

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI,

vs.

JOSEPH DUANE ELLEDGE

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) Case No. 20BA-CR00698
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)

SUGGESTIONS IN SUPPORT OF PROBABLE CAUSE

COMES NOW, the State of Missouri, by and through, Roger Johnson, Assistant Prosecuting Attorney for the County of Boone, and in support of finding probable cause submits as follows:

The Probable Cause Statement submitted by the Columbia Police Department includes sufficient facts to support a finding of probable cause regarding murder in the first degree. Rule 22.03(c) requires the probable cause statement to state facts that support a finding of probable cause that an offense was committed by the defendant. Where, if proved, the allegations in the probable cause statement would satisfy the elements of the statute, the probable cause statement is sufficient *See State v. Smothers*, 297 S.W.3d 626, 635 (Mo.App. W.D. 2009) (reversing grant of motion to dismiss based on finding the probable cause statement was sufficient).

In the present, case there are sufficient facts in the probable cause statement to support a finding that Defendant killed Mengqi Elledge then hid her body. The probable cause statement describes how Defendant says he had tried to give Mengqi a massage on October 8, 2019 positioned on top of her back following frustration about Mengqi not having sex with him. Defendant claimed that after the massage attempt, Mengqi went to sleep and did not move until he noticed she disappeared during the night, leaving behind her phone, pajamas she had been wearing, and breast-feeding baby. Since the night of October 8, 2010, Mengqi's phone activity stopped, she failed to appear for planned events, her financial records show no activity, and no

one has seen or heard from Mengqi. The day after Mengqi disappeared, instead of looking for Mengqi, the Defendant spent several hours driving to places in the area that would be consistent with someone trying to hide a body, including a national forest and two different areas along the Missouri River. He admitted to police that he had locked his apartment when he left, leaving no note and no way for Mengqi to get back inside if she appeared while he was gone. When discussing the trips, however, Defendant omitted that he had gone to another secluded river access point after dark. Through phone records, it was discovered that Defendant had gone to the area of the Lamine River and spent around forty-five minutes there. Police searched that area with cadaver dogs, and the dogs indicated the presence of human remains in the river. The probable cause statement also describes facts suggesting strangulation, including the lack of blood or disturbances at the scene. From the facts recited, there are sufficient facts to support a finding of probable cause that Defendant murdered Mengqi and disposed of her body in the river.

The body not having been found at this time does not undermine a finding of probable cause. The *corpus delicti* rule is an evidentiary rule regarding use of a defendant's confession at trial. See *State v. Madorie*, 156 S.W.3d 351, 355 (Mo. banc 2005) (discussing the *corpus-delicti* rule). Still, to present a sufficient case of murder, the State has to prove the death of the victim and the criminal agency of some person. *State v. Ellison*, 980 S.W.2d 97, 101 (Mo.App. W.D. 1998). That proof, however, can come from circumstantial evidence. *State v. Grim*, 854 S.W.2d 403, 408 (Mo. 1993) (rejecting prior rule that treated direct and circumstantial evidence differently).

In *State v. Ellison*, for example, the victim's body had been found buried in concrete inside a cabinet and concealed in the defendant's basement. The condition of the body had deteriorated to the point where it showed no sign of trauma, but the medical examiner could not

exclude various causes of death. The defendant had made a statement claiming the death of the victim (his wife) was an accident. On appeal, he claimed there was insufficient evidence to prove murder because there was no evidence to prove he intentionally killed the victim or to show how she died. The court noted that the State was required to prove the death of the victim and the criminal agency of some person. *State v. Ellison*, 980 S.W.2d at 101. The court determined, however, that failure to report the death as well as efforts to conceal the body supported the murder charge: “a person guilty of murder can generally be expected to go to far greater lengths to destroy evidence than a person guilty of an accidental or reckless death.” *Id.* at 101-102. That evidence combined with evidence of the Defendant’s motive (that the victim was going to leave him), provided sufficient evidence of the murder. *Id.*

Like in *Ellison*, Defendant’s efforts to conceal the body, his delay in reporting, and his motive provide sufficient proof of murder even without the forensic evidence that would come from a body. The probable cause statement includes sufficient facts to support an inference that the Defendant concealed Mengqi’s body in the Lamine river (discussed above). The facts in the Probable Cause Statement also support a finding that Defendant wanted to be rid of Mengqi, avoid a costly divorce, and ensure custody of their child. Defendant’s handwritten notes, phone recordings, and statements to police demonstrate Defendant’s ongoing frustrations with Mengqi, including her refusal to have sex with him. In the recorded conversations, the Defendant expresses concerns to Mengqi about the cost of a divorce, but Mengqi was not agreeable to a simple process. Defendant also indicates concern about custody of their child, saying, “Anna’s not leaving America, I can tell you that.” Defendant also says he was ready to be “done talking to [Mengqi] forever.” Taken together, the facts in the probable cause statement support a finding that Defendant had a motive to kill Mengqi in the months leading up to her death. As

such, though the probable cause statement does not include facts about a body, like in *Ellison* (where the condition of the body prevented clear proof that the death was not accidental), Defendant's efforts to conceal the body together with his motive create a sufficient case of murder.

There are also sufficient facts to show probable cause that Defendant deliberated. Deliberation for murder in the first degree is "cool reflection for any length of time no matter how brief." Section 565.002(2). "Proof of deliberation does not require proof that the defendant contemplated his actions over a long period of time, only that the killer had ample opportunity to terminate the attack once it began." *State v. Johnston*, 957 S.W.2d 734, 747 (Mo. banc 1997). For deliberation, "an instant is sufficient—and the reference to 'cool reflection' does not require that the defendant be detached or disinterested. Instead, the element of deliberation serves to ensure that the jury believes the defendant acted deliberately, consciously and not reflexively." *State v. Nathan*, 404 S.W.3d 253, 266 (Mo. 2013).

Direct proof of the defendant's state of mind is often unavailable, and deliberation may be proved by "indirect evidence and inferences reasonably drawn from the circumstances surrounding" the murder. *State v. Collings*, 450 S.W.3d 741, 760 (Mo. banc 2014). "In most cases, indirect evidence that supports a finding of deliberation will also support a finding that there was no deliberation, and the existence of deliberation is therefore a question of fact for the jury." *State v. Moore*, 949 S.W.2d 629, 631 (Mo.App. W.D. 1997).

A defendant's actions both before and after the murder can support a finding of deliberation. *See State v. Collings*, 450 S.W.3d 741, 760 (Mo. banc 2014) (discussing actions after the murder). Factors that courts have found supported a finding of deliberation include a defendant's efforts to conceal his involvement in the murder, *State v. Moore*, 949 S.W.2d 629,

632 (Mo.App. W.D. 1997), the defendant's failure to seek medical help, *State v. Glass*, 136 S.W.3d 496, 514 (Mo. banc 2004), and the commission of a murder during a prolonged struggle, *State v. Johnston*, 957 S.W.2d 734, 748 (Mo. 1997).

In particular, courts have noted that death by strangulation is a fact that can support a finding of deliberation. The Missouri Supreme Court has noted that it has permitted an inference of deliberation where "a defendant commits a murder which, because of the particular method of attack, required some time to complete." *State v. Glass*, 136 S.W.3d 496, 514 (Mo. banc 2004). Specifically, courts have noted that evidence of strangulation that took time to accomplish can support a finding of deliberation. *See Id.* (holding that victim's death by two instances of asphyxiation during course of assault was sufficient evidence of deliberation).

In *State v. Collings*, 450 S.W.3d 741 (Mo. 2014), for example, the defendant had strangled the victim during a sexual assault. At trial, the defendant testified that the victim recognized him after the assault, and he "freaked out" and strangled her, which took a few minutes. The defendant argued on appeal that his having "freaked out" negated a finding of deliberation. The Missouri Supreme Court disagreed. *Id.* at 760-761. The court noted that the jury could have concluded the defendant had planned the crime from the beginning and that committing murder to conceal his identity, supporting a finding of deliberation. *Id.* at 760. Further, the court relied on evidence that the strangulation took a few minutes and cited prior cases finding deliberation in strangulation cases because "the particular method of attack . . . required some time to complete." *Id.* Ultimately, the court found ample evidence of deliberation. *Id.* at 760-761.

In the present case, there is sufficient evidence to support a finding that Defendant deliberated. The probable cause statement includes circumstances suggesting death by

strangulation – Defendant’s description of attempting to give the victim a massage from atop her back followed by her not moving, the lack of wounds on Defendant, the lack of blood, and the lack of a reported disturbance. The probable cause statement also includes facts showing that strangulation or suffocation is not a quick method of murder, leaving the person time to reflect on their actions. Like in *Collings* and other strangulation cases, the method described in the probable cause statement supports a finding of deliberation even if the Defendant had been in a heightened emotional state.

In this case, however, there is even more evidence of deliberation. The probable cause statement details Defendant’s threats before the murder to break Mengqi’s neck (Defendant told Mengqi “You know how I conquer nature I f[]ing kill it, I grab its head break its f[]ing neck” then “You’re still just a woman and there’s nature in that. There’s nature in your brain”).

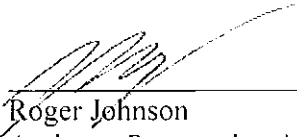
Further, Defendant’s took extensive efforts to conceal the body and lie to the police, which supports a finding of deliberation. *See State v. Moore*, 949 S.W.2d at 632 (finding sufficient evidence of deliberation including efforts to hide evidence and lying to police and noting the court had previously said in *State v. Branch*, 757 S.W.2d 595 (Mo.App.1988), that “it was up to the jury in the face of such evidence to decide whether such actions merely evidence panic following an accidental killing, or instead evidence deliberation and a plan for hiding the crime”). The probable cause statement includes facts detailing how Defendant drove to areas to hide a body the day after Mengqi disappeared. He also failed to tell police about one area where he had spent a significant time at a river access late at night and where other evidence suggests the body is located. Further, Defendant had a handwritten document in his bag that included details about his frustration with Mengqi and tips for interviews that included a reminder to talk

about Mengqi in the present tense. Defendant's efforts to conceal his involvement in Mengqi's death support a finding of deliberation.

Finally, as discussed above, there are facts in the probable cause statement indicating that the Defendant had a motive to murder Mengqi to be rid of Mengqi, avoid a costly divorce, and ensure custody of their child. The evidence of a developing motive over time, especially when paired with the other evidence of deliberation, provide ample proof that Defendant deliberated on Mengqi's death. As such, the Probable Cause Statement supports the filed charges.

WHEREFORE, the State respectfully requests that a warrant issue.

Respectfully submitted,



Roger Johnson
Assistant Prosecuting Attorney
Bar No. 57628

CERTIFICATE OF SERVICE

I hereby certify on this 20th day of February, 2020, an electronic copy of the foregoing was sent through the Missouri e-Filing System to:

/s TL
