

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EMANUEL MAURICE PHILLIPS,

Defendant-Appellant.

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UNPUBLISHED

May 10, 1996

No. 171201

LC No. 93-0679-FC

Before: Doctoroff, C.J., and Hood and Gribbs, JJ.

PER CURIAM.

A jury convicted defendant of voluntary manslaughter, MCL 750.329; MSA 28.561, and felony firearm, MCL 750.227b; MSA 28.424(b). After defendant pleaded guilty to being a second offender, MCL 769.10; MSA 28.1082, the trial court sentenced him to eight to twenty-two and one half years of imprisonment for the manslaughter conviction and two years of imprisonment for the felony-firearm conviction, with the sentences to be served consecutively. Defendant appeals as of right. We affirm.

The incident arose out of a dispute between defendant and the victim, Denterri Horton. On Friday, May 21, defendant got into a fist fight with Horton at a nightclub. Defendant's brother, a bouncer at the nightclub, helped to break up the fight. According to defendant, Horton followed him when he left the club, and fired several shots through the front window of a house where defendant was staying. Defendant testified that, the next morning, while at work, he heard that Horton intended to wait for him at his house. Defendant stated that he saw Horton repeatedly drive past the car wash where defendant worked. When he finished his work shift, defendant obtained a loaded gun with twelve additional cartridges.

On Saturday night, May 22, defendant returned to the nightclub where he had fought with Horton on the previous night. Defendant left his gun in his car. When Horton arrived at the club, he began to argue with the defendant's brother about the shooting the previous night. At this point, defendant was in the club. Sensing a confrontation, Horton's friends came over to stand beside him.

Defendant's brother testified that, at one point during the argument, Horton reached behind his back. When defendant's brother asked Horton if he had a gun, Horton responded that he did not need a gun because he had his hands. Defendant's brother claimed that Horton reached behind his back again. Upon hearing that his brother was arguing with Horton outside, defendant left the club by a side door to retrieve his gun. Defendant alleged that, upon seeing Horton reach behind his back a second time, he fired at Horton because he believed that Horton was about to shoot his brother. Horton's friends testified that he never reached behind his back.

After initially denying involvement in the shooting, defendant confessed to police that he had shot Horton because he believed Horton was about to injure his brother. The police recovered defendant's gun under a rock near the nightclub. All six cartridges in the gun had been used. The police found another handgun hidden under the seat of defendant's car.

Defendant was charged with first-degree murder. At the close of the prosecutor's evidence, defendant moved for a directed verdict, arguing that there was insufficient evidence to support this charge because no evidence of premeditation or deliberation existed. Defendant's only claim on appeal is that the trial court erred when it denied his motion for a directed verdict.

When reviewing a denial of a motion for a directed verdict, this Court views the evidence in a light most favorable to the prosecution to determine whether the evidence was sufficient to permit a rational factfinder to find the essential elements of the crime proven beyond a reasonable doubt. *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995). In order to convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. The elements of premeditation and deliberation may be inferred from the circumstances of the killing. Premeditation may be established through evidence of the following factors: (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 Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

An antagonistic relationship existed between defendant and Horton. They had a fist fight the night before the murder. Defendant stated that he was expecting trouble at the night club. Prior to the killing, defendant obtained a loaded gun and twelve additional cartridges. On the night of the murder, defendant was in the night club when he heard that Horton was outside arguing with his brother. Defendant went to his car to get his gun and then went to the site of the conflict. Several of Horton's friends testified that Horton's hands were raised above his head when defendant shot him. Another witness testified that, even after defendant shot Horton in the face and Horton fell to the ground, defendant continued to shoot him several more times. After the killing, defendant initially told police that he was not involved. Viewing this evidence in a light most favorable to the prosecution, we find that there was sufficient evidence to charge defendant with first-degree murder.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Roman S. Gibbs