

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

STATE OF WASHINGTON,

No. 40249-1-II

Respondent,

v.

JOHN ARTHUR RICHARDSON, III,

UNPUBLISHED OPINION

Appellant.

Hunt, P.J. — John Arthur Richardson, III, appeals his first degree murder jury conviction.

He argues that the evidence of premeditation is insufficient to support the verdict. We affirm.

### FACTS

#### I. Murder

On the afternoon of March 27, 2008, Eric Nevils left home with \$10,000, intending to buy drugs for resale. His friends Ernesto Watson and Joey Torres drove with him to South Tacoma to meet with Albert Toomata, their anticipated drug supplier. Nevils got into Toomata's car, Toomata picked up John Richardson,<sup>1</sup> and the three drove to an apartment complex in South Tacoma. Richardson left the car for 10 to 15 minutes. When he returned, he said they needed to go to Point Defiance. Toomata took Nevils to where Nevils had told Watson and Torres to wait for him. Nevils went over to the car in which Watson and Torres had been riding, covertly

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<sup>1</sup> In his testimony at trial, Toomata referred to Richardson as "June."

handed them \$6,000, and told them, “If they are going to get me, they are not going to get me for everything.” 4 Verbatim Report of Proceedings (VRP) at 240. Nevils returned to Toomata’s car. Toomata took Nevils back to where Richardson was waiting. Nevils got into Richardson’s car and left with him at sunset. Toomata, Watson, and Torres did not see Nevils alive again.

At around 8:30 PM that same day, several people living in the North Park Drive area of Tacoma heard gunshots in two volleys. Several people saw or heard a car leaving the area shortly thereafter. One man went outside, looked around, heard groaning, and found Nevils in a bushy area off the road. He, and other neighbors, called 911. By the time medics arrived, Nevils was dead. One neighbor told police that the car he had seen was an older brown car with a white top.

Shortly after dispatch advised them of the shooting and provided a description of the suspect car, two patrol officers saw a car matching that description at the Tacoma intersection of Sprague and South 19th Streets. They activated their lights and pursued the car at about 70 miles per hour. When the car crashed into a dirt bank, the driver, Richardson, fled; officers quickly apprehended him. Some of the North Park Drive residents brought to the scene identified Richardson’s car as the one that had left their area after the shooting of Nevils.

## II. Confessions

Richardson was arrested. During a post-arrest interview at police headquarters, Richardson admitted having been present along with an unnamed “homeboy” during the murder. 9 VRP at 1070. But Richardson was nonresponsive about whether he himself had done the shooting. He indicated that nothing had been planned, but his “homeboy” and Nevils had gotten into a fight. 9 VRP at 1073. After the interview, a detective standing outside the interview room making transportation arrangements overheard Richardson talking to himself about his daughter;

Richardson began to cry and said, “I should have never shot. I should have never shot that gun.”

10 VRP at 1192.

While incarcerated in the Pierce County jail, Richardson became friendly with inmate Larry Kleven, who had been convicted of a first degree murder committed in 1993 and sentenced to 416 months in prison.<sup>2</sup> Seeking legal advice, Richardson began talking to Kleven about Nevils’ murder. They sometimes communicated by writing notes that jail porters delivered.<sup>3</sup> Kleven wrote down questions, which Richardson then answered.

One of Kleven’s questions was how Nevils could have been shot eight times if the shooter was using a revolver holding only five or six bullets; Richardson replied, “Because I had two gun revolver.” 8 VRP at 828. Richardson also told Kleven that (1) he (Richardson) intended to kill Nevils; (2) he (Richardson) was a member of a “wrecking crew,” a group that would steal back the drugs that Nevils had just sold, 8 VRP at 840; (3) Nevils was going to be a witness against his (Nevils’) uncle in a pending case; (4) Nevils’ uncle had hired this “[wrecking] crew” to kill Nevils to keep him from testifying, 8 VRP at 846; and (5) Richardson and the leader of the crew, Jimmy Wamsley,<sup>4</sup> were the ones who had shot and killed Nevils.

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<sup>2</sup> Kleven was in the jail, instead of prison, because he had successfully challenged the calculation of his offender score and was awaiting resentencing.

<sup>3</sup> Kleven sent the notes to his attorney. The State produced these notes at trial.

<sup>4</sup> Jimmy Wamsley was a friend, or at least an acquaintance, of Richardson. At trial, Kleven referred to Wamsley as “Woomsley.”

### III. Procedure

The State charged Richardson with first degree murder, while armed with a firearm, and second degree unlawful firearm possession. At trial, the State produced a copy of a photograph from a cell phone found in Richardson's car. The photo showed Richardson holding two guns; the date and time stamp on the photo were March 27, 2008, around 1:00 PM. In addition to witness testimony about the facts set forth above, a forensic scientist who had examined available ballistic evidence testified that two different guns had been used in the shooting of Nevils.

The jury convicted Richardson of first degree murder. Several days later, the trial court found Richardson guilty of second degree unlawful possession of a firearm. Richardson appeals only his first degree murder conviction.

### ANALYSIS

Richardson argues that the evidence is insufficient to show premeditation, a necessary element of first degree murder. We disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008) (citing *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980)). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Turner*, 103 Wn. App. 515, 520, 13 P.3d 234 (2000) (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). We consider circumstantial evidence as reliable as direct evidence. *Turner*, 103 Wn. App. at 520 (citing *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). And we do not review credibility issues, which are the sole prerogative of the trier of

fact. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004) (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)).

Premeditation is the “deliberate formation of and reflection upon the intent to take a human life.” *State v. Gregory*, 158 Wn.2d 759, 817, 147 P.3d 1201 (2006) (quoting *State v. Hoffman*, 116 Wn.2d 51, 82, 804 P.2d 577 (1991)); *State v. Robtoy*, 98 Wn.2d 30, 43, 653 P.2d 284 (1982) (citing *State v. Shirley*, 60 Wn.2d 277, 278, 373 P.2d 777 (1962)). It is “the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.” *State v. Bingham*, 105 Wn.2d 820, 823, 719 P.2d 109 (1986) (quoting *State v. Brooks*, 97 Wn.2d 873, 876, 651 P.2d 217 (1982)); *State v. Burkins*, 94 Wn. App. 677, 686, 973 P.2d 15 (1999) (quoting *State v. Pirtle*, 127 Wn.2d 628, 644, 904 P.2d 245 (1995)). The planned presence of a weapon used to facilitate a killing is adequate evidence to allow the issue of premeditation to go to the jury. *State v. Massey*, 60 Wn. App. 131, 145, 803 P.2d 340 (1990) (citing *Bingham*, 105 Wn.2d at 827). Premeditation can also be indicated by the choice of an isolated area or area where there is little traffic. *See State v. Gentry*, 125 Wn.2d 570, 599, 888 P.2d 1105 (1995); *State v. Giffing*, 45 Wn. App. 369, 375, 725 P.2d 445 (1986) (citing *State v. Lanning*, 5 Wn. App. 426, 438, 487 P.2d 785 (1971)).

Richardson murdered Nevils in a heavily wooded area, at the end of a street that had very little traffic. Richardson went to this location for the proposed drug transaction; he, or an accomplice, brought two guns to the site. As Richardson later told Kleven, Nevils’ uncle had paid Richardson and Wamsley to kill Nevils, a clear indication that Nevils’ murder was planned

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and deliberate.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Hunt, P.J.

We concur:

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Quinn-Brintnall, J.

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Johanson, J.