

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD JOHN LETT,

Defendant-Appellant.

UNPUBLISHED

August 2, 2002

No. 209513

Recorder's Court

LC No. 96-008252

ON REMAND

Before: Jansen, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

This case is on remand from our Supreme Court for “consideration of the additional issue that was raised by defendant, but not decided.” *People v Lett*, 466 Mich 206, 208; ___ NW2d ___ 2002. Our Supreme Court reversed our prior decision, which determined that the trial court abused its discretion in declaring a mistrial where there was no manifest necessity to do so and defendant had not consented to the declaration, thus violating defendant’s right to be free from successive prosecutions under the Double Jeopardy Clauses of the federal and state constitutions. Instead, the Supreme Court held that the trial court did not abuse its discretion in declaring a mistrial where the jury foreperson indicated that the jury members were not going to reach a unanimous verdict and defendant did not object to the declaration of a mistrial. We now affirm defendant’s convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b.

The other issue raised by defendant is whether the trial court erred in denying his motion for a directed verdict on the original charge of first-degree premeditated murder. When ruling on a motion for a directed verdict, the court must consider the evidence presented by the prosecution up to the time the motion is made in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

The elements of first-degree premeditated murder are 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 requires sufficient time to allow the defendant to take a second look. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). “To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem.” *People v Morrin*, 31 Mich App 301, 329; 187 NW2d

434 (1971). “When the evidence establishes a fight and then a killing, there must be a showing of ‘a thought process undisturbed by hot blood’ in order to establish first-degree, premeditated murder.” *Plummer, supra* at 301, citing *Morrin, supra* at 329-330. Premeditation and deliberation may be inferred from all the facts and circumstances surrounding the killing. *Ortiz, supra* at 301.

Defendant contends that the prosecution failed to present sufficient evidence of premeditation and deliberation and that, therefore, the trial court erred in denying his motion for a directed verdict and should not have instructed the jury on first-degree premeditated murder. We disagree and find that there was sufficient evidence presented on the elements of premeditation and deliberation to justify submitting the charge of first-degree premeditated murder to the jury.

The incident in this case occurred on August 29, 1996, when the victim, Adesoji Latona, and his girlfriend, Djuana Bradley, were driving in the victim’s taxi cab and stopped at a party store. The victim proceeded to the store and there were three men standing in the parking lot. Bradley remained in the taxi cab and saw one of the men, later identified as Homer Jones, approach the victim and say, “You’re the motherf----- that threw me out of your cab.” The victim threw his keys into the air, caught them, and then entered the party store. According to Bradley, Homer Jones entered the store about two to three minutes after the victim entered it.

Bradley then went inside to check on the victim. The victim and Homer Jones argued and the victim pushed Homer Jones. Two or three other men also got involved in the altercation and were jumping on the victim. One of the men, Frank Kelly, testified that he was with Homer Jones, Levon Jones, Darryl Walker, and defendant that evening. Kelly stated that Homer Jones called out to the victim in the parking lot and then followed him into the store. The victim and Homer Jones “had words” in the store and the victim pushed Homer Jones. Kelly and Levon Jones tried to get Homer Jones out of the store and Kelly pushed back the victim on the chest with his hand. At that point, Kelly heard a gunshot, ran out of the store, and realized that his middle finger had been shot off. Bradley testified that she saw defendant reach for a gun near his waist, she ran to the back of the store, and then heard two gunshots.

Walker, who remained in a car during the incident, stated that Homer Jones had words with the victim, and that the victim, Homer Jones, defendant, Levon Jones, and Kelly entered to store at the same time. Walker saw the victim push Homer Jones into a food rack and later heard two gunshots. Walker had seen defendant with a gun earlier in the evening, either a .32-caliber or .38-caliber handgun.

Defendant gave a police statement in which he indicated that he was out with his friends when they stopped at a party store. Defendant stated that Homer Jones “got into it” with a man who pushed Homer Jones in the store. Defendant left the store, went to a car where Walker had remained, got a gun, and returned to the store. Defendant claimed that he lifted the gun in the air, fired once, and then ran out of the store. The medical examiner, however, testified that the victim was shot twice—once in the head and once in the chest—and that either gunshot wound would have been fatal.

The facts of this case are similar to that of *People v Tilley*, 405 Mich 38; 273 NW2d 471 (1979), where our Supreme Court upheld a first-degree murder conviction. In *Tilley*, the

defendant entered a restaurant with his friend, who started an argument with the victim, an off-duty sheriff's deputy. The friend and the victim left the restaurant, followed by the defendant and other restaurant patrons. The argument continued outside when the friend pulled a gun from his pocket and the victim knocked the gun to the ground. The victim picked up the gun, drew his own gun, and placed the defendant's friend under arrest. A restaurant bouncer approached both men, the victim showed his badge and stated that everything was under control. The crowd continued to ask for the victim's identification and the defendant began to taunt the victim. The defendant's friend then jumped the victim, who struck the friend. The defendant, his friend, and the victim began to struggle and the defendant was able to obtain possession of the victim's gun. One witness testified that the defendant and his friend held the victim, but the victim began to back toward the restaurant and the defendant shot five or six shots, with some fired in the parking lot and others fired in the vestibule of the restaurant. See *id.* at 42-43. The Supreme Court held that there was sufficient evidence to support the jury's verdict of first-degree premeditated murder. *Id.* at 44.

Similarly, in the present case, there was sufficient time for defendant to take a second look. Bradley stated that two or three minutes passed from the time that Homer Jones initially confronted the victim until Jones followed the victim into the store. The victim and Homer Jones continued to fight in the store, while Levon Jones and Kelly were breaking up the fight. Defendant admitted in his police statement to seeing the fight, leaving the store, walking to the car, retrieving a gun, returning to the store, and firing the gun. Kelly stated that he had gotten between Homer Jones and the victim, "finally got [the fight] broke up" and then heard a gunshot. Bradley stated that she saw defendant pull a gun from his waist and she heard two gunshots. There was certainly a time interval between the argument in the party store (or the initial confrontation in the parking lot) and defendant's action of going to the car, retrieving a gun, and returning to the store and firing the gun. See, e.g., *Tilley, supra* at 45 (the testimony indicated that the defendant had between a one-second and one-minute interval from his securing of the gun and the first volley of shots at the victim as he was retreating). Further, Kelly and Levon Jones were breaking up the fight between Homer Jones and the victim at least by the time that defendant returned to the store with his gun.

Accordingly, the prosecution presented sufficient evidence at trial of premeditation and deliberation to justify the trial court's denial of the motion for a directed verdict and instruction to the jury on first-degree premeditated murder.

Affirmed.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra