STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 10, 2015
v	No. 323528 Saginaw Circuit Court
WILLIE JAMAR BLAKNEY, Defendant-Appellant.	LC No. 13-039355-FC

Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

After a jury trial, defendant appeals his convictions of two counts of first-degree premeditated murder, MCL 750.316(1)(b), one count of assault with intent to murder, MCL 750.83, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. For the reasons provided below, we affirm.

I. FACTS

This case arises from the shootings of Joseph Ball, Donyae Johnson, and Mike Skipper at a halfway house in Saginaw. While Ball and Johnson died as a result of the shootings, Skipper survived.

Evidence offered at trial indicated that on the eve of the shooting, defendant was with Travis Smith, Darius McGee, Fred Chapman, Ashley Allen, and Rebecca Carpenter. The group was drinking and smoking marijuana. At one point as defendant and others were walking to a store to purchase more alcohol, they passed the halfway house and were asked by Skipper if they wanted to "come down here and chill." Smith testified that they did not go to the halfway house at that point, but did so later after Skipper again approached them. Smith testified that they met Johnson and Ball at the halfway house. He testified that they stayed at the house "[d]rinking, smoking marijuana, chilling." There was some evidence at the trial to show that some people were using cocaine, allegedly sold by Johnson.

Defendant and his companions eventually left and went to Allen's house, where they continued smoking marijuana. Smith testified that defendant later suggested going back to the halfway house to rob Johnson. Smith stated that defendant had a handgun ("a Glock") and that defendant "racked it back and put one in the head, put a bullet in the head." Carpenter testified

that she overheard defendant, Smith, and Allen talking about returning to the halfway house, and that at one point she heard defendant say something to the effect that there was a gun with six shots and he "wanted to catch a body." Allen testified that defendant was in possession of the gun when he stated he wanted to "catch a body." Chapman testified that defendant "flashed" a Glock 27 "a couple times" and stated, "I'm gonna catch me one. I'm gonna catch me one on the gun before the night over with. I'm gonna catch me a body." He testified that "catch me a body" means to kill somebody.

According to Smith, he, defendant, and McGee, with the women walking behind them, went back to the halfway house. He testified that when he and defendant knocked on the door, the lights went out inside the residence. He testified that when they knocked again, someone asked, "who is it," and defendant identified himself. When the door opened, Smith testified, defendant just walked in and started shooting. Smith testified that when defendant started shooting, Johnson ran out of the house and fell on the sidewalk. McGee testified that, after the shots were fired, he saw defendant emerge from the house and tuck a gun into his waistline. Thereafter, McGee saw defendant search Johnson's pockets and take his wallet and cellphone.

Skipper testified that around 3:45 a.m., he was sitting with Ball and Johnson when he heard a knock on the door. He stated that he turned the lights off and when he opened the door, he saw defendant and Smith. Skipper stated that defendant did not say a word but walked straight into the living room, shot Ball and Johnson, and then shot him.

II. ANALYSIS

A. SUFFICIENCY OF EVIDENCE

Defendant argues that there was insufficient evidence adduced at trial to convict him of the offenses charged. We review this challenge de novo. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). When reviewing the sufficiency of evidence in a criminal case, this Court considers "the evidence in the light most favorable to the prosecutor, resolving all evidentiary conflicts in its favor, 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 Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012) (quotation marks omitted).

"The elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation." *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). Intent and premeditation may be inferred from all facts and circumstance. *People v Cameron*, 291 Mich App 599, 615; 805 NW2d 371 (2011); *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). "Premeditation may be established through 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." *People v Unger*, 278 Mich App 210, 229; 749 NW2d 272 (2008). Further, "[i]dentity is an element of every offense." *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

Defendant initially suggests that the evidence was insufficient because there was no scientific evidence used at trial to convict him, such as fingerprints or DNA. This suggestion is

wholly without merit, as there is no requirement that such scientific evidence be used to support a conviction, and defendant has provided no authority for the proposition.

Defendant also argues that the testimony from the various witnesses was insufficient because the witnesses were not credible. But weighing the credibility of the witnesses is the jury's duty, and we may not interfere with its assessment. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). The witnesses' testimony, if believed, was sufficient to allow the jury to find beyond a reasonable doubt that defendant was the one who committed the charged offenses. At trial, two witnesses testified that defendant entered the halfway house and shot the victims. This was sufficient. See *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000) ("[P]ositive identification by witnesses may be sufficient to support a conviction of a crime.").

Defendant further argues that the identification process was flawed because the manner of identification was unnecessarily and impermissively suggestive. Specifically, defendant points to Skipper's testimony that he became "100% sure" that defendant shot him after he saw him on TV during his arraignment.

There is nothing of record indicating that the photo array was unduly suggestive. At trial, Skipper testified that when he opened the door, defendant and Smith were standing there. He also stated that defendant walked straight into the room and started shooting. He testified that he later identified defendant from a photo array, but admitted that he was not "100% sure" in his identification until he saw him on TV being arraigned. However, he explained that he became 100% sure when he saw him on TV because he was able to see his "whole body" at that time, which he could not do in the photo array. Further, when asked if when he sees defendant "in person" he is "100 percent sure or not" of his identification, Skipper testified, "I'm 100 percent sure." Thus, the trier of fact was presented with Skipper's identification testimony and his acknowledged qualification of same. We are mindful that the credibility of identification testimony is a question for the trier of fact that we do not resolve anew. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Moreover, as already noted, Smith identified defendant as the shooter, and Allen and McGee testified that defendant was armed with a gun when they returned to the halfway house, with McGee seeing defendant emerge from the house with a drawn gun after the shots were fired.

We also note that defendant dedicates many pages in his brief referring to various studies that demonstrate that eyewitness testimony is inherently unreliable. While we will not address the veracity of these assertions, defendant wholly ignores the fact that aside from Skipper's testimony, defendant's *own companions* supplied the key testimony that established all of the elements of first-degree murder. These referenced studies and principles simply are not applicable for when witnesses know the defendant and are participating, in some manner, with him. Simply put, it is beyond absurd to suggest that defendant's friends, who knew what was about to occur, somehow mistakenly misidentified defendant that night.

Defendant also claims that there was insufficient evidence to show premeditation and deliberation. Defendant states that the evidence was insufficient because "from the time the person walked into the house, drew the gun, and started shooting there was no time for premeditation and deliberation because almost everyone says it happened almost instantly."

Premeditation and deliberation require sufficient time to allow the defendant to reconsider his actions, or in other words, sufficient time to "take a second look." *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). Factors relevant to the establishment of premeditation and deliberation include the following: "(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." *Id.* (quotation marks omitted). Circumstantial evidence and reasonable inferences from the evidence can be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

Defendant conveniently ignores the fact that the premeditation and deliberation started well before the actual shooting occurred. First, there was testimony that defendant was involved in, indeed the instigator of, the formulation of a plan to return to the halfway house and rob Johnson. When the plan to return to the halfway house and rob Johnson was being formulated, Chapman, Carpenter, and Allen heard defendant say something to the effect that defendant wanted "to catch a body," and Chapman testified that this phrase means to kill somebody. Forming this plan and acting on it is evidence of premeditation and deliberation. See *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). And the time it took to return to the halfway house was clearly sufficient to "take a second look." As a result, defendant's claim on appeal fails.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that his trial counsel rendered ineffective assistance. Because "defendant did not move in the trial court for a new trial or an evidentiary hearing, this Court's review is limited to mistakes apparent from the record." *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012).

A criminal defendant has the fundamental right to effective assistance of counsel. *United States v Cronic*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984). To establish ineffective assistance of counsel, a defendant must show (1) that counsel's performance fell below the objective standard of reasonableness under the prevailing professional norms and (2) that there is reasonable probability that, but for the counsel's error, the result of the proceeding would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). "In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). An appellate court will not substitute its judgment regarding matters of strategy, nor should it "assess counsel's competence with the benefit of hindsight." *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

Defendant's claim of ineffective assistance is based on two alleged errors. First, defendant argues that defense counsel should have called an eyewitness identification expert to testify about the problems associated with psychological factors involved in the making of identification. However, defendant offers no proof that an expert testimony would have testified favorably if called by the defense. Furthermore, in *People v Kowalski*, 492 Mich 106, 143; 821 NW2d 14 (2012), the Michigan Supreme Court took the view that expert testimony is not required to explain the common human behavior intrinsic to eyewitness identification. As such, "questions of eyewitness identification, fading memories, witnesses' body language, and the like

involve obvious human behavior from which jurors can make 'commonsense credibility determinations.' " *Id.* Moreover, counsel could have reasonably decided that such testimony would have been negatively received as merely stating the obvious fact that "memories and perceptions are sometimes inaccurate." *People v Cooper*, 236 Mich App 643, 658; 601 NW2d 409 (1999). As a result, defendant has failed to show how counsel's decision to not offer an expert fell below an objective level of reasonableness.

In addition, even if defendant could establish that counsel's performance was objectively unreasonable, defendant cannot establish the necessary prejudice. In addition to Skipper's eyewitness account of defendant being the one who did the shooting that night, Smith also testified that he saw defendant do the shootings. Furthermore, McGee testified that after the gunshots rang out, he saw defendant exit the house and tuck a gun into his waist, before rifling through Johnson's pockets and taking his phone and wallet. Smith provided direct evidence of defendant's guilt, and McGee provided strong circumstantial evidence of defendant's guilt. Both Smith and McGee were friends of defendant, and the concerns raised in the studies and psychological processes identified by defendant are not relevant to impeach their accounts. Therefore, assuming counsel should have offered expert testimony related to eyewitness Skipper, defendant cannot establish that the outcome of the trial would have been different had the expert testified because of the eyewitness accounts from defendant's own friends.

Defendant also claims ineffective assistance based on defense counsel's failure to move to suppress Skipper's in-court identification. Defendant did not produce any evidence to show that the photo array shown to Skipper was impermissibly, unduly suggestive. During his testimony, Skipper explained his hesitation regarding the photo array and clearly stated that he was 100% sure defendant was the shooter. Under these circumstances, any motion to preclude or strike Skipper's identification would have been meritless. And defense counsel cannot be faulted for failing to bring a meritless motion. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). And like the other claim of ineffective assistance, defendant cannot show, in any event, how the verdicts would have been any different because of the other eyewitness accounts.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien