

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
February 13, 2018

v

SANQUA DION CUMMINGS,  
  
Defendant-Appellant.

No. 336940  
Kent Circuit Court  
LC No. 16-005919-FC

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Before: MARKEY, P.J., and M. J. KELLY and CAMERON, JJ.

PER CURIAM.

A jury convicted defendant, Sanqua Cummings, of first-degree premeditated murder in violation of MCL 750.316(1)(a), gang membership in violation of MCL 750.411u, felon in possession of a firearm (felon-in-possession) in violation of 750.224f, and possession of a firearm during the commission of a felony (felony-firearm) in violation of MCL 750.227b. Cummings was sentenced as a fourth-offense habitual offender, MCL 769.12, to serve five years' imprisonment for felony-firearm followed by concurrent sentences for his convictions for murder (life without parole), gang membership (23 years to 75 years), and felon-in-possession (23 years to 75 years). We affirm.

**I. BASIC FACTS**

Just after midnight on August 12, 2015, Marquaan Crosby was shot and killed. The prosecution presented evidence that Cummings and three accomplices ambushed Crosby and three others as they were walking near Adams Street and Marshall Avenue in Grand Rapids, Michigan. There was evidence that Cummings and his friends were members of the Bemis street gang and of a sub-group that Cummings named "Trained To Go" (TTG). It also appears that Cummings's group believed that the individuals they ambushed were members of a rival street gang called "900" or "Adams." Several witnesses testified that Cummings and his accomplices planned the shooting because two Adams gang members had shot at Cummings following a verbal altercation on August 11, 2015. There was testimony that Cummings was one of the individuals who fired shots at the victim; however, no one directly identified him as the person who killed the victim.

## II. SUFFICIENCY OF THE EVIDENCE

### A. STANDARD OF REVIEW

Cummings argues that the prosecution presented legally insufficient evidence to convict him of first-degree premeditated murder because he was not identified as the shooter who killed the victim. We review de novo questions of law such as a challenge to the sufficiency of evidence. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). We review the evidence in a light most favorable to the prosecution to determine whether rational jurors could find that the essential elements of each crime were proved beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). Circumstantial evidence and reasonable inferences drawn from such evidence can constitute satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). We will not resolve witness credibility questions or interfere with the jury’s determination of the weight of evidence. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012).

### B. ANALYSIS

Cummings challenges his conviction for first-degree murder. Under MCL 750.316(1)(a) first-degree murder is “[m]urder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.” In *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010), we explained that “[t]he elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation.” In addition, “identity is an element of every offense.” *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

Here, Cummings points out that no one conclusively testified that he was the person who fired the gun that killed the victim. He contends that, without such evidence, his conviction must be vacated. However, “[a] defendant may be vicariously liable for murder on a theory of aiding and abetting.” *Bennett*, 290 Mich App at 472. In order to convict a defendant on an aiding and abetting theory, the prosecution must establish:

- (1) the crime charged was committed by the defendant or some other person;
- (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and
- (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement. [*Id.* (quotation marks and citations omitted).]

The crime Cummings was charged with was committed by someone. The victim was shot twice after multiple individuals fired at him, and he died of his injuries. The evidence at trial established the existence of gang rivalry: the Bemis gang and TTG members prided themselves in their readiness to shoot and kill opponents. There was evidence that Cummings and the people he was with were associated with the Bemis gang and the TTG sub-group. Further, the individuals firing at the victim—Cummings and at least two other members of TTG—traveled to the area where the shooting took place and searched for someone to shoot as retaliation for members of the Adams gang shooting at Cummings the previous day. That constitutes evidence of deliberation and premeditation. See *People v Plummer*, 229 Mich App

293, 300; 581 NW2d 753 (1998) (“To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets or a choice or problem.”). In addition, intent to kill can be inferred from the fact that they fired multiple shots with large caliber weapons and the fact that after the shooting Cummings and his group fled the area and hid or disposed of their weapons. See *People v Henderson*, 306 Mich App 1, 11; 854 NW2d 234 (2014) (stating that intent to kill can be inferred from all the facts in evidence, including the use of a deadly weapon, flight from a scene, and motive). The individuals with Cummings at the time of the shooting admitted at trial that they all intended to shoot to kill and injure Adams gang members. Thus, there is sufficient evidence to establish that someone intentionally killed the victim with premeditation and deliberation. *Bennett*, 290 Mich App at 472. That is sufficient to establish the first element of first-degree murder under an aiding and abetting theory.

Next, there is sufficient evidence that even if Cummings was not the individual who shot and killed the victim, he “performed acts or gave encouragement that assisted the commission of the crime.” *Id.* Before the shooting, Cummings and another individual hid in one location while the other two individuals with Cummings hid in another spot. The person hiding with Cummings testified that he did not shoot, but that he heard gunshots coming from the area he was in, which allows for an inference that Cummings fired a gun. Multiple witnesses testified that after the shooting Cummings stated that he thought he had hit someone. There was also testimony that the bullets in the victim’s body matched the gun that Cummings was known to carry and use to shoot at people. Although there was testimony that Cummings was not the only individual in his group who believed he had hit the victim, that testimony does not negate the evidence that Cummings laid in wait with three others in order to shoot someone. Thus, at the very least, the evidence allows for an inference that Cummings performed acts—i.e. shooting at the victim—that aided in the commission of the crime.

Finally, the third element under an aiding and abetting theory requires that the defendant either “intended the commission of the crime or had knowledge that the principal intended its commission” at the time that he or she gave aid and encouragement. *Id.* Here, there was evidence that Cummings orchestrated the trip to Adams Street so that TTG could retaliate against the Adams gang for shooting at him the previous day. Further, witnesses testified that Cummings fired at the victim, who he believed he successfully hit. That testimony, coupled with evidence that Cummings had a large caliber weapon, allows for an inference that Cummings intended the commission of the crime. Stated differently, the evidence allows for a reasonable inference that Cummings intended to shoot and kill the victim when he opened fire. Finally, the record reflects that after the shooting, Cummings and the others fled the area, hid their guns, and lied about their involvement. Therefore, even assuming *arguendo* that there was insufficient evidence to find that Cummings was the individual who actually killed the victim, when viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to establish that Cummings was guilty of first-degree murder on an aiding and abetting theory.

### III. INEFFECTIVE ASSISTANCE

#### A. STANDARD OF REVIEW

Cummings next argues that his lawyer provided ineffective assistance because he failed to prevent admission of evidence of Cummings’s alleged gang membership. To preserve a claim

of ineffective assistance of counsel, a defendant must move in the trial court for a new trial or a *Ginther*<sup>1</sup> hearing. *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008). In this case, Cummings failed to move in the trial court for a new trial or *Ginther* hearing, so this issue is unpreserved for appeal. Consequently, we review his claim of ineffective assistance for mistakes apparent on the record. *People v Putnam*, 309 Mich App 240, 246, 247; 870 NW2d 593 (2015).

## B. ANALYSIS

Cummings bears the burden of establishing that his lawyer provided ineffective assistance by showing that “(1) counsel’s performance fell below an objective standard of reasonableness and (2) but for counsel’s deficient performance, there is a reasonable probability that the outcome would have been different.” *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012). Cummings must overcome a strong presumption that his lawyer provided effective assistance. *People v Seals*, 285 Mich App 1, 17; 776 NW2d 314 (2009).

In this case, Cummings’s lawyer objected at the preliminary hearing to the prosecution’s motion to bind over Cummings for trial on the gang membership charge. He contended that the evidence presented at the preliminary examination failed to establish the elements of the charge. The court disagreed and bound Cummings over for trial. Following the presentation of the prosecution’s proofs, Cummings’s lawyer moved for a directed verdict on the gang membership charge, again asserting that the prosecution failed to establish the elements of the crime. The trial court denied the motion, reasoning that the prosecution presented strong evidence of the existence of the Bemis gang, its extensive membership, its geographical territory, its member’s use of a unifying identity hand sign, its leadership structure, Cummings’s affiliation with the Bemis gang, Cummings’s formation and leadership of TTG—a subset of the Bemis gang—and the commission of the murder in retaliation against suspected Adams gang members for shooting at him on the afternoon of August 11, 2015. Accordingly, given that Cummings’s lawyer attempted, albeit unsuccessfully, to exclude the evidence that Cummings was involved in a gang, Cummings cannot establish that his lawyer’s performance was deficient for failure to raise the issue.

On appeal, Cummings argues that his lawyer should have been able to successfully exclude the evidence that he was a gang member because there was insufficient evidence to establish that he was a member of the Bemis gang and because there was insufficient evidence to establish that TTG was a gang. The gang membership requirements are set forth in MCL 750.411u, which provides:

(1) If a person who is an associate or a member of a gang commits a felony or attempts to commit a felony and the person’s association or membership in the gang provides the motive, means, or opportunity to commit the felony, the person is guilty of a felony punishable by imprisonment for not more than 20 years. As used in this section:

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<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

(a) “Gang” means an ongoing organization, association, or group of 5 or more people, other than a nonprofit organization, that identifies itself by all of the following:

(i) A unifying mark, manner, protocol, or method of expressing membership, including a common name, sign or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(ii) An established leadership or command structure.

(iii) Defined membership criteria.

(b) “Gang member” or “member of a gang” means a person who belongs to a gang.

Several witnesses testified that Cummings belonged to the Bemis gang. Specifically, a retired Kent County jail administrator, an expert on gangs, testified that the jail flagged Cummings as a Bemis gang member dating back to 2009 when he got booked into the jail on another offense, and several of Cummings’s cohorts testified that Cummings was a member of the Bemis gang and hung out at Martin Luther King Park with other Bemis gang members. They testified that the Bemis gang understood that their territory covered a large area including Bemis Street and the Martin Luther King Park areas. One of Cummings’s cohorts testified that once one became a member of the Bemis gang, one always remained a member, and members were obligated to commit criminal activities for the gang. The retired jail administrator also testified that the Bemis gang had several subsets of smaller gang-related groups. Older members directed younger subordinate members to commit violent acts for them. One of Cummings’s cohorts and a member of TTG admitted that TTG was a subset of the Bemis gang and that all TTG members were associated with the Bemis gang. There was also testimony that the Bemis gang had over 100 members. There was significant evidence that Cummings was a member of the Bemis gang and that the Bemis gang satisfied the definition of a gang set forth in MCL 750.411u. Thus, even if he had made additional efforts to exclude the testimony, such efforts would have been futile given that the record supported admission of the evidence.

Affirmed.

/s/ Jane E. Markey

/s/ Michael J. Kelly

/s/ Thomas C. Cameron