

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STONE HARRIS,

Defendant-Appellant.

UNPUBLISHED

May 13, 2004

No. 246158

Wayne Circuit Court

LC No. 02-001915-01

Before: Fitzgerald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendant Stoney Harris was convicted by a jury of two counts of first-degree murder, MCL 750.316, two counts of felony-murder, MCL 750.316, felon in possession of a firearm, MCL 750.224f, and felony-firearm, MCL 750.227b, stemming from the shooting deaths of Miquel “Gilla” Kimber and Shennell Weber. The trial court vacated the felony-murder convictions, and defendant was sentenced to concurrent terms of life imprisonment, and 2 to 5 years,’ and to a consecutive 5-year term for felony-firearm. We affirm.

Defendant argues on appeal that the prosecution failed to present sufficient evidence to convict him of first-degree murder either as the principal or as an aider and abettor. We disagree. This Court reviews the evidence de novo in a light most favorable to the prosecution to 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); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). The prosecutor need not negate every reasonable theory consistent with innocence. *Id.* The standard of review is deferential and this Court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). *People v Griffin*, 235 Mich App 27, 31; 597 NW2d 176 (1999).

To convict a defendant of first-degree murder, the prosecution must prove beyond a reasonable doubt that the defendant intentionally killed the victim and that the killing was “willful, deliberate, and premeditated.” *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). Premeditation and deliberation can be proven with inferences drawn from the surrounding circumstances so long as the record supports those inferences. *People v Plummer*, 229 Mich App 293, 301; 581 NW2d 753 (1998); *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Among the factors that may establish premeditation are, “(1) the previous relationship between the defendant and the victim; (2) the defendant’s actions before

and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted.” *Plummer, supra* at 300-301.

To convict a defendant under an aiding-and-abetting theory, the prosecution must prove that

(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. [*People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999).]

Here, the prosecution argued alternative theories. The prosecutor argued that either defendant was the shooter or that defendant aided and abetted the shooter. Defendant argues here that neither theory was supported by sufficient evidence. Looking at the evidence in a light most favorable to the prosecution, we find it sufficient to support defendant’s first-degree murder convictions.

Decedent Kimber and his girlfriend, decedent Weber were staying in a drug house when they were shot. There was evidence that Kimber trusted defendant and expected to see him that night. Kimber and Weber brought a television to the house on the night of the shootings, and someone they knew, and whom Kimber referred to as “my boy,” was inside the house when they arrived and opened the door for them. There was no sign of forced entry.

Defendant knew the victims and told the police that he was in the house shortly before they were killed. Defendant told the police that, on the night of the shooting, in exchange for \$2,000, he left the door open so two armed men could enter the victims’ house and “beat [Kimber’s] ass.”¹ Both victims were killed “execution style,” with one shot to the head. Weber was lying on the couch as if she had been sleeping.

Defendant also told police that after the shootings, he took an AK-47, a carbine rifle, and Weber’s car keys from the scene. He told someone to dispose of the AK-47 and Weber’s car, while he kept the carbine, which was never recovered. The witness who took the car and the AK-47 said he saw defendant wipe down the weapons, including the carbine, as if he were wiping the weapons clean of fingerprints. The carbine was believed to be the murder weapon. Defendant’s ex-girlfriend, said that defendant told her that he had “done something” that the police knew about and needed to get rid of some of his clothing. He also told her that he wanted her to testify on his behalf.

Viewing this evidence in a light most favorable to the prosecution, a reasonable juror could have found that the essential elements of first-degree murder were proven beyond a reasonable doubt. *Hampton supra*, 407 Mich 368. Defendant’s presence in the house near the time of the murders, the lack of forced entry, the evidence of the execution-style shootings, along

¹ No one else was charged with these murders.

with defendant's actions to conceal the crime by getting rid of evidence, all support an inference that defendant acted with deliberation and premeditation. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995).

Defendant also argues that the trial court abused its discretion in admitting evidence regarding his attempt to influence his ex-girlfriend's testimony. We disagree. A trial court's decision regarding the admission of evidence is reviewed for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998), citing *People v Bahoda*, 448 Mich 261; 531 NW2d 659 (1995).

A defendant's attempt to threaten or otherwise influence a witness is generally admissible as probative of his consciousness of guilt. *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996); *People v Mock*, 108 Mich App 384, 389; 310 NW2d 390 (1981). Here, defendant's ex-girlfriend testified that he took her at gunpoint and subjected her to physical and verbal abuse while asking her to testify on his behalf. The trial court did not abuse its discretion in admitting her testimony regarding what she characterized as a kidnapping.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kathleen Jansen

/s/ Michael J. Talbot