

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 12, 2012

v

TERRANCE RICHARDSON,

Defendant-Appellant.

No. 300475
Wayne Circuit Court
LC No. 10-000172-FC

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), two counts of assault with intent to commit murder, MCL 750.83, and one count each of felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life in prison for the murder conviction, to be served concurrently with prison terms of 5 to 15 years for each assault with intent to commit murder conviction, one to four years for the felonious assault conviction, and one to five years for the felon-in-possession conviction, all to be served consecutively to a two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from a shooting incident in a store parking lot. The prosecution witnesses generally agreed that defendant challenged Darryl Gilliam-French to a fight. Shortly thereafter, Vincent Anderson, drove into the parking lot and joined Gilliam-French. Anderson and defendant had been in a fight a few weeks earlier. According to witnesses, codefendant Frederick Campbell¹ or another person shot Anderson in the leg. Anderson ran from the scene along with two other passengers from his car, Demarco Edwards and Christopher Hollins. Witnesses testified that defendant fired several gunshots at Anderson, Hollins, and Edwards as they were fleeing. Hollins was shot in the neck and died from his injury. Defendant then turned and pointed his gun at another passenger, Eric McWilliams, and ordered McWilliams out of the car. Defendant then entered a vehicle and left.

¹ Campbell was acquitted of all charges.

I. EVIDENCE OF INTENT AND PREMEDITATION

Defendant argues that there was insufficient evidence of an intent to kill and premeditation to support his convictions for first-degree premeditated murder and assault with intent to commit murder. We disagree.

We review a challenge to the sufficiency of the evidence in a bench trial de novo. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The evidence is viewed “in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *Id.* Circumstantial evidence and the reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Gayheart*, 285 Mich App 202, 216; 776 NW2d 330 (2009). The trial court’s findings of fact are reviewed under the clearly erroneous standard. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

The elements of first-degree premeditated 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). To be convicted of first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and that the killing was done with premeditation and deliberation. *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). “Premeditation and deliberation require sufficient time to allow the defendant to take a second look.” *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999) (citation omitted). “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.’” *Id.* (citation omitted).

Second-degree murder has four elements: (1) a death, (2) caused by defendant, (3) with malice, and (4) without lawful justification or excuse. *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007). “[M]alice is the intention to kill, the intention to do great bodily harm, or the wanton and willful disregard of the likelihood that the natural tendency of defendant’s behavior is to cause death or great bodily harm.” *People v Aaron*, 409 Mich 672, 720; 299 NW2d 304 (1980).

The elements of assault with intent to commit murder are (1) an assault; (2) with an actual intent to kill; (3) that, if successful, would make the killing murder. *People v Brown*, 267 Mich App 141, 147–148; 703 NW2d 230 (2005). “A factfinder can infer a defendant’s intent from his words or from the act, means, or the manner employed to commit the offense.” *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). A jury may infer an intent to kill from “the manner and use of a dangerous weapon.” *People v Dumas*, 454 Mich 390, 403; 563 NW2d 31 (1997).

The evidence showed that after an initial confrontation between defendant (and possibly others) on one side, and Anderson and Gillian-French on the other, and after Anderson was shot

in the leg, defendant fired several gunshots at Anderson, Edwards, and Hollins as they attempted to flee. Defendant's intent to kill may be inferred from his firing of multiple gunshots at the group as they ran. Further, there was sufficient evidence to find that defendant acted with a premeditated intent to kill. The evidence indicated that defendant was the second shooter. Anderson had already been shot in the leg, and Anderson, Edwards, and Hollins had begun running from the scene when defendant started shooting at them. As the trial court found, defendant had a sufficient opportunity to take a second look and reflect upon his actions when he fired at the fleeing victims. Defendant's prior conflict with Anderson further supports a finding that he acted with a premeditated intent to kill. Although it was Hollins who was killed, under the doctrine of transferred intent, proof that defendant intended to kill Anderson is sufficient, because defendant's general intent to kill need not be directed at a specific victim. *People v Abraham*, 256 Mich App 265, 270; 662 NW2d 836 (2003). Viewed in a light most favorable to the prosecution, this evidence supports a finding that defendant intentionally killed Hollins, and that the killing was done with premeditation and deliberation sufficient to establish first-degree murder. There was also sufficient evidence of defendant's intent to kill to support his convictions for two counts of assault with intent to commit murder.

The record does not support defendant's argument that the trial court erred in its analysis of the elements of intent and premeditation. Defendant's argument concerning the murder charge is based on statements the court made in its findings concerning the assault with intent to commit murder charges. With respect to the murder charge, the court specifically found that defendant "acted in premeditation, deliberation in killing Mr. Hollins." The court explained that it found that the killing was premeditated because, after Anderson was shot, defendant "had time to back off[,] [h]e had time to step back[,] [h]e had time to cool off[,] but instead of backing off, he went after Anderson, intending to kill him. There is no indication in the trial court's findings concerning the murder charge that the court misunderstood or misapplied the elements of first-degree murder and combined them with the elements of second-degree murder.

Further, there is no indication that the court convicted defendant of the assault with intent to commit murder counts on the basis of an intent less than an actual intent to kill. On the contrary, the trial court specifically found that defendant "intended to kill these persons."

For these reasons, we reject these claims of error.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next argues that trial counsel was ineffective for pursuing a strategy of attacking the prosecution witnesses' credibility rather than focusing on the issue of intent to persuade the court to find defendant guilty of lesser offenses. Because defendant did not raise this issue below in a motion for a new trial or request for a *Ginther*² hearing, this Court's review is limited to errors apparent from the record. *People v Horn*, 279 Mich App 31, 38; 755 NW2d 212 (2008). "To prove a claim of ineffective assistance of counsel, a defendant must establish that counsel's performance fell below objective standards of reasonableness and that, but for

² *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

counsel's error, there is a reasonable probability that the result of the proceedings would have been different." *People v Swain*, 288 Mich App 609, 643; 794 NW2d 92 (2010). Defendant must overcome the strong presumption that trial counsel's conduct was sound trial strategy. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). "This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight." *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

On appeal, defendant challenges trial counsel's decisions to waive opening statement and to focus on attacking the credibility of the prosecution witnesses in an attempt to gain outright acquittal. He contends that a better strategy would have been to use opening statement and cross-examination to highlight the weaknesses of the prosecution's evidence of defendant's intent and premeditation in order to obtain convictions on the lesser offenses of second-degree murder and assault with intent to do great bodily harm. As defendant recognizes, the decisions whether to waive opening statement, what evidence to present, and whether to call or question witnesses were matters of trial strategy. *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009); *Rockey*, 237 Mich App at 76. Defendant's argument falls far short of overcoming the presumption that counsel's employed strategy was sound. *LeBlanc*, 465 Mich at 579. Defendant's hindsight strategy of seeking convictions of lesser offenses instead of outright acquittal would have required counsel to persuade the trial court that defendant did not act with premeditated intent to kill when he fired a gun at three individuals as they ran away from him. Defense counsel's decision not to pursue that strategy in favor of challenging the reliability of the prosecution witnesses was not objectively unreasonable.

III. DEFENDANT'S STANDARD 4 BRIEF

In a pro se supplemental brief filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4, defendant argues that his waiver of a jury trial was invalid because it was not knowingly and voluntarily made.

A jury waiver is not valid unless it is knowingly and voluntarily made. *People v Cook*, 285 Mich App 420, 424; 776 NW2d 164 (2009). Compliance with MCR 6.402(B) establishes a presumption that a defendant's jury waiver was voluntary, knowing, and intelligent. *Id.* at 422; *People v Mosly*, 259 Mich App 90, 96; 672 NW2d 897 (2003).

MCR 6.402(B) provides:

Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

Defendant argues that his jury waiver was inadequate because the trial court failed to inquire whether he was under the influence of any medication, whether he had been diagnosed or treated for mental illness, whether he understood the importance of his right to a jury trial, and whether he understood the difference between a jury trial and bench trial. Defendant does not

cite any authority requiring specific inquiry into these matters. Defendant's reliance on *Godinez v Moran*, 509 US 389; 113 S Ct 2680; 125 L Ed 2d 321 (1993), is misplaced because that case addresses the sufficiency of a guilty plea and waiver of counsel.

In this case, the trial court questioned defendant regarding the voluntariness of his decision to waive a jury trial. The court specifically asked defendant whether his decision was prompted by any threats, coercion, or a promise of anything in exchange. Although the court did not specifically question defendant regarding his knowledge of the difference between a jury trial and a bench trial, the court repeatedly referred to defendant's right to a jury trial. The court also ascertained that defendant had consulted with his counsel, defense counsel stated that he had explained defendant's options to him, and defendant agreed with this statement. The court specifically asked defendant whether he wanted to relinquish his right to a jury trial and "to have this Court hear your matter." Defendant responded, "Yes." Lastly, there is no indication in the record that defendant was under the influence of any medication or had any condition that prevented him from understanding and knowingly and voluntarily waiving his right to a jury trial. Because the record establishes that defendant's jury waiver was knowingly and voluntarily made, we reject this claim of error.

Affirmed.

/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause