STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL L. COLLINS,

Defendant-Appellant.

UNPUBLISHED
March 13, 1998

No. 195004
Kalamazoo Circuit
LC No. D 95-000194-FC

Before: Markey, P.J., and Michael J. Kelly and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of voluntary manslaughter, MCL 750.321; MSA 28.553, and felonious assault, MCL 750.82; MSA 28.277. Defendant was sentenced to seven to fifteen years' imprisonment for the manslaughter conviction, and a concurrent term of thirty-two months to four years for the assault conviction. We affirm.

I

Defendant first argues that he is entitled to a new trial because he was denied his constitutional right to confront the witnesses against him and to present a meaningful defense when the jury was not allowed to at least view Gerald Crawford, the alleged assault victim, in order to take note of his size and appearance. We disagree.

This issue is unpreserved, because defendant never specifically asked that the jury be allowed to view Crawford and, thus, the trial court was never called upon to rule on the matter. See *People v Hubbard (After Remand)*, 217 Mich App 459, 483; 552 NW2d 493 (1996). Nevertheless, we find that defendant suffered no prejudice because Crawford's size is completely irrelevant to the issues raised during trial. Defendant argues on appeal that Crawford's size was relevant as to whether he was put in reasonable fear of defendant's and codefendant's actions, as well as to explain why defendant and codefendant reacted as they did when they chased Crawford down and shot him. However, in *People v Sanford*, 402 Mich 460, 474-479; 265 NW2d 1 (1978), our Supreme Court specifically held that the definition of criminal assault did not include the requirement that "the victim be put in reasonable fear of immediate harm," recognizing instances where a victim may be violently assaulted

without ever seeing his assailant. Moreover, because defendant never presented any argument or supporting evidence concerning self-defense at trial, Crawford's size would likewise be irrelevant in justifying defendant's actions or explaining why he purposefully secured a 9-millimeter handgun and chased Crawford. Accordingly, defendant is not entitled to reversal on this issue. *People v Grant*, 445 Mich 535, 553-554; 520 NW2d 123 (1994).

II

Defendant next argues that the trial court erred in qualifying one of the prosecution's police witnesses as an expert, and thereafter allowing him to present rebuttal testimony on the subject of street gang activity. Defendant claims that the officer possessed insufficient expertise, and that the qualification was merely an attempt to discredit his testimony. After reviewing the record, we conclude that the officer was qualified to testify as an expert, and find that his testimony was relevant and properly admitted for the very reason that it did directly address and refute defendant's theory of the case.

In addition to being charged with an assault on Crawford, defendant was also charged with the premeditated and deliberate death of M.L. Hamilton. During opening arguments, defense counsel informed the jurors that the "relationship" between defendant and Hamilton would be crucial to their resolution of the case. Defendant then later testified concerning his "positive" involvement with the organization known as "Growth and Development" (previously referred to as the Gangster Disciples), and suggested that he had no motive to kill Hamilton because Hamilton was a fellow gang member and the code of conduct forbids one to harm a fellow gang member. Defendant now finds fault with the lower court for allowing the prosecution's expert police witness, Officer Robert Smith, to rebut that contention.

In accordance with MRE 702, a witness qualified as an expert can testify in the form of an opinion or otherwise as to scientific, technical, or other specialized knowledge that would assist the trier of fact to better understand the evidence. A witness may be qualified as an expert by knowledge, skill, experience, training or education. MRE 702; *Mulholland v DEC Int'l Corp*, 432 Mich 395, 403; 443 NW2d 340 (1989). Additionally, in determining whether the testimony would aid the trier of fact, the trial court should ask whether an untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without expert testimony. *People v Smith*, 425 Mich 98, 106; 387 NW2d 814 (1986). The party offering the expert bears the burden of showing that the witness possesses specialized knowledge that would aid the factfinder in understanding the evidence or determining a fact in issue. *Id.* at 112. Here, the court did not abuse its discretion in determining that the prosecution met that burden.

With respect to Smith's qualifications, the record establishes that he had been an officer since 1985 and had participated in at least twenty-one different "gang schools" or seminars throughout the United States, where he had become versed in the subjects of gang activity, business, dress, and graffiti. Smith testified that he had instructed and trained several other officers concerning gangs, and had conducted informational seminars of his own to over two dozen different organizations.

Also, during his experience as an officer, Smith dealt with over 300 gang members who had been incarcerated in the jail in which he worked, and had come to know their codes of conduct. Smith noted that most of the gang members with whom he had direct contact were Gangster Disciples, and stated that he was well acquainted with the organization and its leadership, both locally and nationwide. Lastly, the officer testified that he previously had been qualified as an expert witness on gang activity. On these facts, we agree with the trial court that Smith possessed a specialized knowledge of gangs and gang activity sufficient to qualify him as an expert on the subject.

Next, as to the relevancy and the usefulness of Smith's testimony, we note that like any other witness who takes the stand to testify, a defendant cannot expect that his testimony will go unchallenged or that he will not be impeached as a witness. *People v Fields*, 450 Mich 94, 109-110; 538 NW2d 356 (1995). Through defendant's testimony in this case, the defense clearly sought to convince the jury that defendant would not, and in fact did not, kill Hamilton because their common gang affiliation prevented defendant from harming Hamilton. The specific purpose of Smith's rebuttal testimony was to refute this theory by presenting facts not typically known by laypersons, including Smith's knowledge that the Gangster Disciples, despite their recent name change, still operated as a street gang that ran guns and drugs for money, and that although gang codes of conduct often forbid inflicting harm on fellow gang members, such violence occurs on a regular basis.

Accordingly, we find that the officer's expert testimony was relevant, as it dealt directly with an issue raised by defendant, and it undoubtedly assisted the jury in understanding the evidence. We find no abuse of discretion.

III

Lastly, defendant argues that the trial court erred in denying his motions for directed verdicts on the principal charges of first-degree murder and assault with intent to commit murder. Defendant claims that there was insufficient evidence to support the finding that he acted as a principal in committing those offenses, or that he aided and abetted codefendant in their commission. We again disagree.

When ruling on a directed verdict motion, the court must consider the evidence presented by the prosecutor up to the time the motion was made in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the charged crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Circumstantial evidence is sufficient to satisfy the elements, *id.*, and any questions regarding the credibility of witnesses are to be left to the trier of fact, *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991).

To establish the crime of first-degree murder, the prosecution must present proofs from which the jury could rationally find 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). Premeditation and deliberation require sufficient time to allow the defendant to take a "second look," and 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." *Id*.

Further, one who "procures, counsels, aids, or abets" in the commission of an offense may be convicted and punished as if he directly committed the offense. MCL 767.39; MSA 28.979; *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). "'Aiding and abetting' describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime." *Id*. To support a finding that a defendant aided and abetted a crime, the prosecutor must show that

> (1) the crime charged was committed by the defendant or some other person;
>
> (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and
>
> (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. [*Id*.]

An aider and abettor's state of mind may also be inferred from all the facts and circumstances presented during the trial, including such factors as: "a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime." *Turner, supra* at 568-569. Here, the prosecution argued that defendant could be convicted of first-degree murder either as the principal assailant, or as an aider and abettor to codefendant. We find that the evidence presented during the prosecution's case-in-chief supports both theories of guilt.

The record indicates that defendant and Crawford engaged in a violent physical altercation on Lantern Lane in the afternoon of September 17, 1995, and that immediately following the altercation defendant proceeded to a friend's home to secure possession of a Ruger 9-millimeter handgun. While at the friend's home, defendant met codefendant, and the two of them left together for Lantern Lane, codefendant accompanying defendant as the front passenger in defendant's vehicle.

Upon arriving at Lantern Lane, defendant and codefendant saw Crawford and two other black males (one of whom was Hamilton) riding on bicycles. When defendant drove past the three men, Crawford fired approximately three gunshots at defendant's car. After hearing the shots, codefendant yelled, "Go. Go. Go." Defendant responded by saying, "Let's go get 'em," put his vehicle in reverse, and sped after them. When Hamilton and Crawford ran in opposite directions, defendant sped after Crawford and pursued him until he lost sight of him. As the two chased Crawford, witnesses observed codefendant pointing a gun out the passenger window and heard at least one shot being fired.

Defendant and codefendant proceeded a short distance and spotted Hamilton riding toward them on a bike. Several witnesses reported that they then heard four gunshots in rapid succession, and some observed Hamilton fall to the road approximately five to six feet away from the driver's side of defendant's vehicle. A few witnesses believed that both Hamilton and the vehicle had actually stopped moving, and one reported that just before the shots rang out, someone from the vehicle yelled, "What's up now, nigger?" Another witness saw a gun protruding from defendant's driver-side window.

Following the shooting, defendant fled from the scene, parked his vehicle in an obscure location, and gave his clothes to codefendant to hide. Police later found the Ruger handgun and defendant's clothes hidden in codefendant's girlfriend's home.

Defendant turned himself in to police and claimed that it was codefendant who had fired the fatal shots. However, the record also reveals that defendant admitted to possessing the gun periodically throughout the chase, and trajectory analysis revealed that a bullet that passed through the outside mirror on the driver's side of defendant's vehicle, and carried with it a small piece of metal that was found lodged in Hamilton's clothing, most likely originated from an assailant sitting in the driver's seat of the vehicle.

We find that this evidence presents a prior relationship establishing a motive or purpose for the killing, the use of a weapon that was arguably possessed and positioned in preparation for a potential homicide, an agreement and choice by defendant to "get 'em," a deliberate and purposeful chase, the firing of four bullets following a sarcastic greeting, and finally, flight from the scene and subsequent organized conduct to hide the "evidence." From this, a jury could conclude, beyond a reasonable doubt, that defendant was guilty of first-degree murder.

Moreover, even if defendant did not kill Hamilton, we find that there was ample evidence presented that defendant knew codefendant intended to kill Hamilton, and aided and encouraged him in doing so. Defendant and codefendant returned to the scene together, they possessed a deadly weapon, they both agreed to pursue Crawford, Hamilton, and the third biker, and defendant was aware that codefendant had the handgun situated and ready to fire. After spotting Hamilton, defendant drove within a few feet of him, shots were fired, and defendant then sped away.

Although the evidence does not compel the conclusion that defendant actually fired the gun, or that he and Parker acted with premeditation and deliberation, we conclude that there was sufficient evidence presented, whether circumstantial or direct, from which a reasonable jury could infer such. Therefore, the lower court did not err in denying defendant's motion for a directed verdict on the first-degree murder charge filed against him.

With respect to the alleged offense of assault with intent to commit murder perpetrated against Crawford, the prosecution carried the burden of establishing that defendant, either acting as the principal assailant or as an aider and abettor, assaulted Crawford, with an actual intent to kill, which, if successful, would make the killing murder. See *People v Hoffman*, ___ Mich App ___; ___ NW2d ___ (Docket No. 191445, rel'd 8/19/97) slip op at 4.

Again, the evidence presented established that defendant and codefendant together pursued Crawford, that they possessed a loaded and operable handgun that was handled by both of them at some point during the chase, that codefendant actually fired one shot in Crawford's direction, and that defendant, at the least, pointed the gun at Crawford in an attempt to shoot him. The use of a deadly weapon may alone be sufficient evidence of an intent to kill, see *Turner, supra* at 567, and from the remaining facts, we find that a reasonable jury could certainly determine that defendant and codefendant made a mutual assault on Crawford with an intent to kill such that, if Crawford had died, it would have

been murder. Thus, the trial court properly denied defendant's motion for a directed verdict on the charge of assault with intent to commit murder.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ William C. Whitbeck