

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 15, 2011

v

MICHAEL JAMES FULLER,

Defendant-Appellant.

No. 295930
Wayne Circuit Court
LC No. 09-20496-01

Before: K. F. KELLY, P.J., and BORRELLO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316(1)(a), and of felony firearm, MCL 750.227b. This case arises out of the shooting death of David Gear outside a house in Detroit, after an altercation at a party. Defendant appeals his first-degree murder conviction. We affirm.

The victim was a friend or associate of people who lived on the downstairs floor of a two-residence house in Detroit. Defendant was a friend of the person who lived upstairs and known to the people downstairs. On the night of the shooting, a party was in progress upstairs and a somewhat more sedate “get-together” occurred downstairs. Two of the women at the downstairs event got into a physical altercation, resulting in enough noise to bring many of the upstairs people downstairs. According to witnesses, defendant was one of those people. One of the women accused the victim—who had actually helped break up the fight—of hitting her. The person who lived upstairs demanded that the victim hit him instead. A witness mollified that person, but then defendant abruptly swung a punch at the victim.

A poorly-described struggle ensued, and the downstairs owner demanded that everyone leave, although he specifically asked the victim to remain. Nevertheless, the victim also exited the house. One witness went to the door and another to the front window, where they both saw that when the victim got to the street, defendant approached out of the crowd and pushed someone else aside. Defendant put a gun to the victim’s head, said something unintelligible, and shot the victim once. Defendant then walked away. Defendant presented two witnesses who testified that he was elsewhere at the time.

Defendant first argues that there was insufficient evidence to convict him of first-degree premeditated murder and that the conviction was against the great weight of the evidence.

Defendant challenges both his identity as the shooter and whether there was premeditation and deliberation. We disagree.

A challenge to the sufficiency of the evidence requires this Court to review the evidence in the light most favorable to the prosecution to determine whether a reasonable trier of fact could have found that the prosecutor had proven all of the essential elements of the convicted offenses beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). It is not sufficient that there is simply “some” evidence supporting the conviction, but the reviewing court must not invade the trier of fact’s role to weigh the evidence and evaluate witness credibility. *Id.* at 513-515.

The trial court may grant a new trial on the basis of the weight of the evidence only where the evidence itself, not merely the judge’s evaluation of the witnesses’ credibility, heavily preponderates against the verdict and there would be a serious miscarriage of justice if the new trial is not granted. *People v Lemmon*, 456 Mich 625, 638-642; 576 NW2d 129 (1998). This generally requires more than conflicting testimony. See *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). Appellate courts should be reluctant to interfere with the trial court’s decision. *Lemmon*, 456 Mich at 638. Where, as here, a challenge based on the weight of the evidence is unpreserved, the issue may be reviewed for plain error affecting defendant’s substantial rights. *Musser*, 259 Mich App at 218.

A first-degree premeditation murder conviction requires the prosecutor to “prove that the defendant intentionally killed the victim with premeditation and deliberation.” *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). Identity is always an element of any crime. *People v Lewis (On Remand)*, 287 Mich App 356, 365; 788 NW2d 461 (2010). Premeditation and deliberation require the defendant to have had time to reflect on the killing, and it may be inferred from circumstances and from conduct both before and after the killing. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). There is no minimum time needed, but the defendant must have had a reasonable time in which to think the matter over and consider his or her options. See *People v Vail*, 393 Mich 460, 468-469; 227 NW2d 535 (1975), overruled on other grounds by *People v Graves*, 458 Mich 476; 581 NW2d 229 (1998).

Two eyewitnesses, both of whom were familiar with defendant, identified defendant as the person who put a gun to the victim’s head and shot the victim. Defendant correctly identifies some discrepancies in their versions of events, but none of those discrepancies seriously undermine the witnesses’ credibility. For example, both witnesses provided several reasons why they did not initially name defendant as the killer to the police: they did not know his full name, or even whether the name they had was real, and they were being threatened not to divulge the killer’s identity. Other issues, like one witness having consumed some alcohol and describing the gunshot on the wrong side of the victim’s head, were all presented to the jury and are not fatal to their identification of defendant. The jury deemed one set of witnesses more credible than another, and the courts are not to interfere with that credibility determination.

Defendant points out that the shooting here took place after a heated physical altercation and in the immediate aftermath of a chaotic and apparently confused scene. However, there was enough time for most of the crowd of people to leave the house and gather in a crowd in front of it. Of some significance, eyewitnesses indicated that defendant approached the victim from

somewhere else in the crowd, pushed another person out of the way, and spoke to the victim before shooting. Defendant then walked away. There is sufficient evidence from which a reasonable trier of fact could infer that defendant had thought it over, particularly because the struggle itself was over at that point. We find defendant's convictions supported by the evidence.

Defendant also argues that the trial court erred in admitting two photographs of the gunshot injury, both of which particularly emphasized the "stippling" surrounding the actual bullet wound, the presence of which indicates that the gun was fired from a distance of two to three feet. Defendant asserts that the photographs are gruesome, but more importantly irrelevant to any fact at issue because he never challenged the victim's death by close-range gunfire. See MRE 403. We disagree.

This issue was previously before this Court in an interlocutory appeal brought by the prosecutor. This Court held that the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice. *People v Fuller*, order of the Court of Appeals, Docket No. 295192 (Nov 25, 2009). If an appellate court has made a legal determination on an issue and remanded it, and if the facts have not materially changed, then the lower courts and the same appellate court remain bound by the earlier decision. *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 522; 730 NW2d 481 (2007). We are bound by our earlier decision. However, we briefly observe that although defendant did not actively challenge the fact or manner of the victim's death, a general denial of guilt places at issue *all* elements of the crime. *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000). The prosecutor remained obligated to prove all elements of the charged offenses, so we do not agree that the photographs were necessarily irrelevant just because they helped establish a fact that defendant did not actively challenge.

Affirmed.

/s/ Kristen Frank Kelly
/s/ Stephen L. Borrello
/s/ Amy Ronayne Krause