

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LANCE RUSSELL JONES,

Defendant-Appellant.

UNPUBLISHED
February 10, 2009

No. 282242
Ingham Circuit Court
LC No. 06-001335-FC

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of first-degree felony murder, MCL 750.316(1)(b), conspiracy to commit armed robbery MCL 750.157a and MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to serve two years for felony-firearm, consecutive to concurrent prison terms of 225 to 600 months for conspiracy to commit armed robbery and life without parole for felony murder. Because we conclude that there were no errors warranting relief, we affirm.

Defendant first argues the trial court abused its discretion when it denied defendant's motion for a new trial based on the discovery of evidence that a prosecution witness, Charles Smith, lied when he testified that defendant confessed to murdering the victim. Smith testified that defendant admitted to the crimes while the two men were incarcerated together before defendant's trial. Specifically, Smith testified that defendant told him that he and the codefendant planned to rob the victim of his money and heroin, but that the victim resisted because he "didn't want to give anything up" and that "pretty much everything went wrong." Smith testified that defendant stated that the victim and codefendant began fighting and "grabbing ahold of each other." Further, defendant told Smith that he used the .22-caliber rifle to shoot the victim twice. The newly discovered witness, Arthur Garrett, was imprisoned with defendant sometime after Smith was moved. Garrett testified that while he and Smith were housed together, Smith stated that he was going to lie about defendant's confession.

We review for an abuse of discretion a trial court's decision to grant or deny a motion for a new trial. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). A trial court abuses its discretion when it selects an outcome that is outside the range of reasonable and principled outcomes. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008).

In order to warrant a new trial based on newly discovered evidence, a defendant must demonstrate that: “(1) ‘the evidence itself, not merely its materiality, was newly discovered’; (2) ‘the newly discovered evidence was not cumulative’; (3) ‘the party could not, using reasonable diligence, have discovered and produced the evidence at trial’; and (4) the new evidence makes a different result probable on retrial.” *Cress*, 468 Mich at 692, quoting *People v Johnson*, 451 Mich 115, 118 n 6; 545 NW2d 637 (1996). After considering all the relevant evidence in this case, the trial court concluded that defendant was not entitled to a new trial because—considering the overwhelming evidence against defendant—the new evidence would not make a different result probable on retrial.

As recognized by the trial court, there is overwhelming evidence to support the conviction even without Smith’s testimony. Testimony established that the victim was a drug dealer and that he routinely carried several thousand dollars in cash. Likewise, the evidence indicated that the victim’s body was found with his pockets turned out and with no cash. Some heroin was found near the victim. Testimony established that the victim died at around 4 p.m. on the day at issue.

Evidence and testimony concerning defendant’s phone records indicated that defendant called codefendant, who was a friend, more than twenty times before 4 p.m. on the day of the murder. There was also evidence that codefendant called the victim by phone on several different occasions on that same day. Defendant also obtained permission to leave work at 2:30 p.m. on the day of the murder; defendant had been scheduled to work until 4:30 p.m. This evidence supports an inference that defendant arranged to meet with codefendant before 4:30 p.m. on the day of the murder and that codefendant also arranged to meet with the victim.

There was also evidence that the .22 caliber rifle used to kill the victim was owned by defendant’s stepfather and that defendant had borrowed it from his stepfather before the murder. In addition, the murder occurred in the garage of an unoccupied rental property owned by defendant’s stepfather. Testimony established that defendant borrowed the key to the property a few days before the murder. Four .22 caliber shell casings were found on the garage floor and the .22 caliber rifle that fired the shells was found in the rafters of the garage with defendant’s fingerprints still on it. Testimony also established that, although there were substantial amounts of dust throughout the garage area, the rifle was not dusty or dirty. This evidence, along with the phone records and the evidence that defendant obtained permission to leave work early on the day of the murder, strongly suggests that defendant arranged a meeting with the victim and codefendant at the rental property and ensured that the rifle was available.

Investigators also discovered three buttons that belonged to a shirt owned by codefendant on the garage floor. The victim’s blood was on this shirt, as well as a pair of codefendant’s jeans. A shoeprint was discovered in the garage that matched codefendant’s shoe, as were three packages of heroin. Further, when defendant’s car was searched, investigators found \$1,224 inside a McDonalds cup and two boxes of .22-caliber ammunition in a storage compartment on the driver’s side door. Considered in its totality, the weight of this evidence is such that, we cannot conclude that the new evidence would make a different result on retrial probable. *Cress*, 468 Mich at 692. Likewise, we reject defendant’s contention that application of the fourth *Cress* criterion deprived him of the right to have a jury decide his guilt. A motion for a new trial based on newly discovered evidence does not implicate instructional error. Hence, defendant’s reliance on *Sullivan v Louisiana*, 508 US 275, 280; 113 S Ct 2078; 124 L Ed 2d 182 (1993) and other

cases involving instructional error is misplaced. The trial court's decision to deny defendant's motion for a new trial was within the range of reasonable and principled outcomes. *Yost*, 278 Mich App at 379.

Defendant also argues that the court erred in submitting the charges to the jury because insufficient evidence was adduced that he participated in the armed robbery and murder. Further, defendant argues there is also insufficient evidence that he conspired, or encouraged others to commit the crimes charged. For these reasons, defendant contends, the trial court should have granted his motion for a directed verdict. "This Court reviews de novo a trial court's decision on a motion for directed verdict to determine whether the prosecutor's evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime were proven beyond a reasonable doubt." *People v Martin*, 271 Mich App 280, 319-320; 721 NW2d 815 (2006). We do not agree that the trial court erred in submitting the charges to the jury. The evidence already noted could clearly persuade a rational jury that the essential elements of each of the charges had been proven beyond a reasonable doubt.

There were no errors warranting relief.

Affirmed.

/s/ David H. Sawyer
/s/ Deborah A. Servitto
/s/ Michael J. Kelly