

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH LAMAR HENDERSON,

Defendant-Appellant.

UNPUBLISHED

March 26, 2013

No. 309460

Wayne Circuit Court

LC No. 11-000769-FC

Before: BORRELLO, P.J., and M.J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b. He was sentenced to life in prison without parole for the first-degree premeditated murder conviction, and two years’ imprisonment for the felony-firearm conviction. For the reasons set forth in this opinion, we affirm.

This case arises from a homicide in Detroit on July 21, 2010. Defendant argues that while there may have been sufficient evidence to prove second-degree murder, there was insufficient evidence for the jury to establish the first-degree murder elements of premeditation and deliberation. Defendant argues that the prosecutor failed to produce any evidence that defendant intended to kill the victim of the shooting or anyone else in the group that defendant fired into.

In criminal cases, due process requires that the evidence must have shown the defendant’s guilt beyond a reasonable doubt. *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). This Court examines the lower court record de novo, in the light most favorable to the prosecution, to determine whether a rational trier of fact could have found that the evidence proved each element of the crime beyond a reasonable doubt. *Id.* The weight of evidence, the credibility of witnesses, and what inferences can be fairly drawn from the evidence are to be decided by the jury. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012); *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011).

“The elements of premeditated murder are (1) an intentional killing of a human being (2) with premeditation and deliberation.” MCL 750.316(1)(a); *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009). First-degree premeditated murder is a specific intent crime that requires proof that the defendant had an intent to kill. *People v Herndon*, 246 Mich App

371, 386; 633 NW2d 376 (2001). Owing to the difficulty of proving a state of mind, specific intent to kill may be inferred from any facts in evidence, including “minimal circumstantial evidence.” *People v Unger*, 278 Mich App 210, 229; 749 NW2d 272 (2008). Among other factors, the jury may take into account the killing itself, the “temper or disposition of mind with which” the killing was carried out, “whether the instrument and means used were naturally adapted to produce death,” what the defendant said before, during, and after the killing, and “all other circumstances calculated to throw light upon the intention” with which the killing was committed. *People v Taylor*, 422 Mich 554, 568; 375 NW2d 1 (1985). “Under the doctrine of transferred intent, where A aims at B, intending to kill him, but misses and hits C, killing her, A is held guilty of the murder of C.” *People v Plummer*, 229 Mich App 293, 304 n 2; 581 NW2d 753 (1998).

In this case, the prosecutor presented numerous witnesses who testified, in varying forms to the fact that defendant appeared after being summoned to a neighborhood brawl involving numerous people near the intersection of Garfield Avenue and Leroy Avenue in Detroit, Michigan. Although the accounts of the witnesses varied as to the particulars of what defendant stated after exiting his car, several witnesses testified that they heard defendant state one of the following: “Who shootin’ at my people?”, or, “[W]ho shootin’ at my cousins?”, or, “Shoot who?” The majority of witnesses testified that these statements were made by defendant while he was armed with, and firing a handgun. Additionally, witnesses testified that defendant appeared at the scene with the intent to murder the person who was shooting at Cordaryl Massey, his cousin. Cornelius Barnes said that Massey told defendant, “[S]hoot, shoot,” and Massey testified that he, Barnes, and others pointed down the street, which a reasonable jury could have read as encouragement to shoot that way. Each of the seven witnesses who saw defendant shoot testified that he held the gun straight out, pointing it directly into the scattering crowd on Leroy Avenue. Reviewing the evidence in the light most favorable to the prosecutor, our review of the record leads us to conclude that the evidence in this case would lead a rational juror to conclude beyond a reasonable doubt that at the time he was firing his weapon, defendant intended to kill at least one person in the crowd. When viewed in its totality, the evidence also negates the possibility that defendant fired his weapon only to intimidate whoever shot at Massey. We therefore conclude that defendant possessed the necessary mens rea to commit first-degree murder at the time he arrived at the scene of the neighborhood brawl.

“The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing.” *Unger*, 278 Mich App at 229. “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.” *Id.* “Some time span between the initial homicidal intent and the ultimate killing is necessary to establish premeditation and deliberation. However, the time required need only be long enough to allow the defendant to take a second look.” *Id.* “Circumstantial evidence and reasonable inferences drawn from the evidence may constitute satisfactory proof of premeditation and deliberation.” *Id.*

The evidence overwhelmingly suggests that defendant had an opportunity to “take a second look.” *Unger*, 278 Mich App at 229. At least seven witnesses saw defendant drive westbound on Glenfield Avenue with a female passenger, stop in the middle of the intersection of Leroy Avenue, get out of the car, and ask who was shooting at Massey. These pre-killing

actions, the second factor of the *Unger* test, 278 Mich App at 229, support a rational inference of the premeditation and deliberation element.

Three witnesses testified that after defendant exited the green car, he asked either, “Who shootin’ at my people?”, or, “[W]ho shootin’ at my cousins?”, or, “Shoot who?”, while armed with a handgun. Barnes said that Massey told defendant, “[S]hoot, shoot,” and Massey testified that he, Barnes, and others pointed down the street, which a reasonable jury could have read as encouragement to shoot that way. Seven witnesses saw defendant point a handgun south and fire a handgun into a crowd that was dispersing in the direction Massey, Barnes, and others pointed. An eighth witness, with a sense of self-preservation unique to this case, saw defendant’s car pull into and stop in the intersection, but almost immediately fled, sensing that “it was about to be problems,” and did not see defendant fire the gun. Defendant’s question to the bystanders, and his reaction to their answer—pointing the gun in the direction he was told to—support a circumstantial finding of premeditation and deliberation based on the first (defendant thought he was shooting at his cousin’s attacker) and third *Unger* factors.

Seven witnesses testified that they saw defendant run after the shooting to catch up with the woman, who had moved to the driver’s seat, and drive away. This post-killing behavior, contemplated by the fourth factor of the *Unger* test, speaks strongly to the premeditation and deliberation element.

A rational jury could have concluded that defendant had formulated a plan, beginning with his telling Massey, “I’m on my way,” to retaliate against the person or persons Massey told him had been shooting at him, and that the plan included a getaway vehicle and driver. Testimony that defendant said, “East Warren, bitch,” after firing, further indicated that the shooting was retaliatory and deliberate. And voluminous evidence suggestive of a large feud, culminating in a street fight of “two lawns full of people” having occurred the day before the shooting and the day of the shooting, supported a rational jury’s inference that defendant’s actions constituted his willful contribution to the fight. We therefore conclude that defendant is not entitled to relief.

Affirmed.

/s/ Stephen L. Borrello

/s/ Michael J. Kelly

/s/ Mark T. Boonstra