

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TORANTE GENE HANKINS,

Defendant-Appellant.

UNPUBLISHED
February 13, 2007

No. 266365
Wayne Circuit Court
LC No. 04-006770-01

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for first-degree premeditated murder, MCL 750.316(1)(a), assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to life in prison without parole for the murder conviction, 15 to 25 years in prison for the assault conviction, and two years in prison for the felony-firearm conviction. We affirm.

Defendant argues that the trial court abused its discretion in admitting Investigator Barbara Simon's testimony about Dawn Janney's statements to her. We disagree. The decision whether to admit evidence will not be disturbed on appeal absent an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). However, the decision whether to admit evidence often involves a preliminary question of law, which is reviewed de novo. *Id.*

Simon testified that Janney had told her that she was afraid to identify defendant because he had threatened her. The trial court admitted Janney's statement to Simon as a prior consistent statement, or alternatively, an excited utterance. To the extent that defendant challenges the portion of Simon's testimony about Janney's identification of defendant, MRE 801(d)(1)(C) applies. MRE 801(d)(1)(C) provides that, if a declarant testifies at trial and is subject to cross-examination about the statement, her statement identifying a person after perceiving him is not hearsay. *People v Malone*, 445 Mich 369, 375; 518 NW2d 418 (1994). Janney testified at trial and was subject to cross-examination about her statement that defendant was the shooter. Janney identified defendant after perceiving him, and her testimony about this statement was not hearsay. Similarly, Simon, a third party, was under oath and subject to cross-examination about the circumstances of the identification. See *id.* at 385 n 14. Therefore, Simon's testimony about Janney's statement identifying defendant was admissible.

The hearsay exclusion for prior consistent statements also applies. If the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the prior statement is “consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive,” the statement is not hearsay. MRE 801(d)(1)(B); *People v McCray*, 245 Mich App 631, 641-642; 630 NW2d 633 (2001). Janney testified and was subject to cross-examination about her statements to Simon. Janney’s prior statement was consistent with her trial testimony identifying defendant as the shooter and explaining that she was scared to identify defendant because he had threatened her.

During Janney’s cross-examination, defense counsel questioned her about her identification of defendant at the investigative subpoena, implying that the photographs had influenced her. Defense counsel also asked Janney whether she had identified defendant based on the fact that, in one of the photographs, he was wearing a shirt bearing the same logo she had described to the police. Therefore, defense counsel implied that the declarant, Janney, had an improper influence of motive—the prosecutor’s use of the photographs of defendant—in identifying defendant as the shooter. Accordingly, Simon’s testimony about Janney’s statement was properly admitted as a prior consistent statement. Therefore, the trial court did not abuse its discretion in admitting Janney’s statement to Simon during Simon’s testimony.

Defendant claims that the trial court abused its discretion in permitting the prosecutor to question him about his prior possession of a rifle because it was improper character evidence. At the outset, we note that this argument is misplaced because the gun possession at issue was not offered as a character trait or under MRE 404(b). Rather, this statement was offered to impeach defendant’s testimony and is excluded from hearsay as an admission by a party under MRE 801(d)(2)(A).

During cross-examination, the prosecutor asked defendant about ownership of weapons, and defendant claimed that he “never” owned a long gun or rifle. The prosecutor then impeached defendant with a prior police statement in which he had admitted to owning or possessing a rifle. MRE 801(d)(2)(A) provides that a statement is not hearsay if it is offered against a party and is the party’s own statement. It is undisputed that defendant made this statement during a police interrogation, and it was clearly offered against him. Therefore, the trial court did not abuse its discretion when it permitted the prosecutor to question defendant about this prior statement.

Defendant also argues that there was insufficient evidence to sustain his first-degree premeditated murder conviction. We disagree. When the sufficiency of the evidence is challenged, this Court reviews the evidence in a light most favorable to the prosecution to determine whether any trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

The elements of premeditated first-degree murder are that the defendant killed the victim and that the killing was “willful, deliberate, and premeditated[.]” MCL 750.316(1)(a); *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). Janney, who was also shot during the incident, testified that someone grabbed her from behind, put his arm around her throat and pulled at her purse. The attacker raised his arm, Janney heard a gunshot and she realized that Thomas McCartney had been shot. McCartney died from a gunshot to his chest. Janney

recognized the shooter's face, but she did not connect the face with a name until later. Janney had purchased drugs from defendant, who she knew as "Rico." Therefore, the evidence established that defendant killed McCartney.

Some time span between the initial homicidal intent and the ultimate action is necessary to establish premeditation and deliberation, and the interval should be long enough to afford a reasonable person time to take a "second look." *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003).

Premeditation and deliberation may be established by evidence of (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide. Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. [*People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999) (citations and punctuation omitted).]

Although there is nothing to suggest that McCartney and defendant had a prior relationship, Janney, who was McCartney's girlfriend, had purchased drugs from defendant, who she knew as "Rico," and Janney owed him money. Further, defendant had grabbed Janney and tried to take her purse when McCartney intervened. Defendant arrived at the parking lot of a bar with a loaded weapon, and drove away after the shooting. These circumstances support a reasonable inference of premeditation.

After initially denying knowing the shooter, Janney gave the police and the prosecutor the name "Rico" and the location and description of the house where she had purchased drugs. Janney then accompanied the police to the neighborhood where she had purchased drugs, and she identified the specific house. Using this information, the police obtained two photographs of defendant, and Janney used the photographs to put the name "Rico" together with defendant's face. Janney had met defendant as many as six times, and he was a couple inches away from her face when he threatened her and only a foot away when he shot her.

At trial, defendant denied being at the bar on May 1, 2004, and claimed that he had been at home with his fiancée and two children. Defendant claimed that he was not able to run in May 2004 because of a leg injury. Defendant denied using the name "Rico," selling drugs, knowing Janney and owning a weapon.

While we acknowledge the vast difference between the testimony of defendant and Janney, absent exceptional circumstances, issues of witness credibility are for the jury. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). This Court will not interfere with the role of the trier of fact in determining the weight of the evidence or the credibility of witnesses. *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003). Accordingly, after reviewing the evidence in a light most favorable to the prosecution, we conclude that any trier of fact could find that the essential elements of first-degree premeditated murder were proven beyond a reasonable doubt.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Alton T. Davis
/s/ Deborah A. Servitto