

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE HALL,

Defendant-Appellant.

UNPUBLISHED

February 20, 2007

No. 266087

Wayne Circuit Court

LC No. 05-007357-01

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree premeditated murder, MCL 750.316(1)(a), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to two years' imprisonment for the felony-firearm conviction, to be followed by concurrent terms of two to five years' imprisonment for the felon-in-possession conviction and life imprisonment for the murder conviction. Because sufficient evidence was presented to support defendant's first-degree murder conviction and defendant was not deprived of his right to a fair trial, we affirm.

The charges against defendant arose out of the shooting death of Chauncy Greene on November 8, 2004. On that date, Greene was apparently following a vehicle in which defendant was a passenger. When Greene pulled into the parking lot of an apartment building, defendant exited the vehicle with an AK-47, asked Greene why he was following defendant, and shot him several times. Defendant returned to the vehicle and told his friends that he "got him" or "shot him." Greene died from gunshot wounds a short time later.

On appeal, defendant first argues that there was insufficient evidence of premeditation and deliberation to support his first-degree murder conviction. We disagree.

In determining whether sufficient evidence has been presented to sustain a conviction, an appellate court is required to view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

In order to convict defendant of first-degree premeditated murder, the prosecution was required to prove that defendant intentionally killed the victim and that the act of killing was

premeditated and deliberate. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002). Premeditation and deliberation characterize a thought process undisturbed by hot blood; to premeditate is to think about beforehand, and to deliberate is to measure and evaluate the major facets of a choice or problem. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Premeditation and deliberation require sufficient time to allow the defendant to take a second look. *People v Marsack*, 231 Mich App 364, 370-371; 586 NW2d 234 (1998). Premeditation and deliberation may be established by evidence of the prior relationship of the parties, the defendant's actions before the killing, the circumstances of the killing itself, and the defendant's conduct after the homicide. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999).

In this case, the evidence indicated that defendant first encountered Greene in the parking lot of an apartment building. Greene initially began to follow the group that defendant was with, but then turned around and drove back to the apartment building. Defendant told the driver of the vehicle he was in to turn around and follow Greene's vehicle. Defendant arrived back at the apartment building, then, armed with an AK-47, sought out the victim at the apartment building, and harshly asked the victim why he had been following them. Several gunshots were then fired, as many as 15 to 20, and the victim was shot three times, twice in the back. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable the jury to find beyond a reasonable doubt that defendant intentionally shot the victim and that the act of killing was premeditated and deliberate.

Next, defendant argues that he was deprived of a fair trial because the trial court failed to instruct the jury on manslaughter. However, the record discloses that defendant did not request any lesser offense instructions at trial. Moreover, he specifically objected to a lesser offense instruction on second-degree murder and expressed satisfaction with the court's remaining instructions. Under these circumstances, we conclude that any issue involving the failure to instruct on manslaughter was affirmatively waived.¹ *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004); *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002); *Ortiz*, *supra* at 311.

¹ Even if we reviewed this issue as an unpreserved issue subject to review for plain error affecting substantial rights, appellate relief would not be warranted. An involuntary manslaughter instruction was not warranted because there was no evidence suggesting that the victim's killing was unintentional, or occurred under circumstances involving (1) the commission of an unlawful act not amounting to a felony and not naturally tending to cause great bodily harm; (2) the commission of some lawful act, negligently performed; or (3) the negligent omission to perform a legal duty. *People v Mendoza*, 468 Mich 527, 536; 664 NW2d 685 (2003). Further, considering that the defense theory was that defendant was not involved in the victim's shooting death and that the prosecution witnesses were all lying about defendant's involvement as part of a cover up, the failure to instruct on voluntary manslaughter was not a plain error that affected defendant's substantial rights. *Id.*; *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Alton T. Davis

/s/ Deborah A. Servitto