STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 6, 2012
v	No. 297641 Calhoun Circuit Court
PARIS DERON PALMER, Defendant-Appellant.	LC No. 2009-002989-FC

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder, MCL 750.316(1)(a); felony murder, MCL 750.316(1)(b); three counts of possession of a firearm during the commission of a felony, MCL 750.227b; armed robbery, MCL 750.529; and unlawful imprisonment, MCL 750.349b. We affirm.

I. PROSECUTORIAL MISCONDUCT

Defendant argues that he is entitled to a new trial because the prosecutor committed misconduct by arguing facts not in evidence, when he argued during his rebuttal argument that defendant had prior dealings with murder victim Oscar Romano. We disagree.

This Court reviews the prosecutor's comments in their context to determine if defendant was denied a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). In doing so, we recognize that prosecutors are free to argue all reasonable inferences from the evidence and that prosecutors have "wide latitude in arguing the facts and reasonable inferences, and need not confine argument to the blandest possible terms." *Id.* at 282; *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007). A prosecutor may not, however, "make a factual statement to the jury that is not supported by the evidence." *Dobek*, 274 Mich App at 66.

Defendant told Leroy Glenn and Vernon Turman that he wanted to talk to his "friend" immediately before he drove directly to Romano's home. When defendant arrived at Romano's home, he walked directly to the back door. Within 15 minutes of arriving at Romano's home, defendant purchased marijuana from Romano and trusted Romano with money to purchase more marijuana. Reasonable inferences can be drawn from that testimony, specifically that Romano was indeed defendant's friend, defendant had prior dealings with Romano, and defendant knew where he lived. He was comfortable walking to Romano's backdoor and trusting Romano with

money to buy more marijuana. Thus, the prosecutor argued reasonable inferences from facts in evidence, and the prosecutor did not commit misconduct. *Bahoda*, 448 Mich at 282.

II. SUFFICIENCY OF THE EVIDENCE

Next, defendant claims there was insufficient evidence to support his convictions. We disagree. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

A.

Defendant argues that there was insufficient evidence that an armed robbery was committed and that, accordingly, his convictions of armed robbery and felony murder, which relied on the presence of an armed robbery, must be vacated. We disagree.

Felony murder has three elements:

> (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, (3) while committing . . . or assisting in the commission of any of the felonies specifically enumerated in MCL 750.316(1)(b). [*People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009).]

Defendant only challenges the sufficiency of the evidence on this count with regard to the third element. Specifically, defendant was convicted of felony murder for his role in the armed robbery.[1] Hence, defendant's position is that if there was insufficient evidence to support an armed robbery, then his conviction for felony murder would not supported. As a result, we will focus our analysis on whether there was sufficient evidence to support finding that an armed robbery took place.

Armed robbery, MCL 750.529, consists of a larceny by force, while the perpetrator possessed a dangerous weapon. *People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007). Larceny is the trespassory taking and carrying away of the property of another with felonious intent. *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999). Felonious intent is the intent to permanently deprive the victim of his property. *People v Perkins*, 262 Mich App 267, 271-272; 686 NW2d 237 (2004). "[M]inimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

[1] Since armed robbery, MCL 750.529, is a type of "larceny," it is one of the enumerated crimes ("larceny of any kind") under MCL 750.316(1)(b).

Although defendant did not personally take a cellular telephone, his conviction for armed robbery was based on an aiding and abetting theory. Aiding and abetting has three elements: (1) the defendant or someone else committed the crime; (2) the defendant performed acts, encouraged, or assisted in 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." *People v Plunkett*, 485 Mich 50, 61; 780 NW2d 280 (2010) (internal quotations omitted).

When viewed in a light most favorable to the prosecution, sufficient evidence was introduced to allow a rational jury to conclude beyond a reasonable doubt that defendant aided in permanently depriving Dimas of his cellular telephone. First, the crime of armed robbery was committed. Defendant, Glenn, and Turman held Romano, Jawara Triggs, Lisa Clark, and Frederick Dimas at gunpoint. Defendant told Turman to check Dimas's pocket for a cellular telephone. Defendant asked Dimas whether he had a cellular telephone, and Dimas replied that he did not. Turman nevertheless reached into Dimas's pocket and took his white cellular telephone. Dimas has never recovered his cellular telephone. In fact, Glenn testified that he later saw a white cellular telephone in defendant's car after they left Romano's home. Minimal circumstantial evidence will suffice to prove intent. *Kanaan*, 278 Mich App at 622. Taking a cellular telephone by force and keeping it permanently supports a reasonable inference that Turman intended to permanently deprive Dimas of his cellular telephone. *Cain*, 238 Mich App at 120. Second, defendant encouraged or assisted in the commission of the crime and intended its commission. Defendant asked Turman to check Dimas's pocket for a cellular telephone. This shows he encouraged the crime and supports a reasonable inference that he intended to permanently deprive Dimas of his cellular telephone. *Id.* There was sufficient evidence to prove beyond a reasonable doubt that Turman committed an armed robbery and that defendant aided in that armed robbery. *Wolfe*, 440 Mich at 515. Sufficient evidence, thus, supported defendant's armed robbery conviction and, consequently, his felony murder conviction.

Defendant contends that there was insufficient evidence to establish that he had the requisite intent to support his conviction for armed robbery, even as an aider or abettor. The evidence was that *after* Glenn took Romano's and Triggs's cellular telephones, one of the codefendants said to "smash" the telephones. Glenn subsequently smashed Romano's and Triggs's cellular telephones. Defendant argues that this shows the only intent was to destroy the cell phones, and that there was insufficient evidence of an intention to steal them. However, the felonious intent must be present *at the time of the taking*. *Cain*, 238 Mich App at 118-119. The statement or command to "smash" the telephones was (1) not attributed to defendant, and (2) was made *after* the phones were taken. Thus, we hold that a jury could have reasonably inferred that defendant possessed the requisite felonious intent at the time of the taking. As a result, we need not address whether an intent to destroy property satisfies the intent to steal that property for purposes of a larceny.

B.

Defendant next argues that there was insufficient evidence that defendant premeditated Romano's killing and that accordingly, his first-degree murder conviction should be vacated. Again, we disagree. 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) evidence of 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.* "Circumstantial evidence and reasonable inferences from the evidence can be sufficient to prove the elements." *Id.*

When viewed in a light most favorable to the prosecution, sufficient evidence was introduced to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant premeditated Romano's killing. First, there was evidence that defendant said to "kill them all." Second, defendant pointed his gun at Romano's head, walked him to the end of the driveway, and shot him from close range. The time defendant walked Romano to the end of the driveway constituted a sufficient time for defendant to have taken "a second look" before shooting. Also, shooting a victim from close range and in the head supports a finding that defendant premeditated the killing. *People v Anderson*, 209 Mich App 527, 537-538; 531 NW2d 780 (1995). Finally, defendant ran from the scene of the killing, fled from the police in a car traveling at over 100 miles per hour, threw the murder weapon out of the window of the car, and ran from the police after the car wrecked and flipped over. Fleeing and attempting to conceal involvement in the crime supports a finding that defendant premeditated the killing. *People v Gonzalez*, 178 Mich App 526, 533-534; 444 NW2d 228 (1989). Therefore, there was sufficient evidence to support defendant's first-degree murder conviction.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray