STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW JEFFERSON, JR.,

Defendant-Appellant.

UNPUBLISHED
November 1, 1996

No. 185901
LC No. 94-013659

Before: Saad, P.J., and Corrigan and R.A. Benson,* JJ.

PER CURIAM.

Defendant was charged with murder in the first degree, MCL 750.316: MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and appeals from his bench trial convictions of murder in the second degree, MCL 750.317; MSA. 28.549, and felony-firearm. Finding no error, we affirm.

Defendant first argues that, at the preliminary examination, the district court erroneously relied upon a statement made by defendant, that was later suppressed at a *Walker*[1] hearing, without which there was insufficient evidence of premeditation to bind defendant over on the first-degree murder charge. We disagree.

Evidence of premeditation and deliberation necessary to sustain a conviction of murder in the first degree may be inferred from facts and circumstances in evidence. *People v Gonzalez*, 178 Mich App 526, 533; 444 NW2d 228 (1989). The length of time necessary to premeditate and deliberate is not controlling, but there must be sufficient time for defendant to take a "second look." *People v Furman*, 158 Mich App 302, 308; 404 NW2d 246 (1987). Here, evidence showed that defendant first placed a handgun to Thomas' head and then returned it to his side before he fired the gun. Clearly then, some time elapsed between that moment that the weapon was initially placed to Thomas' head and the moment when it was discharged. During this time, defendant had the opportunity to take a "second" look. Accordingly, even absent inclusion of defendant's statement to Officer Terry, the prosecutor introduced some evidence from which premeditation and deliberation may be inferred.

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

Therefore, viewing the matter as a whole, it cannot be said that the district court abused its discretion in binding defendant over on the charge of murder in the first degree. *People v Flowers*, 191 Mich App 169, 174; 477 NW2d 473 (1991).

Defendant next contends that the trial court erred in refusing to grant his motion for a directed verdict of acquittal. We disagree. In reviewing a trial court's decision to grant or delay a motion for a directed verdict, we view the evidence presented, at the time the motion was made in a light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of premeditation and deliberation. *Jolly*, *supra*, 442 Mich 466. Here, defendant confronted Thomas and they engaged in a heated discussion. In the course of the confrontation, defendant placed a gun to Thomas' head, then dropped the gun to the area of his waist and ultimately fired the gun once into Thomas' head and approximately four times into his chest. Thomas was unarmed at the time of the shooting and according to witnesses, made no threatening movement toward defendant. Viewing this evidence in a light most favorable to the prosecution and drawing reasonable inferences therefrom, a rational trier of fact could find that premeditation and deliberation had been established. Therefore, the trial court did not err in denying defendant's motion for a directed of acquittal.

Defendant also asserts that the trial court's failure to grant defendant's motion for a directed verdict may have deprived him of a compromise verdict. However, the power of compromise in reaching a verdict is limited to juries. A trial court, sitting as trier of fact, may not reach compromise verdicts. *Wayne County Prosecutor v Recorder's Court Judge*, 177 Mich App 762, 764-765; 442 NW2d 771 (1989). Therefore, defendant's argument is without merit.

Defendant finally claims that the trial court erred in failing to consider the lesser included offense of voluntary manslaughter. We disagree. Findings of fact by the trial court, sitting as trier of fact, may not be set aside unless clearly erroneous. MCR 2.613(C). The factfinder must address those theories argued by defendant which were supported by the facts in evidence. *People v Maghzal*, 170 Mich App 340, 347; 427 NW2d 552 (1988). We must consider whether the evidence presented at trial would support a conviction of voluntary manslaughter. The elements of the crime of voluntary manslaughter are: (1) defendant killed in the heat of passion, (2) that passion was caused by adequate provocation, and (3) enough time had not elapsed between the provocation and the killing to permit a reasonable person to control his passions. *People v Pouncey*, 437 Mich 382, 388; 471 NW2d 346 (1991). The provocation must be such that it would cause a reasonable person to lose control. *Pouncey*, *supra*, 437 Mich at 389.

Here provocation was not admitted so as to mandate a consideration of the crime of voluntary manslaughter. Words alone are insufficient to provoke a reasonable person into a heat of passion. See *People v Eagen*, 136 Mich App 524, 527; 371 NW2d 710 (1984). While defendant testified that he shot Thomas in self-defense, contradictory evidence indicated that Thomas was not in possession of a

weapon and that Thomas made no threatening movement toward defendant at the time of the confrontation. Questions regarding the credibility of witnesses and the weight given to evidence are matters uniquely within the province of the trier of fact. *People v Palmer*, 392 Mich 370, 376; 220 NW2d 393 (1974). In its findings of fact and conclusions of law, the trial court stated: "Now given the fact that no one saw a brick or weapon of any kind in Mr. Thomas's hand or anywhere at the crime scene the court does not at all believe defendant acted in self defense . . ." There is no additional evidence in the record to support a finding that defendant killed in the heat of passion caused by adequate provocation. Therefore, the trial court was not required to address the crime of voluntary manslaughter.

Affirmed.

/s/ Henry William Saad
/s/ Maura D. Corrigan
/s/ Robert A. Benson

[1] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).