

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON ROBERT TALTON,

Defendant-Appellant.

UNPUBLISHED

December 30, 1996

No. 190131

Recorder's Court

LC No. 95-002769-FC

Before: Taylor, P.J., and Markman and P. J. Clulo,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant shot and killed a man who he suspected had earlier stolen rims off an automobile belonging to defendant. Another man was wounded by defendant's gunshots. Both victims were unarmed and were shot in the back while fleeing from defendant at the time because he had begun to spray gunshots in their direction. Defendant was sentenced to life in prison without parole on the first-degree murder conviction, ten to fifteen years in prison for assault conviction and a mandatory two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erred when it denied his motion for a directed verdict at the close of the prosecution's proofs because the prosecution had, at that point, failed to prove that defendant premeditated and deliberated before he killed one of the two victims. We review a trial court's ruling on a motion for a directed verdict by considering the evidence presented by the prosecution up to the time the motion was made, in a light most favorable to the prosecution, and 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 Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Here, a review of the record establishes that the prosecution presented sufficient evidence that

* Circuit judge, sitting on the Court of Appeals by assignment.

defendant engaged in premeditation and deliberation before he shot and killed the decedent. Defendant's girlfriend testified that defendant suspected the decedent of having stolen the rims to defendant's car and that defendant made reference to this point just minutes before the shooting occurred. Further, there was testimony that defendant already had the gun in his hand when he confronted the decedent about the rims, followed the decedent out of a house and shot the decedent in the back. Thus, there was sufficient evidence from which the trial court could have reasonably inferred that defendant had time for a "second look." *People v Coddington*, 188 Mich App 584, 599-600; 470 NW2d 478 (1991); *People v Gonzalez*, 178 Mich App 526, 532-534; 444 NW2d 228 (1989). We find no error on the trial court's part.

Defendant next argues that there was insufficient evidence presented to rebut his theory of self-defense. Viewing the evidence in the light most favorable to the prosecution, we conclude that sufficient evidence was presented below for the trial court to find that defendant's belief of imminent danger or serious bodily harm was either not honest or not reasonable. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993); *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). Witnesses, including defendant, testified that neither the decedent nor the assault victim had a weapon on their person and that defendant's gun was already drawn when he left the house. Further, the evidence established that both victims were shot in the back as they ran away from defendant and were some distance from him running in opposite directions. Reversal of defendant's convictions is therefore unwarranted on this ground.

Finally, defendant contends that there was insufficient evidence that he possessed a specific intent to kill the assault victim and, thus, his conviction for assault with intent to commit murder should be reversed. Here, again viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence of defendant's intent to kill the assault victim. Because the assault victim was with the decedent at the time defendant confronted and shot at the decedent, it was not unreasonable for the trial court to have inferred that defendant intended also to kill the victim. The evidence suggests that defendant alternatively shot in the direction of the decedent and the assault victim. Further, the assault victim was, in fact, shot in the back; it appears purely serendipitous that he was not also killed. *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992); *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

Affirmed.

/s/ Clifford W. Taylor
/s/ Stephen J. Markman
/s/ Paul J. Clulo