) (defining "appreciable" as "perceptible but not a synonym of substantial").

There never has been any need to revise the phrase "short period of time" subsequent to this Court's decision in State v. Moore. See Moore, 481 N.W.2d at 361: "premeditation requires no specific period of time for deliberation"; See also State v. Quick, 659 N.W.2d 701, 710 (Minn. 2003) quoting State v. Cooper, 561 N.W.2d 175, 180 (Minn. 1997): "a finding of premeditation does not require proof

of extensive planning or preparation to kill, nor does it require any specific period of time for deliberation."

The CRIMJIG 11.02 pattern jury instruction was properly given.

III. NO ERROR OCCURRED IN THE COURT'S NOT GIVING A NON-REQUESTED INSTRUCTION ON SECOND DEGREE INTENTIONAL MURDER.

Appellant alleges reversible error in the trial court's not giving a non-requested instruction on Second Degree Intentional Murder. However, as stated supra, the defense at trial was not that Appellant was the shooter but simply had not formed premeditation; rather, the defense posture at trial was that Appellant was not the shooter at all.

There never were any additional instructions, in addition to the First Degree Premeditated Murder and Felon in Possession of a Weapon charged counts, requested by experienced defense counsel, Stuart Mogelson. Appellant, however, based on this Court's holding in State v. Dahlin, 695 N.W.2d 588 (Minn. 2005), alleges that the court should have, apparently *sua sponte*, given a Second Degree Intentional Murder instruction anyway. The State disagrees.

Although it is true that in Dahlin this Court stated: "even when a defendant has expressly or impliedly waived a jury instruction, the trial court may, in its discretion, ignore the waiver and give any instructions warranted by the evidence," Dahlin, 695 N.W.2d at 598, this Court in Dahlin also held: "as a preliminary matter, we emphasize that when a defendant fails to request a lesser-included offense instruction warranted by the evidence, the defendant impliedly waives his or her right to receive the instruction." Id. 695 N.W.2 at 597-98 citing, inter alia, State v. Leinweber, 303 Minn. 414, 422, 228 N.W.2d 120, 126 (1975).

An extensive line of controlling decisional law in this State is in accord. See, e.g., State v. Pankratz, 238 Minn. 517, 57 N.W.2d 635 (1953), in which this Court held "where the evidence will justify a verdict of a lesser degree of the crime than is charged in the indictment, defendant may not demand as a matter of right that the court submit only the degree of the crime charged in the indictment. If, however, his request to do so is granted by the court, he cannot thereafter complain of the court's action." 57 N.W.2d at 647. See also State v. Gaularpp, 144 Minn. 86, 174 N.W. 445, 446 (1919): "it is thoroughly settled in this state that a failure to instruct on a particular phase presented by the evidence is not reversible error in the absence of a request to instruct thereon, or an objection, before the jury retires . . . it is readily conceivable that a defendant charged with assault in the second degree should deem his chance of acquittal more probable if the jury were not given the alternative of finding him guilty of a lesser offense and hence he keeps silent when the court omits to submit the lesser degree."

This was precisely the situation in the case at bar; this issue should be regarded as waived on appeal.

Even if not waived, it is the State's position that Appellant would not have been entitled to a Second Degree Intentional Murder instruction even if it had been requested. As held in State v. Pankratz, supra, 57 N.W.2d at 647: "where there is no evidence to justify a verdict in a lesser degree, it should not be submitted to the jury." That is the situation in the instant case. One of the necessary predicates for giving a lesser offense instruction is that "the evidence provides a rational basis

for acquitting the defendant of the offense charged." Dahlin, 695 N.W.2d at 598 citing, inter alia, Stiles v. State, 664 N.W.2d 315, 319 (Minn. 2003). Here, if Appellant was indeed the shooter (and he was) he could have rationally been convicted of one offense only: premeditated murder in the first degree. Given the amount of time elapsed, given the amount of deliberation, calculation, pursuit of the victim into the convenience store, the asking where the victim was, the locating of the victim in the office at the rear of the store, the firing of seven rounds from a .357 magnum into Appellant including the placement of three rounds into the victim's head, leads to the inescapable conclusion that no reasonable jury could have acquitted Appellant of premeditated murder—and a second degree intentional murder instruction would not have been required, or even justified, even if it had been requested.

Respondent requests that Appellant's convictions be affirmed.

CONCLUSION

Based on the record and legal arguments herein, Respondent, State of Minnesota, requests that Appellant's convictions for premeditated murder and Felon in Possession, be, in all respects, affirmed.

DATED: February 17, 2006

Respectfully submitted,

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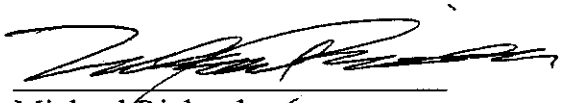
CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 2,981 words. This brief was prepared using Microsoft Word 2003, Times New Roman font face size 13.

Dated: February 17, 2006



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