

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL C. WARINNER,

Defendant-Appellant.

UNPUBLISHED

April 15, 1997

No. 193327

Recorder's Court

LC No. 95-002983

Before: Holbrook, Jr., P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to life imprisonment for the first-degree murder conviction and to a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

This case involves the shooting death of Russell Harmon. Harmon was killed by a single gunshot to his right eye from a .45 caliber weapon fired at point blank range.

Defendant first argues that the trial court abused its discretion in refusing to admit evidence of Harmon's assaultive behavior with another man the day before the killing, and in refusing to admit tracking-dog evidence.

The trial court refused to admit evidence of Harmon's altercation with another man the day before the shooting on the basis that the evidence was irrelevant. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; *People v Brooks*, 453 Mich 511, 517; 557 NW2d 106 (1996). Such evidence is generally admissible. MRE 402; *Id.* Because the evidence was of consequence to a fact in issue in that it went to the issue of whether other people had a motive to kill Harmon, and because the evidence made a fact of consequence less probable in that it was potentially exculpatory to defendant, we conclude that the evidence was relevant. *Id.* at 518. Therefore, the trial court abused its discretion in refusing to admit this evidence. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). However, because the prosecutor did not

present evidence to rebut defendant's theory that another person perpetrated the crime, and because the record is replete with testimony to support defendant's conviction, we conclude that the error was harmless. Cf. *Brooks*, *supra* at 520. In addition, because defendant did not show that the tracking dog was placed on the path defendant allegedly took from the scene to another location, the trial court properly denied the admission of this evidence on the basis that a sufficient foundation was not laid. *People v Laidlow*, 169 Mich App 84, 93; 425 NW2d 738 (1988); *People v Harper*, 43 Mich App 500, 508; 204 NW2d 263 (1972).

Defendant next argues that insufficient evidence was presented to support his conviction for first-degree premeditated murder. We disagree.

In viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the elements of premeditation and deliberation were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The testimony indicated that defendant's prior relationship with Harmon was one of great animosity where defendant was upset that Harmon had not returned defendant's darts. The testimony also indicated that defendant admitted to several people that he wanted to kill Harmon, and that he took steps to plan the killing such as buying ammunition and various items to disguise himself. Further, testimony regarding the circumstances of the killing itself indicated that defendant laid in wait for Harmon and shot him point blank in the eye. Finally, testimony regarding defendant's actions after the killing indicated that he told the police two different versions of his whereabouts on the night in question, that he demanded to see an attorney when the police were searching his home, and that he admitted to being at the scene and fled after the shooting. Given these facts, we conclude that sufficient evidence was produced to support defendant's conviction for first-degree premeditated murder. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald

/s/ Michael R. Smolenski