

2013 IL App (2d) 120037-U  
No. 2-12-0037  
Order filed May 22, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-2094
	)	
TERRY S. BRATCHER,	)	Honorable
	)	Blanche Hill Fawell,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Hutchinson and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant's murder was exceptionally brutal or heinous, justifying his life sentence: the terror, degradation, and agony that defendant inflicted went beyond the mere infliction of death.

¶ 2 Following a jury trial in the circuit court of Du Page County, defendant, Terry S. Bratcher, was found guilty of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)), home invasion (720 ILCS 5/12-11(a)(1) (West 2008)), and armed robbery (720 ILCS 5/18-2(a)(2) (West 2008)). The victim of the offenses was 82-year-old Carl Kuhn. The jury found that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. Because of that finding,

defendant was eligible for a sentence of natural life imprisonment. See 730 ILCS 5/5-8-1(a)(1)(b) (West 2008). The trial court imposed that sentence for the first-degree murder conviction, sentenced defendant to 30-year prison terms for the other offenses, and ordered that the sentences run concurrently. Defendant argues on appeal that the evidence does not support the finding of exceptionally brutal or heinous behavior indicative of wanton cruelty and that his sentence for first-degree murder thus cannot stand. We disagree, and therefore we affirm.

¶ 3 The State presented evidence that defendant and Kuhn were friends. On the evening of August 21, 2009, defendant's mother, Nina Bratcher, made a 911 call to report having found Kuhn unconscious in his home in unincorporated Bartlett. She testified that defendant had asked her to drive him to Kuhn's home. Defendant told his mother that he had been repairing Kuhn's car and that Kuhn was going to give him money for parts. Defendant initially told police that when he arrived at Kuhn's house he found Kuhn in a bedroom lying face-down on the bed. Defendant told police that the door to another room appeared to have been kicked in and that Kuhn's cellular telephone had been broken. Defendant also observed that a gun safe had been sawed open. Kuhn was an avid gun collector. Defendant's mother subsequently found several guns that she did not recognize in her garage. She contacted the police to advise them of her discovery and she consented to a search of her property. The search uncovered a variety of weapons, and defendant was subsequently taken into custody and questioned about Kuhn's death.

¶ 4 Defendant initially denied that he was involved in Kuhn's death or that he had taken Kuhn's guns. When informed of the weapons that had been found at his mother's home, defendant claimed that he had taken guns from Kuhn's collection for safekeeping. Defendant indicated that he feared that, if he did not do so, one of Kuhn's sons would liquidate the collection in a manner that was

contrary to Kuhn's wishes. Eventually, however, defendant admitted that he and an accomplice, Keith Allen, had stolen the guns so that Allen could sell them. Defendant had anticipated that Allen would reward him with drugs for participating in the robbery. Defendant and Allen planned the robbery before they arrived at Kuhn's home. Defendant entered the home purportedly to visit Kuhn, and at some point he signaled Allen to enter the home. Allen was armed with a handgun. Allen yelled at Kuhn and forced him to kneel. Defendant told police that Kuhn had knee problems. Kuhn's home was equipped with a stairlift.

¶ 5 While Kuhn was kneeling, Allen covered Kuhn's head with a jacket or a bag and a pair of underwear. Defendant and Allen used the stairlift to get Kuhn upstairs, placed him on a bed, and removed the underwear from his head. Allen demanded money and the combination to the gun safe. Kuhn indicated that he had no money and that only his son had the combination to the safe. Defendant was aware that Kuhn did, in fact, know the combination to the safe. Allen had defendant give Kuhn green tea to drink. When he drank the tea, Kuhn started choking and spitting it out. Defendant told police that he believed Allen had laced the tea with dish soap.

¶ 6 Defendant told police that Allen whispered to him that they could not let Kuhn live. Allen held Kuhn's arms down and defendant held Kuhn's face down against a cushion or a pillow. After a few seconds, defendant pulled Kuhn's head up and told Allen to ask Kuhn for the combination to the safe. Kuhn said that he did not know the combination. At first, defendant told police that he left the room at that point and that Allen killed Kuhn. Ultimately, defendant acknowledged that his actions led to Kuhn's death.

¶ 7 An autopsy revealed that Kuhn died from asphyxia and that he had sustained injuries consistent with having his head pushed into a pillow or a cushion. The medical examiner who

performed the autopsy testified that Kuhn would have lost consciousness after 30 seconds to a minute and that it would have taken from two to six minutes for him to die.

¶ 8 As noted, the jury’s finding beyond a reasonable doubt that Kuhn’s murder was “accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty” exposed defendant to a possible sentence of natural life imprisonment. See 730 ILCS 5/5-8-1(a)(1)(b) (West 2008). Defendant’s sole argument on appeal is that the evidence presented at trial was insufficient to sustain the jury’s finding. When reviewing a challenge to the sufficiency of the evidence, “ ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The finding at issue here is treated as an element of the offense. See *People v. Callahan*, 334 Ill. App. 3d 636, 649 (2002).

¶ 9 Our supreme court has held that, for purposes of determining eligibility for a natural life sentence, “[t]he terms ‘brutal,’ ‘heinous,’ and ‘indicative of wanton cruelty’ are given their ordinary and popular meaning.” *People v. Nitz*, 219 Ill. 2d 400, 418 (2006) (quoting *People v. La Pointe*, 88 Ill. 2d 482, 499 (1981)). Elaborating on the meaning of these terms, the *Nitz* court stated as follows:

“For behavior to be heinous, it must be ‘hatefully or shockingly evil; grossly bad; enormously and flagrantly criminal.’ [Citations.] We define brutal behavior as ‘behavior that is grossly ruthless, devoid of mercy or compassion; cruel and cold-blooded.’ [Citation.] Brutal or heinous behavior generally involves prolonged pain, torture, or premeditation [citation], but does not necessarily require them [citation]. Behavior must qualify as either brutal or heinous for the sentencing enhancement to apply. [Citation.]

In addition to being exceptionally brutal or heinous, the crime must also be indicative of wanton cruelty. “[W]anton cruelty” requires “proof that the defendant consciously sought to inflict pain and suffering on the victim of the offense.” [Citation.]” *Id.*

¶ 10 Although “[a]ll murders are brutal and heinous to a certain degree” (*People v. Andrews*, 132 Ill. 2d 451, 466 (1989)), enhanced sentences are reserved for murders that are *exceptionally* brutal or heinous. *Id.* Thus, enhanced sentences “[are] meant for murders that go beyond the mere infliction of death.” *People v. Anderson*, 201 Ill. App. 3d 75, 81 (1990).

¶ 11 Defendant’s argument, in essence, is that there was nothing exceptional about this crime. He contends that “cases where [enhanced] sentences based on exceptionally brutal or heinous behavior have been upheld have involved prolonged torture and premeditation.” As noted, however, neither torture nor premeditation is an essential component of exceptionally brutal or heinous behavior. *Nitz*, 219 Ill. 2d at 418; see also *People v. Smith*, 362 Ill. App. 3d 1062, 1090 (2005). “When assessing the brutality and heinousness of a crime, the trier of fact must evaluate all of the facts surrounding the offense.” *Smith*, 362 Ill. App. 3d at 1089. Relevant considerations include “premeditation, the unprovoked nature of the attack, the ‘senseless’ nature of the act, the number of wounds inflicted, the danger created by the act, and the extent of the injury inflicted.” *Id.* Mental suffering inflicted on the victim is also a relevant consideration. *People v. Pugh*, 325 Ill. App. 3d 336, 346 (2001).

¶ 12 Even if defendant and Allen did not initiate the robbery with a preconceived plan to kill Kuhn, the evidence suggests that the murder was not entirely unpremeditated. As we have noted, “‘premeditation’ is ‘a legal term of art meaning nothing more than “‘having made the choice to kill.’” [Citation].’” *People v. Romero*, 387 Ill. App. 3d 954, 978-79 (2008) (quoting *People v.*

*Williams*, 193 Ill. 2d 1, 29 (2000)). Defendant and Allen discussed the need to kill Kuhn while the robbery was underway. Furthermore, the act of killing Kuhn took two to six minutes, during which defendant and Allen could have relented and spared Kuhn's life.

¶ 13 *People v. Payne*, 294 Ill. App. 3d 254 (1998), is instructive. In that case, the defendant and one Robert Dieu sought to purchase drugs from the victim, Steven Butler, at a location in Danville. After Butler took their money and ran away without providing the drugs, the defendant and Dieu obtained a handgun and went looking for him. They found Butler and told him that they had more money to purchase drugs. Butler told them that drugs were available at a different location. He then got into an automobile with the defendant and Dieu. When they drove off, the defendant and Dieu demanded drugs or the return of their money. Butler indicated that he had neither. During the drive, a handgun discharged accidentally and Butler was struck in the thigh. He pleaded for his life and later started to remove his clothing to prove that he had no money or drugs in his possession. The defendant stopped the car near two cornfields outside of the city and told Butler to get out of the car. He did so and then attempted to run away. The defendant shot Butler in the back from a distance of 20 to 25 feet. Butler fell to the ground. As he tried to crawl away, the defendant stood over him and shot him in the head. Butler did not survive his injuries. In upholding the imposition of an enhanced sentence based on exceptionally brutal or heinous behavior indicative of wanton cruelty, the *Payne* court reasoned as follows:

“There is little evidence of premeditation in this case, *at least not at first*. Defendant went home and got his handgun and the pair then commenced driving about Danville looking for Butler, tricking him into entering the backseat under the guise of having more money to buy crack. While defendant drove Butler to a location outside of town \*\*\* defendant may

have originally intended to frighten Butler, not to kill him. There was no taunting of the victim, although the victim was threatened in an attempt to force him to come up with either the drugs or the money. However, since Butler undressed, he obviously was not brandishing a weapon. Butler begged for his life in the car after Dieu fired the first shot. Butler was shot three times, the first apparently by accident, the second apparently with the intent to kill him, and the third clearly with the intent to kill him. [Citation.] Focusing narrowly on the conduct during the commission of the offense, it might be said that such conduct ‘did not “go beyond the mere infliction of death.”’ [Citation.] Defendant had no history of violent crime and expressed remorse for his actions.

On the other hand, it does appear that certainly very quickly after the first shot struck Butler defendant formed the intent to kill Butler. Defendant stopped the car between two cornfields, Dieu gave defendant the gun, defendant told Butler to get out of the car, defendant shot Butler, who was having difficulty running away, and defendant fired the final shot from three to four feet away. The fact that unforeseen developments led defendant to conclude that it was necessary to commit murder does not prevent a characterization that the murder was brutal and heinous. A ‘cold-blooded execution’ after a robbery, just to cover up the fact that the victim knew the defendant, can constitute exceptionally brutal or heinous behavior indicative of wanton cruelty. [Citation.] We reject the argument that once Butler had been shot it was ‘logical’ for defendant to kill Butler and that he did so in the least brutal way possible considering the circumstances. We reject the argument that defendant did nothing ‘beyond the mere infliction of death.’” (Emphasis added.) *Id.* at 262-63.

¶ 14 Kuhn’s murder was accompanied by behavior that was more brutal and heinous than the behavior in *Payne*. In contrast to *Payne*—where the victim had stolen from the defendant—here, the crime was unprovoked. Kuhn was a friend of defendant and there is no evidence that defendant had any grievances with Kuhn. Kuhn was also terrorized and degraded when, despite having knee problems, he was forced to kneel and was essentially hooded with a bag or a jacket that was held in place with a pair of underwear. The attempt to serve Kuhn tea laced with dish soap is further evidence of the cruelty with which the robbery was carried out. The killing itself was as much a “cold-blooded execution” as the murder in *Payne*, but was more ruthless given that defendant targeted a friend and employed a method of killing him that required two or more minutes of physical effort. At one point, Kuhn’s head was lifted from the pillow or cushion that was being used to smother him and he was asked to divulge the combination to the safe. At that point defendant and Allen had the opportunity to show mercy. Instead, Kuhn was killed in cold blood.

¶ 15 Defendant argues that circumstances of the murder are not indicative of wanton cruelty. According to defendant, “[t]here is absolutely nothing in the record to indicate that it was the defendant’s desire to inflict pain on the victim. Indeed, the facts of the the case show that the defendant suffocated the victim and that he died in two to six minutes.” The argument is meritless. Struggling to breathe while being held down was almost certainly mentally and physically agonizing for Kuhn until he lost consciousness. It is possible that, in *Payne*, Butler’s leg wound caused more suffering than Kuhn experienced in this case. However, that wound was accidental and had no bearing on the issue of wanton cruelty. Otherwise, it is not clear that Kuhn suffered any less than Butler did in *Payne*.

¶ 16 We cannot say that no rational trier of fact could find beyond a reasonable doubt that Kuhn's murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

Accordingly, we affirm the judgment of the circuit court of Du Page County.

¶ 17 Affirmed.