

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 13, 2012

v

JOSHUA MAURICE STANTON,

Defendant-Appellant.

No. 305085
Wayne Circuit Court
LC No. 11-000499-FC

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of one count of first-degree, premeditated murder, MCL 750.316, three counts of assault with intent to commit murder, MCL 750.83, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to life in prison without parole for the first-degree murder conviction, 20 to 30 years in prison for each assault with intent to murder conviction, and two years in prison for the felony-firearm conviction. For the reasons set forth below, we affirm.

I. GREAT WEIGHT OF THE EVIDENCE

We review for plain error defendant's claim that the verdict is against the great weight of the evidence because it is unpreserved. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Generally, however, this Court would review such a challenge to determine if 'the evidence preponderates heavily against the verdict and a serious miscarriage of justice' would occur if the conviction were allowed to stand." *People v Williams*, 294 Mich App 461, 471; 811 NW2d 88 (2011), quoting *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). "The credibility of witnesses and the weight accorded to evidence are questions for the jury, and any conflict in the evidence must be resolved in the prosecutor's favor." *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009).

Defendant argues that his case presents an "exceptional situation" in which discrepancies in witness testimony entitle him to a new trial. According to defendant, DeMario Brown's testimony is not worthy of belief because he did not come forward immediately and he made inconsistent statements. Brown died before trial. Accordingly, at trial, the prosecution offered three pieces of testimonial evidence from Brown: a signed statement he gave to police, testimony he gave pursuant to an investigative subpoena issued by the Wayne County Prosecutor's Office, and his testimony at the preliminary examination. Though Brown's

testimony varied in certain respects, his general account of what happened on the night of the crime remained consistent. Brown consistently testified that he was with Caresa Baltimore and “Teddy B” on Piedmont Street in Detroit when defendant drove by in a red Ford Escort and fired several shots at them. A short time later, Brown was with Baltimore and Teddy B at a nearby gas station when defendant, dressed in the same clothes, opened fire on them with an assault weapon. Brown was able to observe and identify defendant during both incidents and, throughout the investigation, he consistently identified defendant as the shooter.

Defendant takes issue with the testimony of Angelic Winters because she had the opportunity to speak with Brown before she identified defendant in a photographic line-up. Defendant also notes that Winters did not make a statement to the police until two weeks after the shooting, and only did so at Brown’s request. Again, however, issues of witness credibility are for the trier of fact. *Harrison*, 283 Mich App at 378. This also applies to the testimony of Tracey Brown. The fact that she did not identify defendant as the shooter at trial does not render the other eyewitness testimony incredible. Importantly, Tracey Brown never contradicted other testimony by stating that defendant was *not* the shooter, but simply testified that she did not see the shooter and, therefore, could not identify him.

In sum, the testimony about which defendant complains is the very kind that should be left for the trier of fact to assess. Defendant has not shown that the verdict was against the great weight of the evidence.

II. UNANIMOUS VERDICT

Defendant argues that he was denied his constitutional right to a unanimous verdict pursuant to Const 1963, art 1, § 14. Defendant specifically cites a juror’s post-verdict complaint that she felt pressured from other jurors during the deliberation process. In *People v Budzyn*, 456 Mich 77, 91; 566 NW2d 229 (1997), the Supreme Court stated:

Generally, jurors may not impeach their own verdict by subsequent affidavits showing misconduct in the jury room. [O]nce a jury has been polled and discharged, its members may not challenge mistakes or misconduct inherent in the verdict. Rather, oral testimony or affidavits may only be received on extraneous or outside errors, such as undue influence by outside parties. As the United States Supreme Court has explained [in *Tanner v United States*, 483 US 107, 117; 107 S Ct 2739; 97 L Ed 2d 90 (1987)], the distinction between an external influence and inherent misconduct is not based on the location of the wrong, e.g., distinguished on the basis whether the “irregularity” occurred inside or outside the jury room. Rather, the nature of the allegation determines whether the allegation is intrinsic to the jury's deliberative process or whether it is an outside or extraneous influence. [Citations omitted; footnote added.]

Following *Budzyn*, this Court held in *People v Fletcher*, 260 Mich App 531, 540; 679 NW2d 127 (2004), that “[a]ny conduct, even if misguided, that is inherent in the deliberative process is not subject to challenge or review.”

Here, defendant complains about conduct that was confined to the internal deliberative process of the jury and does not involve any improper outside influence. Moreover, when polled by the trial judge, the juror in question affirmed that she agreed with the verdict. Again, once the jury has been polled and discharged, “its members may not challenge mistakes or misconduct inherent in the verdict.” *Budzyn*, 456 Mich at 91; see also *People v Van Camp*, 356 Mich 593, 601-602; 97 NW2d 726 (1959).

Defendant again contends that this case presents an exceptional situation. However, even if the disputed facts in this case do not implicate the policy of discouraging harassment of jurors *by the parties*, other public policy rationales *are* implicated, including the benefit of finality in the adjudicative process. See *Tanner*, 483 US at 121. Because defendant’s allegations do not pertain to “extraneous or outside influences,” the trial court correctly ruled that defendant is not entitled to judgment notwithstanding the verdict or a new trial.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly