

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES WILLIS RAMSEY,

Defendant-Appellant.

UNPUBLISHED

May 18, 2004

No. 245614

Wayne Circuit Court

LC No. 01-012708

Before: Fitzgerald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316(1)(a); assault with intent to commit murder, MCL 750.83; and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life in prison for the first-degree murder conviction, ten to twenty years in prison for the assault with intent to commit murder conviction, and two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm.

This case arises from the shooting death of James Cross. On July 6, 2001, Cross was driving through Highland Park when he saw his friend, Marcellis Harris, driving a car that belonged to the passenger, Kyree. Harris and Cross parked their vehicles near the curb, got out, and were standing in the street talking when a white Grand Prix pulled up next to them. Harris identified defendant as the driver of the Grand Prix and Sean Jamar Ramsey, defendant's brother, as the occupant of the front passenger seat. Harris also noticed a third unidentified man in the back seat.

Harris saw that Sean Ramsey was pointing a gun at them, and he and Kyree hid behind their vehicle. Sean Ramsey fired gunshots from a revolver, and defendant fired gunshots from what appeared to be a nine millimeter handgun, extending his arm across the front seat past Sean Ramsey. A total of three to five gunshots were fired, but nobody was hit. The Grand prix performed a U-turn and returned. Defendant fired his weapon from the driver's window, and Sean Ramsey fired gunshots across the hood of the vehicle while leaning out of the passenger window. Approximately ten to fifteen gunshots were fired, and the Grand Prix drove away. Cross sustained gunshot wounds to his left arm and abdomen, and died two days later as a result of the gunshot wounds. Neither Kyree nor Harris was injured.

Harris made a statement to the police after the shooting, but he admitted at trial that he had given false information because he intended to seek revenge on defendant and Sean Ramsey without police involvement. He testified that he made a second police statement on August 10, 2001, and he identified defendant and Sean Ramsey as the shooters and explained his history with them. Harris had known Sean Ramsey since 1989 and defendant for five years prior to the shooting. Approximately one or one-and-a-half years before the shooting Harris had a verbal argument with defendant. Two or three months after the argument, Harris and defendant got into a fistfight in which Harris prevailed. After the fistfight, Harris did not see Sean Ramsey or defendant again until the shooting.

Defendant argues that there was insufficient evidence of premeditation and deliberation to sustain his first-degree murder conviction and that the trial court erred when it denied defendant's motion for a directed verdict of acquittal. Because no evidence was presented after defendant moved for a directed verdict of acquittal, we need only address the trial court's denial of defendant's motion for a directed verdict of acquittal. When reviewing a trial court's decision on a motion for a directed verdict of acquittal, we review the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Werner*, 254 Mich App 528, 530; 659 NW2d 688 (2002).

Defendant argues that the prosecutor failed to prove that defendant was the one who fired the shot that killed Cross. MCL 767.39 abolished the distinction between a principal and an aider and abettor. *People v Mass*, 464 Mich 615, 627; 628 NW2d 540 (2001). Defendant was tried under an aiding and abetting theory, and the trial court provided the aiding and abetting jury instruction, CJI2d 8.1. Accordingly, defendant's argument is misplaced.

To show first-degree premeditated murder, some time span between the initial homicidal intent and the ultimate action is necessary to establish premeditation and deliberation, and the interval should be long enough to afford a reasonable person time to take a "second look." *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003), applying *People v Tilley*, 405 Mich 38, 45; 273 NW2d 471 (1979). 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. Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999).

Viewed in the light most favorable to the prosecution, the evidence reveals that defendant drove the vehicle, and three to five gunshots were fired the first time defendant and Sean Ramsey drove by Harris and Cross. Nobody was injured by the first set of gunshots. Defendant performed a U-turn and returned, firing an additional ten or fifteen gunshots before driving away. Because defendant and Sean Ramsey drove toward the victims two separate times with loaded weapons, there was enough time to afford a reasonable person a "second look." *Tilley, supra* at 45. Moreover, nobody was injured during the first set of gunshots, and the act of returning to fire additional gunshots further establishes that there was sufficient time to afford defendant a second look. *Id.* Accordingly, there was sufficient evidence of premeditation and deliberation.

Although Harris' testimony revealed to the jury that he had lied in his police statement, absent exceptional circumstances issues of witness credibility are for the jury. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). "This Court will not interfere with the role of the trier of fact of determining the weight of the evidence or the credibility of witnesses." *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003). Accordingly, we conclude that, viewed in a light most favorable to the prosecutor, there was sufficient evidence to permit a rational trier of fact to find that the essential elements of premeditated first-degree murder were proved beyond a reasonable doubt. *Werner, supra* at 530.

Defendant also argues that the circuit court erred when it denied defendant's motion to quash. If a defendant is convicted at trial, any subsequent appeal would not consider whether the evidence adduced at the preliminary examination was sufficient to warrant a bindover. *People v Yost*, 468 Mich 122, 124 n 2; 659 NW2d 604 (2003); *People v Hall*, 435 Mich 599, 601-603; 460 NW2d 520 (1990) ("such an evidentiary deficiency at the preliminary examination is not ground for vacating a subsequent conviction where the defendant received a fair trial and was not otherwise prejudiced by the error"). Because we have concluded that the evidence presented at trial was sufficient to permit a rational jury to conclude beyond a reasonable doubt that defendant committed first-degree premeditated murder, this issue need not be addressed.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kathleen Jansen

/s/ Michael J. Talbot