

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN DESMOND CLINTON,

Defendant-Appellant.

UNPUBLISHED

October 7, 1997

No. 192309

Berrien Circuit Court

LC No. 95-001892-FC-H

Before: O’Connell, P.J., and MacKenzie and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, felony-firearm, MCL 750.227b; MSA 28.424(2), and carrying a concealed weapon, MCL 750.227; MSA 28.424. He received concurrent sentences of two years’ imprisonment for the felony-firearm conviction and forty to sixty months’ imprisonment for the conviction of carrying a concealed weapon and a consecutive sentence of life without parole for his murder conviction. Defendant now appeals as of right, challenging only the sufficiency of the evidence to sustain the first-degree murder conviction. He specifically argues that the prosecution presented insufficient credible evidence to identify him as the drive-by shooter or to establish the requisite elements of premeditation and deliberation. We disagree and affirm his convictions and sentences.

In reviewing a challenge to the sufficiency of the evidence to support a jury trial conviction, this Court views the evidence in a light most favorable to the prosecution and determines whether any rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201 (1992). “Inherent in the task of considering the proofs in the light most favorable to the prosecution is the necessity to avoid a weighing of the proofs or a determination whether testimony favorable to the prosecution is to be believed. All such concerns are to be resolved in favor of the prosecution.” *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993). In addition, when deciding this issue, this Court should not interfere with the jury’s role of determining the weight of the evidence or the credibility of the witnesses. *Wolfe, supra* at 514-515.

Defendant first argues that there was insufficient credible evidence to identify him as the drive-by shooter. We disagree. The prosecution presented evidence that defendant had access to his girlfriend's white Hyundai on the day of the shooting and that defendant was seen exiting a white Hyundai at the park where the shooting occurred. Two witnesses testified that they knew defendant, who was on parole for a cocaine delivery conviction at the time of the instant shooting, and that he was involved in an altercation at the park just minutes before the shooting took place. The same witnesses observed defendant get into the front passenger seat of the Hyundai and then heard someone from inside the Hyundai yell "I'll be back" before it sped off.

Moments later, several witnesses observed the white Hyundai return to the park, drive by at a high speed, first heading south and then again heading north, with gunfire ringing out from the vehicle both times. One witness testified that as the Hyundai sped by, he saw a black male sitting on the passenger side of the vehicle, firing over the roof toward the park. That same witness indicated that he was able to see the shooter's face and jacket and later positively identified defendant as the shooter. Another witness, who was on the sidewalk near the park when the shooting occurred, also observed a black male sitting on the window sill of the front passenger door of a white vehicle and firing a gun toward the park. Several other witnesses observed the front seat passenger of the white vehicle handling a gun, some saw him actually discard something from the vehicle, and others observed the passenger fleeing from the vehicle when approached by the police. Those same witnesses identified the jacket defendant was wearing as being of the same type worn by the shooter.

Finally, the arresting officer witnessed defendant flee from the white Hyundai near the scene of the shooting. He later found a .380-caliber handgun lying in the lilac bushes where defendant momentarily hid during the chase. Several spent shell casings retrieved from the scene of the shooting and the bullet taken from the victim's body were fired from a .380-caliber weapon.

We find that this evidence, if believed, was sufficient for a reasonable jury to conclude, beyond a reasonable doubt, that defendant was the individual who committed the drive-by shooting.

To convict a defendant of first-degree murder, the prosecutor must also prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Intent and premeditation may be inferred from all the facts and circumstances surrounding the offense. *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987). Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence, and the reasonable inferences which arise therefrom, is sufficient to establish intent. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991); *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

Premeditation and deliberation require sufficient time to allow the defendant to take a "second look" and may be established through evidence of the defendant's actions before the killing, the circumstances of the killing itself, the defendant's use of a deadly weapon, and the defendant's conduct after the killing. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). See also *People v Martin*, 392 Mich 553, 561-562; 221 NW2d 336 (1974). Even where a defendant's intended victim is not killed, but instead an "unintended" victim dies, the intent to kill someone other than

the actual victim is sufficient to satisfy the intent requirement. *People v Youngblood*, 165 Mich App 381, 388; 418 NW2d 472 (1988).

Here, the evidence shows that defendant was first involved in a fistfight at the park, that the vehicle in which defendant and his brother rode was pelted with bricks and bottles, and that someone in the vehicle yelled “I’ll be back” as it sped away. The vehicle returned minutes later, making two passes by the park, and defendant deliberately fired a .380-caliber handgun toward a crowd of people both times. Also, when confronted by police, defendant fled from the scene, led an officer on a chase, and attempted to hide the handgun. We believe that such evidence supports a finding of purposeful and planned conduct from which a reasonable jury could infer that defendant intended to kill.

Affirmed.

/s/ Peter D. O’Connell
/s/ Barbara B. MacKenzie
/s/ Hilda R. Gage