

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARQUEZ DESHAN JENKINS,

Defendant-Appellant.

UNPUBLISHED

November 19, 2020

No. 350396

Wayne Circuit Court

LC No. 19-001890-02-FC

Before: GLEICHER, P.J., and K. F. KELLY and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder,¹ MCL 750.316, armed robbery, MCL 750.529, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and obstruction of justice, MCL 750.505. Defendant was sentenced to life in prison for first-degree murder, 18 to 30 years' imprisonment for armed robbery, two years' imprisonment for felony-firearm, and two to five years' imprisonment for obstruction of justice. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS

This case arises out of the shooting of Jermaine Jones, the victim. Defendant and the victim were friends, but experienced a “falling out” and stopped “hanging out” for a period of time in 2018. However, defendant and the victim were seen together on the day Javari Bates was involved in a fight, arrested, and jailed. The victim began to raise money to bail Bates out of jail. On October 18, 2018, the victim's mother overheard him speaking to Bryanna Goree. The victim told his mother that he was going to Goree's home to obtain bail money for Bates. Defendant arrived at their home to pick up the victim, and defendant asked to use the rest room. The victim's mother saw the victim leave with defendant.

¹ Defendant was convicted of one count of first-degree murder that was supported by two theories—premeditated murder, MCL 750.316(1)(a) and felony-murder, MCL 750.316(1)(b).

Defendant and the victim entered a sport utility vehicle driven by Isaiah Boglin. Defendant obtained the ride from Boglin by promising him gas money. Sisters Mya Watson and Shylah Ashley as well as Watson's boyfriend, Jalen Trapp, were also present in the vehicle. When they arrived at the home, the victim got out of the vehicle and spoke to Goree on the porch. Defendant also got out of the vehicle and whispered to Trapp. The victim received \$100 from Goree. As the victim and Goree spoke, defendant stood a couple steps away from the porch, but then returned to the vehicle. When the victim attempted to get back into the vehicle, defendant made a hand gesture to the driver to move the car forward. The vehicle moved forward and turned the corner such that it was no longer visible from Goree's home.

The victim told defendant to "stop playing." Defendant was overheard saying "gimme." He also said, "I didn't want it to go this way, bro." Trapp got out of the vehicle and shot the victim multiple times. A neighbor heard three shots and then a pause. Defendant then purportedly told Trapp to "finish 'em," and Trapp fired again. The neighbor heard an additional three or four gunshots. At that time, defendant took the victim's "retro Jordan" shoes. Additionally, defendant and Trapp had money when they got back in the vehicle. Defendant laughed when he got in the vehicle with the shoes and said something to the effect of, "I told him to sell me these bitches." Defendant and Trapp split the money, and Boglin received money for gas. The vehicle drove away. The victim was shot nine times and left facedown and shoeless in the street.

II. SUFFICIENCY OF THE EVIDENCE

Defendant contends that the prosecution did not present sufficient evidence to the jury to convict defendant of first-degree murder premised on an aiding and abetting theory. We disagree.

"We review de novo a challenge to the sufficiency of the evidence." *People v Savage*, 327 Mich App 604, 613; 935 NW2d 69 (2019). "We review the evidence in the light most favorable to the prosecution and determine whether the jury could have found each element of the charged crime proved beyond a reasonable doubt." *Id.* "Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of [a] crime." *Id.* (quotation marks and citation omitted). We also must draw all reasonable inferences and make all credibility choices in support of the verdict. *Id.* at 613-614. "It is for the trier of fact, *not the appellate court*, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018) (quotation marks and citation omitted).

Defendant was convicted under an aiding and abetting theory of two different types of first-degree murder—premeditated murder and felony murder.² "The elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation." *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). "A defendant may be vicariously liable for murder on a theory of aiding and abetting." *Id.* The elements of aiding and abetting are

² Defendant only contests the sufficiency of the evidence to support the murder conviction and does not challenge the other convictions.

(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 that [the defendant] gave aid and encouragement. [*People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (quotation marks and citations omitted).]

“An aider and abetter’s knowledge of the principal’s intent can be inferred from the facts and circumstances surrounding an event.” *Bennett*, 290 Mich App at 474.

Contrary to defendant’s assertion, there was sufficient circumstantial evidence and reasonable inferences that defendant performed acts to assist in the commission of premeditated murder and intended the commission. Defendant told the vehicle occupants that the victim needed a ride to pick up bail money and promised Boglin gas money to drive him. After the victim got out of the car to collect the money, defendant exchanged whispers with Trapp. Defendant stood near the porch when Goree gave the victim money. Once the victim returned to the vehicle, defendant gave a hand gesture to Boglin to drive off to prevent the victim from entering the vehicle. Instead, Boglin drove and turned the corner to obscure the vehicle’s view from Goree’s home. At that time, defendant reportedly told the victim to “gimme” and that he “didn’t want to do it to you bro.” Trapp then shot the victim multiple times. Defendant then instructed Trapp to “finish” killing the victim, and Trapp again shot the victim multiple times. At that time, defendant took the victim’s shoes off of his feet. Defendant laughed in the vehicle, carried the shoes, and stated that the victim should have sold him the shoes. Although it was unclear whether defendant or Trapp took the bail money, the men had the money when they entered the vehicle and split the proceeds, further indicative of defendant’s planning of the murder. Defendant’s direction to finish the killing also demonstrated that defendant intended the murder and was not surprised by Trapp’s actions. Under the circumstances, there was sufficient evidence to establish that defendant aided and abetted first-degree premeditated murder. *Robinson*, 475 Mich at 6.

Defendant was also convicted of felony murder, and

[t]he elements of felony murder are: (1) the killing of a person, (2) with the intent to kill, do great bodily harm, or create a high risk of death or great bodily harm with the knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of an enumerated felony [which includes armed robbery.] [*People v Lane*, 308 Mich App 38, 57-58; 862 NW2d 446 (2014).]

“The facts and circumstances of the killing may give rise to an inference of malice.” *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999). “A jury may infer malice from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm.” *Id.* “Malice may also be inferred from the use of a deadly weapon.” *Id.*

Here, the prosecution satisfied the first element by proving that the victim was killed by gunshot wounds inflicted by Trapp. Although defendant was not acting as the principal, he aided and abetted the murder by participating in the armed robbery, and that the killing was within the scope of their common plan. Defendant’s statement to Trapp during the robbery, as well as

defendant's theft of the victim's shoes, demonstrate that defendant was an active participant in the robbery.

The use of the gun during the robbery supports an inference of malice. "Moreover, by engaging in an armed robbery with his co-felons, defendant set in motion a force likely to cause death or great bodily harm." *Id.* at 760. Defendant participated in a robbery involving the use of a gun, thereby "acting in wanton and wilful disregard of the possibility that death or great bodily harm would result." *Id.*

Lastly, defendant's assistance in the armed robbery is supported by the evidence. Defendant seemingly planned the robbery as demonstrated by his whispering exchange with Trapp and his gestures to Boglin to drive off. Defendant took the shoes from the victim's feet after the shooting. He also split the bail money with Trapp that had been taken from the victim's body. Therefore, the prosecution presented sufficient evidence from which the jury could find that defendant aided and abetted the felony murder of the victim beyond a reasonable doubt.

II. ADMISSION OF PHOTOGRAPHS

Defendant alleges that the trial court erred when it admitted autopsy photographs depicting the bullet wounds sustained by the victim in the shooting, particularly a bullet wound to the face, because it had no bearing on defendant's state of mind as an accessory and served only to emotionally motivate the jury to convict. We disagree.

Defendant waived this evidentiary challenge by stating that there was no objection to the admission of the autopsy photographs in the trial court. "Waiver is the intentional relinquishment or abandonment of a known right." *People v Buie*, 491 Mich 294, 305; 817 NW2d 33 (2012) (quotation marks and citations omitted). "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *Id.* at 306 (quotation marks and citation omitted). Thus, this Court is not obliged to review defendant's claim that the trial court erred in admitting the photographs. Nonetheless, even after reviewing this issue, we find no error.

Unpreserved evidentiary issues are reviewed for plain error affecting substantial rights. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Carines*, 460 Mich at 763. "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.* "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." *Id.* at 763-764 (quotation marks and citation omitted).

The photographs at issue here depict each of the bullet wounds sustained by the victim in the shooting. One of the photographs depicts a bullet wound above the victim's left eye on his forehead. However, the photograph does not depict any blood emanating from the wound.

"Photographic evidence is generally admissible as long as it is relevant, MRE 401, and not unduly prejudicial, MRE 403." *People v Gayheart*, 285 Mich App 202, 227; 776 NW2d 330

(2009). “ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. “Evidence is unfairly prejudicial if it presents a danger that the jury would give undue or preemptive weight to marginally probative evidence.” *People v Mesik (On Reconsideration)*, 285 Mich App 535, 544; 775 NW2d 857 (2009). “While gruesome photographs should not be admitted solely to garner sympathy from the jury, a photograph that is admissible for some other purpose is not rendered inadmissible because of its gruesome details.” *Id.*

Defendant submits that the photographs were not necessary because the manner of the victim’s death was not in dispute. “However, the prosecution is required to prove each element of a charged offense regardless of whether the defendant specifically disputes or offers to stipulate any of the elements.” *Id.* Therefore, even though defendant did not specifically dispute the victim’s manner of death, the prosecution was still required to prove all of the elements of first-degree murder, both premeditated and felony murder, including intent. The intent to kill was established in part by the number of gunshot wounds sustained by the victim. Furthermore, the pictures were not gruesome; rather, they merely depicted the location of the gunshot wounds on the victim’s body. The probative value of the photographs was not substantially outweighed by unfair prejudice. Defendant failed to establish plain error affecting his substantial rights arising from the admission of the autopsy photographs, including the photograph depicting the gunshot wound to the forehead.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro