

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO DONTA HORNE,

Defendant-Appellant.

UNPUBLISHED

March 23, 2001

No. 221050

Oakland Circuit Court

LC No. 99-165278-FC

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316; MSA 28.548, assault with intent to commit murder, MCL 750.83; MSA 28.278, felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), carrying a concealed weapon, MCL 750.227; MSA 28.424, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced as a third habitual offender, MCL 769.11; MSA 28.1203, to concurrent terms of life imprisonment for the first-degree murder conviction, twenty-five to fifty years for the assault with intent to commit murder conviction, and two to ten years each for the felon in possession of a firearm and carrying a concealed weapon convictions, to be served consecutive to two concurrent two-year terms for the felony-firearm convictions. He appeals as of right. We affirm.

Defendant first claims that the trial court abused its discretion and denied him a fair trial by allowing the jury to hear evidence of defendant's gang-related activities which was irrelevant and highly inflammatory. We disagree. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). Relevant evidence is evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). Generally, all relevant evidence is admissible and irrelevant evidence is inadmissible. MRE 402; *Starr*, *supra* at 497. However, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403; *Starr*, *supra* at 498. Although proof of motive in a prosecution for first-degree murder is relevant to prove premeditation or deliberation, this Court has rejected the argument that any evidence remotely connected with the accused or

his social acquaintances is always admissible to show motive. *People v Wells*, 102 Mich App 122, 128-129; 302 NW2d 196 (1980).

In this case, the prosecutor elicited testimony from defendant regarding his gang membership, and signifying “brands” or tattoos that defendant displayed to the jury. Following defense counsel’s objection, the trial court cautioned the prosecutor about the line of questioning if he could not tie the questioning to motive. Ultimately, the court instructed the jury to disregard all evidence of gang membership as irrelevant, because it occurred years before, when defendant was in high school. Following closing arguments, the court again instructed the jury to disregard all stricken evidence. It is presumed that the jurors followed the court’s instructions. See *People v Morey*, 230 Mich App 152, 160; 583 NW2d 907 (1998).

Defendant next claims that the evidence of premeditation and deliberation was insufficient to support his conviction for first-degree murder. We disagree. This Court reviews a sufficiency of the evidence issue to determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found that the essential elements were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense. *People v Richardson*, 139 Mich App 622, 625; 362 NW2d 853 (1984).

Premeditated murder is “murder which is premeditated by means of poison, lying in wait, or other willful, deliberate and premeditated killing. MCL 750.316; MSA 28.548. Evidence of premeditation and deliberation sufficient to sustain a conviction for first-degree murder may be inferred from the character of the weapon used, the wounds inflicted, and the circumstances surrounding the killing. *People v Macklin*, 46 Mich App 297, 308; 208 NW2d 62 (1973). Premeditation is measured in time; time to permit a reasonable person to subject the nature of his response to a second look. *People v Brown*, 137 Mich App 396, 407; 358 NW2d 592 (1984). In this connection, relevant factors in ascertaining whether an accused took a second look include the previous relationship of the parties, the accused’s actions prior to and after the killing, and the circumstances of the killing itself. *Id.*

The evidence viewed in the light most favorably to the prosecution indicates that there was a prior relationship between defendant, an admitted drug dealer, and the victims Coulter and Walker involving the exchange of money and the use of Coulter’s car for cocaine and marijuana, and a \$200 debt owed to defendant by Coulter. Defendant took two adults and four children with him when he allegedly was going to Coulter’s apartment to take Coulter and Walker to work, requiring that five adults and four children would have had to be packed into Coulter’s car. Moreover, defendant arrived at Coulter’s apartment approximately three hours earlier than needed, leaving his fiance and four little children waiting outside in the car in the middle of a February night. He went to the victims’ apartment with a concealed, loaded gun, and admitted familiarity with guns, their use and the tendency of the gun he carried to “kick back.” According to Coulter, no argument preceded the shootings, and defendant testified that Coulter was wearing nothing but shorts and did not have a weapon in his hand. Coulter closed the door of the apartment, turned around and defendant started shooting. Of the five shots fired, the first was fired point blank at Walker’s chest from four or five feet, notwithstanding that she was simply

standing next to Coulter. Defendant shot Walker a second time. Walker died within moments. Defendant then turned the gun on Coulter, shooting him first in the chest and then in the wrist, which Coulter had raised defensively, and a third time nicking Coulter's arm. Coulter's wounds would have been fatal had EMS not arrived quickly. Further, Coulter testified that there was no provocation, and thus no issue of self-defense. When the police came to arrest defendant, he lied about his name and denied any involvement in the shooting. When he ultimately confessed, defendant made no mention of self-defense. Most damning, defendant first shot and killed Walker, who made no aggressive moves and posed no immediate threat to defendant, other than that she would have been a witness to defendant's shooting of Coulter. From defendant's action and the lack of aggression by Walker, it can be inferred that defendant had time for a second look prior to shooting her point blank in the chest. The evidence of premeditation and deliberation was sufficient to support that element of first-degree murder.

Affirmed.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Brian K. Zahra