

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIYKETIS DORNICO MOSS,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 184399

Ingham Circuit Court

LC No. 94-067675-FC

Before: Michael J. Kelly, P.J., and Wahls and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions and sentences for second-degree murder, MCL 750.317; MSA 28.549, two counts of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to three concurrent prison terms of 65 to 100 years in addition to a consecutive two-year term for the felony-firearm conviction. We affirm.

The charges against defendant arose out of an incident in which defendant allegedly fired a .44 magnum pistol repeatedly into the front yard of a house where two families were gathered. Two other individuals were involved in the shooting, which apparently was the culmination of a feud between one of the participants and a resident of the house. Numerous witnesses saw the person on the back of a motorcycle, identified by the witnesses as defendant, shoot a large gun several times into the yard. Stephen Thomas, age five, died of his gunshot wounds. Christopher Thomas, age three, and William Jamieson were seriously wounded.

Defendant argues that the trial court erred when it denied his motion for a directed verdict with regard to the charge of first-degree murder. We disagree. There was sufficient evidence introduced at trial to enable a rational trier of fact to conclude that the element of premeditation and deliberation had been proven beyond a reasonable doubt. In *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995), this Court set forth the factors to be considered in determining whether premeditation had been established:

Premeditation and deliberation require sufficient time to allow the defendant to take a second look. The elements of premeditation and deliberation may be inferred from the circumstances surrounding 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. [Citations omitted.]

Although there was no prior relationship between defendant and the victims, there was evidence relating to defendant's conduct prior to the shooting and the circumstances of the killing itself that would justify a rational jury in concluding that the killing was planned. As the trial court noted, there were ample opportunities for the three participants to plan their moves. They met at the Jamieson house at the same time, and Walker brought a loaded weapon. The motorcycle riders kept their face shields down so that their identities were obscured. Witnesses testified that they heard someone give a command or saw a hand signal to shoot. One witness described the shooting as going "like clockwork. . . . [A]s soon as the gentleman [on the porch] stood up, the guy that was in the car started running back toward the car and the person on the bike started shooting." When viewed in a light most favorable to the prosecution, this evidence would justify reasonable jurors in concluding that premeditation had been proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

Defendant's argument that he did not know what Walker and Roland had planned is dependent upon his not having been the person who carried and fired the gun. However, defendant was overwhelmingly identified by eyewitnesses as the shooter. Because there was sufficient evidence of premeditation to justify submitting the charge of first-degree murder to the jury, reversal is not required on the basis of this issue. See *People v Rotar*, 137 Mich App 540, 549-550; 357 NW2d 885 (1984).

In addition, we find defendant's argument that reversal is required because the prosecution did not show that defendant intended to kill Stephen Thomas to be without merit. The prosecution need only prove that the killing was intentional and that the act of killing was deliberate and premeditated. *Anderson, supra* at 537. Moreover, our examination of the record reveals that defendant's claim that the doctrine of transferred intent was never mentioned is false. The prosecutor addressed that doctrine at length in his closing statement, defense counsel responded, and the court instructed the jury with regard to the meaning of transferred intent.

Defendant next contends that his sentences are disproportionate to the seriousness of the offense. Although defendant's sentences are severe, the trial court did not abuse its discretion in exceeding the guidelines. On the sentencing report departure evaluation form, the court gave the following reasons for imposing a sentence in excess of the recommended range: (1) two victims were shot in the back; (2) the guidelines scoring did not fully take into account the nature and circumstances of the concurrent offenses; and (3) the emotional and financial impact on the victims and their families.

In *People v Watkins*, 209 Mich App 1, 6; 530 NW2d 111 (1995), this Court held that a sentence of 75 to 150 years for a conviction of second-degree murder did not violate the principle of proportionality where the defendant

displayed particular viciousness and a total disregard for public safety in the commission of the crimes. Not only did he participate in what was to be the callous execution of a suspected rival drug dealer, but the assassins were apparently indifferent to the fact that the automobile they ambushed was occupied by a passenger who would ultimately die in the fusillade. The sentences may serve to deter other drug dealers from murdering individuals suspected of encroaching on their drug territory. Moreover, [the defendant] has a deplorable prison record. [Citations omitted.]

If anything, the circumstances of the present case are even more egregious than those presented in *Watkins, supra*. Instead of a single automobile passenger, there were at least six children and adults present who were not involved in the dispute. Instead of a drug rivalry, the assault was precipitated by a real or imagined game of “chicken” with automobiles. The victims in this case presented no threat to defendant and, as the trial court noted, the shooting was unprovoked.

In addition, defendant has a history of violence. He was charged with first-degree murder at the age of fifteen, but the charge was later reduced to negligent discharge of a firearm causing death. Defendant had also formerly been convicted as an adult of breaking and entering of an occupied dwelling and was awaiting trial on armed robbery charges in Wayne County at the time of sentencing. Based on defendant’s prior record and the circumstances of the crimes, the sentences were not disproportionate.

Affirmed.

/s/ Michael J. Kelly
/s/ Myron H. Wahls
/s/ Hilda R. Gage