STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO CHAVEZ VINSON,

Defendant-Appellant.

UNPUBLISHED
September 6, 1996

No. 183451
LC No. 94-006285

Before: Corrigan, P.J., and Jansen, and M. Warshawsky,* JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The court sentenced defendant to consecutive terms of imprisonment of eight to twenty-five years on the murder conviction and two years on the felony firearm conviction. We affirm.

I. Underlying Facts

This case arose from events on May 22, 1994 that ultimately led to the death of Cleveland Jackson. Defendant shot and killed Jackson, a 16-year-old youth, after a gang altercation in a party store parking lot. The altercation involved gang rivalry between the Latin Counts, who considered the parking lot their "territory," and a rival gang, the Worldwide Gangsters (which was part of the Folk Nation gang, or "Folks").

On the evening of May 22, 1994, six men, including the victim, were riding in a van. At least one of the men in the van was, or had been, associated with the Folks gang. The van pulled into the parking lot of the "V West Party Store" in Detroit where about fifty people were congregated. Some people were wearing the colors of the Latin Counts. The men from the van mingled with the large group. Several men from the van then went into the party store. While inside, they heard gunfire. When they returned to the parking lot, they found Jackson lying on the ground, wounded. Jackson died as a result of three gunshot wounds, one to the forehead, one to the abdomen, and one to the arm. Police recovered two slugs from Jackson's body. Both slugs had been fired from the same gun.

* Circuit judge, sitting on the Court of Appeals by assignment.

As the gangs mingled in the parking lot, the tension mounted. At one point, some of the people in the parking lot shouted "Almighty Counts" and occupants of the van returned shouts of "Folk Love" or "Folks Up." Witnesses described these phrases as "battle cries" that gangs yell before a fight. At least four shots were fired shortly thereafter. Defendant, a seventeen-year-old member of the Latin Counts, admitted firing four shots at Jackson, but argued that he shot in self-defense. He claimed that once he heard "Folks Love," and sounds from the van indicating weapons being loaded, he believed the occupants of the van would shoot him. He claimed that he shot first to avoid being killed. The occupants of the van denied having any guns. Defendant admitted he never saw the victim with a gun.

II. Admission of Statement

Defendant first argues that the court should have suppressed his statement to police because it was involuntary. He claims that the trial court improperly limited defendant's and his expert's testimony on the voluntariness issue. We disagree. A trial court enjoys wide powers of discretion in discharging its duty to control proceedings. MCL 768.29; MSA 28.1052; *People v Burgess*, 153 Mich App 715, 719; 396 NW2d 814 (1986). The trial court did not limit defendant's testimony at the voluntariness hearing. The court did not make a ruling restricting defense counsel's questioning, but rather politely asked defense counsel to stick to the issues. Furthermore, the court did not rule that defendant was not entitled to a Walker hearing because he denied making the statement, as defendant now argues. In fact, the court made extensive findings of fact in determining that defendant was advised of his rights pursuant to *Miranda* and that defendant understood those rights and voluntarily waived them. Similarly, the trial court did not limit the testimony of defendant's expert witness; rather, the court found that the expert testimony was not helpful because it was based on defendant's mere claim that he did not understand his rights, and not on the expert's observations. Therefore, the court did not abuse its discretion.

III. Sufficiency of the Evidence

Defendant Vinson next argues that he should not have been charged with first-degree murder because the prosecution did not present sufficient evidence on the issue of premeditation and deliberation to bind him over for trial or to submit the issue to the jury. We disagree.

The jury convicted defendant of second-degree murder. If the evidence was insufficient on the element of premeditation, then prejudice is presumed and defendant's conviction must be reversed, even though defendant was acquitted of first-degree murder. *People v Vail*, 393 Mich 460, 464; 227 NW2d 535 (1975). Because sufficient evidence existed both to bind defendant over on first-degree murder and to submit the issue to the jury, however, defendant is not entitled to relief.

The premeditation and deliberation element of first-degree murder requires a showing that the defendant had an opportunity for a second look; a chance to measure and evaluate the choice before it was made. *People v Coddington*, 188 Mich App 584, 599-600; 470 NW2d 478 (1991). The time for such a "second look" escapes precise determination. Evidence about the previous relationship between the defendant and the victim, the defendant's actions before and after the crime, and the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted, support a finding of premeditation and deliberation. *Id.* That a killing occurred in an unplanned

confrontation does not preclude a finding of premeditation and deliberation. *People v Gonzalez*, 178 Mich App 526, 532-534; 444 NW2d 228 (1989).

A bindover on first-degree murder requires proof of probable cause to believe that the crime has been committed, including evidence of each element of the crime charged or evidence from which the elements may be inferred. *People v Cotton*, 191 Mich App 377, 383-384; 478 NW2d 681 (1991). When the evidence conflicts or raises a reasonable doubt concerning guilt, the defendant should be bound over because these questions should be submitted to the trier of fact. In reviewing a magistrate's decision to bind over a defendant for trial, the circuit court may not substitute its judgment for the magistrate's, but may reverse only if it appears on the record that the magistrate committed an abuse of discretion. *Id.*

The prosecutor presented sufficient evidence at the preliminary examination on the issue of premeditation and deliberation to justify the bindover decision. Defendant's statement established that a period of time elapsed between the shouts from the rival gang members and the time when defendant believed that the rival gang would shoot him. Defendant initiated shooting, despite the absence of other weapons. Finally, the parties stipulated that the gunshots that struck the victim entered from the front of his body and traveled toward the back. Given defendant's history with the rival gang and his admission that he paused between the gang members' battle cries and the shooting, the magistrate could have determined that sufficient time elapsed for an opportunity for a "second look." Thus, the question of defendant's state of mind was properly for the trier of fact. The trial court did not err in denying defendant's motion to quash the information.

IV. Motion for Directed Verdict

We review a defendant's motion for a directed verdict by taking the evidence presented at trial in the light most favorable to the prosecution. *People v Wolfe*, 440 Mich 508, 516 n 6; 489 NW2d 748 (1992). If that evidence would enable a rational trier of fact to conclude that the essential elements of the offense were proven beyond a reasonable doubt, then the trial court properly denied defendant's directed verdict motion. *Id.*

As noted *supra*, defendant's statement was properly admitted. Defendant's statement provided sufficient evidence to warrant submission of the issue of premeditation and deliberation to the jury. The trial court did not err in denying defendant's motion for directed verdict.

Affirmed.

/s/ Maura D. Corrigan
/s/ Kathleen Jansen
/s/ Meyer Warshawsky