STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TROY ODUM,

Defendant-Appellee.

UNPUBLISHED
November 25, 2003

No. 241599
Wayne Circuit Court
LC No. 01-008088-01

Before: Schuette, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Defendant appeals as of right his convictions, following a bench trial, of two counts of first-degree murder, MCL 750.316(1)(a), possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. The court sentenced defendant to two terms of natural life for the murder convictions, concurrent to thirty to sixty months' imprisonment for the felon in possession conviction, and consecutive to two-years' imprisonment for the felony firearm conviction. We affirm.

Defendant was charged in connection with the shooting deaths of Timothy Troup and Kareem Jones at around 3:00 a.m. in the morning of February 11, 2001, at the Detroit home of Timothy and Denise Troup. The Troups were hosting an after-party at their home for one or two dozen people, following a gathering at a hall called The Other Place that had been held to celebrate the birthday of several family members (the Mott siblings). All witnesses that testified at trial were at the Troup home when the shootings occurred and most had been at the gathering at The Other Place.

Defendant maintained that the shootings were done in the heat and confusion of the moment, without deliberation.

I

Defendant's first argument is that the prosecution failed to prove premeditation and deliberation beyond a reasonable doubt. We disagree.

When reviewing sufficiency of the evidence claims, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have

found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

First-degree murder is a statutory crime requiring premeditation and deliberation. MCL 750.316(1)(a).[1] *People v Tanner*, 255 Mich App 369, 417; 660 NW2d 746 (2003). "Some time span between [the] initial homicidal intent and ultimate action is necessary to establish premeditation and deliberation." *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003), quoting *People v Hoffmeister*, 394 Mich 155, 161; 229 NW2d 305 (1975). Premeditation and deliberation require sufficient time to allow the defendant to take a second look. *Gonzalez, supra* at 641; *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing, and factors relevant to finding premeditation and deliberation include: (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 killing. *Plummer, supra* at 300. Such circumstances include "the weapon used and the location of the wounds inflicted." *People v Coddington*, 188 Mich App 584, 600; 470 NW2d 478 (1991).

Regarding shooting victim Kareem Jones, although a number of witnesses described a shooting from several feet away, the medical examiner testified that the gunshot wound to Jones' left chest area showed that the muzzle of the gun had been held up to his body. Further, Tywana Mott testified that defendant walked over to Jones as he was lying on the floor, unarmed, stood directly over Jones and pointed the gun directly at him. A rational factfinder could infer from the testimony of these witnesses that defendant intended to end Jones' life and that he did so after premeditation and deliberation. *Gonzalez, supra; Plummer, supra.*

Regarding shooting victim Timothy Troup, testimony indicated that after shooting Jones, defendant had asked the crowd whether anyone else wanted some. Defendant ran out the door of the Troup home after shooting Jones, but at some point stopped running, turned from the sidewalk, yelled to Troup that he was not afraid of his "big ass," and shot several times at Troup, who was unarmed. After shooting Troup, defendant ran away. Troup died of a single gunshot wound to the abdomen, and the police found a second bullet lodged in the driver's side of a van parked in the Troups' driveway. A rational factfinder could conclude beyond a reasonable doubt that defendant, who stopped running, yelled at Troup, and fired several shots at Troup, and then ran away, premeditated and deliberated Troup's shooting.

[1] MCL 750.316(1) provides:

> A person who commits any of the following is guilty of first degree murder and shall be punished by imprisonment for life:
>
> (a) Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.

II

Defendant next argues that the trial court erred reversibly by eliciting from him during his jury waiver that he had been expelled from school for fighting, was unemployed at the time of the offenses, and had been fired from his last job. Defendant argues that it is clear that a jury would not have been so informed, as those events bore no legitimate relevance to the issues in this case. Defendant contends that evidence of poverty or unemployment is generally not admissible to show either motive or credibility. He asserts that although the length of his schooling could be relevant in determining whether he was sufficiently educated to understand that he had a right to a jury and was voluntarily waiving that right, being expelled, fired and unemployed had no bearing whatsoever. Defendant argues that the trial court, in effect, forced him to be a negative character witness against himself, in violation of his right to remain silent. He notes that the damaging information the court elicited reflected badly on his character and may have affected the court's determination of his guilt, and particularly the question whether he had premeditated the killings.

Defendant acknowledges that where the trier of fact is exposed to extraneous evidence, the error may be harmless if overwhelming evidence of guilt was introduced at trial, however, he argues that evidence of guilt was not overwhelming; that, as argued *supra*, the evidence of premeditation and deliberation was insufficient to support his convictions of first-degree murder. Defendant asserts that reversal is therefore required of his first-degree murder convictions.[2]

"[A] judge in a bench trial must arrive at his or her decision based upon the evidence in the case." *People v Simon*, 189 Mich App 565, 568; 473 NW2d 785 (1991). "The judge may not go outside the record in determining guilt." *Id.*, citing 2 Gillespie, Michigan Criminal Law & Procedure (2d ed), § 630, p 285. "When the fact-finder relies on extraneous evidence, the defendant is denied his constitutional right to confront all the witnesses against him and to get all the evidence on the record." *Simon*, *supra* at 568, citing *People v Ramsey*, 385 Mich 221, 224-225; 187 NW2d 887 (1971); US Const, Am VI; and Const 1963, art 1, § 20.

On the first day of trial, defense counsel requested a waiver trial, the prosecutor indicated no objection, and the following colloquy ensued:

THE COURT: Thank you, Counsel. What is your name, sir?

THE DEFENDANT: Troy Odum.

THE COURT: How old are you, Mr. Odum?

THE DEFENDANT: 22.

THE COURT: How far have you gone in school?

[2] The prosecution's appellate brief argues that defendant has not shown the requisite bias and prejudice to sustain his call for disqualification of the trial judge. However, we do not understand defendant's argument to be one of disqualification.

THE DEFENDANT: The 11th grade.

THE COURT: Where was that?

THE DEFENDANT: Redford High.

THE COURT: Did you quit school or were you kicked out?

THE DEFENDANT: I was kicked out?

THE COURT: For what reason?

THE DEFENDANT: From really like, from fighting.

THE COURT: Where were you living at the time of your arrest?

THE DEFENDANT: 13616 Glastonbury.

THE COURT: With whom were you living there?

THE DEFENDANT: My mother, Linda Odum.

THE COURT: How long have you lived there?

THE DEFENDANT: Ever since I was born.

THE COURT: What is 5332 Cadieux?

THE DEFENDANT: I wasn't living there.

THE COURT: I didn't ask you that. I asked you what is it?

THE DEFENDANT: That's my cousin' [sic] house.

THE COURT: Were you employed at the time of your arrest?

THE DEFENDANT: No, sir.

THE COURT: When were you last employed?

THE DEFENDANT: In December of last year – of 2000, rather. December 2000.

THE COURT: What were you doing?

THE DEFENDANT: I was a cashier at Meijer's.

THE COURT: Did you quit or were you fired?

THE DEFENDANT: I was fired.

THE COURT: Mr. Odum, I have here a paper entitled waiver of trial by jury purporting to contain your signature.

THE DEFENDANT: Yes.

THE COURT: Is this your signature?

THE DEFENDANT: Yes.

THE COURT: This paper, sir, indicates that you know and understand that you have a right to a trial by a jury of twelve persons.

THE DEFENDANT: Yes.

THE COURT: It would be their function to determine whether the Prosecution has proved you guilty beyond a reasonable doubt of each and every element that makes up the offense charged against you, or any of them. Is that your understanding?

THE DEFENDANT: Yes.

THE COURT: Has anyone promised you anything, Mr. Odum, to get you to waive, give up your right to a trial by jury?

THE DEFENDANT: No.

* * *

Defendant was obviously aware that he had disclosed this information to the trier of fact. Nevertheless, he proceeded to a bench trial before the court without objection and without inquiry whether the court might be influenced by the information. Because this challenge is unpreserved, defendant must show a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Assuming without deciding that the trial court's elicitation of this information from defendant was error, we nonetheless conclude that defendant has not shown a plain error that affected his substantial rights. *Carines, supra.* The trial court's questions were few and elicited information that was irrelevant to the case. The court made no reference to defendant's having been kicked out of school or having been fired from his most recent job after the colloquy quoted *supra*, nor does defendant point to any remarks by the trial court to support that the information it elicited from defendant played a role in its conviction or sentencing of defendant.

Affirmed.

/s/ William D. Schuette
/s/ Mark J. Cavanagh
/s/ Helene N. White