

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY DEJUAN HOLLIS,

Defendant-Appellant.

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UNPUBLISHED

February 15, 2005

No. 251008

Wayne Circuit Court

LC No. 02-013849-01

Before: Murray, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

I. Material Facts

On April 24, 2002, in the area of Delta and Fenelon, an argument ensued between Grenisha King, Latoya Redrick, and Stephanie Hart. At approximately 7:20 to 7:30 p.m., Grenisha's brother, Germell King, and his girlfriend, Joanne Rauti, drove to the area in a white Grand Am to pick up Grenisha. Grenisha and Redrick were arguing with other females on the sidewalk. Defendant came up to the car, and shook Germell's hand. Defendant told Germell that he would not let anything happen to Grenisha. Grenisha informed her brother of what was happening, and Germell told Grenisha to stop arguing. Germell and Rauti then left the area. According to defense witnesses, Germell opened the trunk of the car before leaving the area.

Germell and Rauti circled the block and returned to the area shortly thereafter. Germell exited the car, told the people in the area to leave Grenisha alone, and again told Grenisha to leave the area. People in the area began to argue with Germell and they began to yell at each other.

According to prosecution witnesses, Germell did not make any threats to any person, say he was going to kill someone, or say that he had a gun and was going to shoot anyone, but merely told the people to leave Grenisha alone. Germell had turned away from defendant, and defendant shot Germell near the ear toward the back of his head. Additionally, prosecution witnesses Terry Ingram, Grenisha, and Rauti indicated that Germell did not have a weapon in his hands or in his possession. Further, Rauti stated that there had been no weapons in her car prior

to the incident. After Germell was shot, he fell to the ground, and defendant left the area running. Subsequently, Germell was placed in Rauti's car and taken to the hospital under a police escort. While at the hospital, the police searched the vehicle; however, no evidence was found.

According to defense witnesses, Germell had his hand in his pocket, and walked toward defendant. Defense witness Carlton Hart testified that Germell then stated, "When I come back nobody be around my sister or I'm killing everybody. . . ." Carlton admitted he did not see Germell with a gun. Kenneth Clark testified that Germell stated that he would shoot anyone who was around Grenisha, but also indicated he did not see Germell with a gun. Charles Payton testified that Germell stated that he had "eight rounds," and that he would shoot the first person who came near him. Payton further testified that Germell had his hand in his pocket as if he had a gun, and that it looked to him like Germell had a gun.

Defendant testified on his own behalf, and indicated he was in the area that day to sell a gun to help provide for his daughter. Defendant indicated that after Germell left initially, he attempted to stop the argument between Grenisha and Stephanie Hart, but that he was unable to do so. When Germell returned, he stated, "Oh, y'all gon [sic] try to jump on my sister anyway?" Defendant attempted to leave, but Germell stated, "Don't run now, n----, what's popping." At this point, defendant became alarmed, and saw a gun in Germell's hands. Defendant put his hands in the air and told Germell to "hold on," but Germell threatened to kill defendant. At that point, defendant reached into his shirt, pulled out a gun, and shot Germell one time from approximately three feet away. Defendant stated that he had no intent to kill Germell and that he panicked and ran away. Defendant later indicated that he did not think about where he shot Germell, but rather he just raised the gun and shot. Defendant also stated that Germell pointed the gun at defendant's face, although Germell did not come directly at him with the gun.

The autopsy revealed that Germell died as a result of a single gunshot wound to the head, which was located in the left back area of the head, two inches below the left ear and four inches below the top of the head. Additionally, there was no evidence of close range firing. A .22 caliber shell casing was located at the scene of the incident.

On October 15, 2002, defendant was located by the Detroit Police Department. Defendant informed the officers that his name was Christopher Hicks. Defendant was subsequently identified by the police because his picture was in an internal police file. Defendant admitted to lying to the police about his identity.

## II. Prosecutorial Misconduct

First, defendant argues that the prosecutor committed misconduct by eliciting sympathy for the witness, Grenisha, and by making statements not supported by the evidence. We disagree.

This Court's "[r]eview of alleged prosecutorial misconduct is precluded unless the defendant timely and specifically objects, except when an objection could not have cured the error, or a failure to review the issue would result in a miscarriage of justice." *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). Here, defense counsel did not object to either of the alleged improper statements, nor did defendant request a curative instruction.

Accordingly, this issue must be reviewed for plain error. *Id.* In order to establish plain error, defendant must demonstrate that error occurred, the error was plain, i.e., clear or obvious, and that the error affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant argues that the prosecutor committed misconduct by eliciting sympathy for Grenisha, suggesting that her testimony should be treated more "gently" than other testimony and that her testimony could be judged at a different standard. A prosecutor may argue the evidence and all reasonable inferences arising from the evidence that relate to the theory of the case. *People v Knowles*, 256 Mich App 53, 60; 662 NW2d 824 (2003). Further, although a prosecutor may not vouch for the credibility of his witnesses by implying that he has some special knowledge of their truthfulness, the prosecutor may comment on his own witnesses' credibility, especially when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004).

Here, the prosecutor's comments during the opening statement and closing argument did not attempt to elicit sympathy for the prosecutorial witness or to persuade the jury to "judge" her testimony at a different standard. Rather, the prosecutor's comments related to the credibility of his own witness, where the prosecutor asked the jury to set aside the witness' speech and education when evaluating her testimony. Regardless, the court specifically instructed the jury that the attorneys' comments were not evidence, thereby dispelling any prejudice. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). Accordingly, defendant has failed to demonstrate a plain error affecting his substantial rights regarding his claim for prosecutorial misconduct.

### III. Directed Verdict

Defendant next argues that the trial court erred in denying his motion for a directed verdict with respect to the charge of first-degree premeditated murder. We disagree. "When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

Defendant contends that the prosecution failed to present legally sufficient evidence to support the charged offense of first-degree premeditated murder. Specifically, defendant argues that the prosecution did not produce any evidence that defendant had a motive to kill or harm the decedent, or that he engaged in any planning of an assault. Defendant notes that there was no evidence of a prior fight or dispute between Germell and defendant, and that the evidence demonstrated they actually shook hands before the incident.

The elements of first-degree premeditated murder are that the defendant killed the victim and that the killing was "willful, deliberate, and premeditated." MCL 750.316(1)(a); see also *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). In order to demonstrate first-degree premeditated murder, there must be some time span between the initial homicidal intent and the ultimate action to establish premeditation and deliberation, and the interval should

be long enough to afford a reasonable person time to take a “second look.” *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003). Factors that may be considered in determining premeditation and deliberation include: ““(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.”” *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999), quoting *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). “Proof of motive is not essential.” *Abraham, supra* at 657. Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

On April 24, 2002, Germell drove to the area of Delta and Fenelon, where his sister Grenisha was having an argument with Stephanie Hart. At that time, defendant and Germell met for the first time, and the two shook hands. Germell subsequently left the area, but shortly returned thereafter to find his sister fighting again. An argument ensued between Germell and some of the people in the area. According to prosecution witnesses, prior to the shooting, Germell made no threats to anyone in the area, and he did not have a gun in his possession. Further, there was evidence that Germell was turned away from defendant when defendant shot him. Following the shooting, defendant fled the scene of the crime, until he was apprehended by the police, despite his providing them with a false identification.

In reviewing the evidence in the light most favorable to the prosecution, we find that the prosecution presented sufficient evidence to support the charge of first-degree premeditated murder. Defendant and Germell only met each other that day, moments prior to the incident. Additionally, the evidence presented by the prosecution demonstrated that Germell did not have a weapon and that he did not make threats to anyone in the area; however, defendant shot Germell when he was turned away from him. Defendant then fled the scene of the incident, and when confronted by the police, provided them with a false identification. The circumstantial evidence in the case, when viewed in the light most favorable to the prosecution, demonstrates that the killing was “willful, deliberate, and premeditated.” There was a sufficient time span between the initial homicidal intent and the ultimate action to establish premeditation and deliberation. The interval was long enough to afford a reasonable person time to take a “second look” before shooting Germell in the back of the head. Contrary to defendant’s argument, proof of motive is not necessary. *Abraham, supra*. Accordingly, the trial court did not err in denying defendant’s motion for a directed verdict.

#### IV. Due Diligence

Finally, defendant argues that the trial court erred in ruling that the prosecution used due diligence in seeking to secure the appearance of witness Stephanie Hart, and then permitting her prior trial testimony to be read to the jury. We disagree.

Regarding the trial court’s finding that there was due diligence in attempting to locate a witness, we review this factual finding for clear error. *People v Briseno*, 211 Mich App 11, 14; 535 NW2d 559 (1995). “Because the trial court has the discretion to admit evidence, we review its ruling on admissibility for an abuse of discretion.” *Id.*

A defendant has a constitutional right to be confronted with the witnesses against him. *People v Conner*, 182 Mich App 674, 680; 452 NW2d 877 (1990). However, former testimony

may be used by the prosecution consistent with this constitutional right if the witness is “unavailable” for trial and there was a prior opportunity for cross-examination. *Crawford v Washington*, 541 US 36; 124 S Ct 1354, 1374; 158 L Ed 2d 177 (2004). A declarant is “unavailable” if the declarant “is absent from the hearing and the proponent of his statement has been unable to procure his attendance . . . by process or other reasonable means, and in a criminal case, due diligence is shown.” *People v James (After Remand)*, 192 Mich App 568, 571; 481 NW2d 715 (1992), quoting MRE 804(a)(5). The test for due diligence is “one of reasonableness and depends on the facts and circumstances of each case, i.e., whether diligent good-faith efforts were made to procure the testimony, not whether more stringent efforts would have produced it.” *People v Bean*, 457 Mich 677, 684; 580 NW2d 390 (1998).

Here, Officer Tyrone Kemp testified that he personally received the subpoenas in this case approximately one week before trial. Kemp indicated that he knew it would be a problem locating Hart. On August 9, 2003, Kemp went to Hart’s last known address on Delta street. On his first visit, there was no answer although Kemp observed someone moving the blinds. On his second visit, Kemp spoke to Hart’s father, who indicated that Hart was not at home but that she was aware of the trial. On August 10, 2003, Kemp went to the address at 1:00 a.m., and left his card and again spoke to Hart’s father who indicated that Hart knew of the trial and that he would tell her about it again to make sure she would appear at the trial. Kemp returned that same day at 5:00 p.m., and spoke with Hart’s father. At this time, Kemp left the subpoena with Hart’s father. On August 11, 2003, Kemp returned to the address at 9:30 a.m., and spoke with Hart’s father who insisted that she knew about the trial date and that he did not know why she did not come to court.

Kemp was aware that Hart had moved from the time of the first trial, but that she had since returned to live at the Delta address. In an attempt to locate Hart, Kemp checked the surrounding county jails and hospitals within Detroit, and the Wayne County Medical Examiner, but was unable to locate her. Upon contacting various utility companies, Kemp discovered that the electric bill for the Delta address was in Hart’s name. Upon contacting the post office, Kemp discovered that Hart was receiving mail at the Delta address. Additionally, Hart’s neighbor, Anthony Davis, informed Kemp that Hart resided at the Delta address and that she had been at the residence on August 9, 2003. Kemp also discovered that on August 12, 2003, Hart appeared at court and dropped her mother and cousin off, although she subsequently left. According to Kemp, other squad members had attempted to serve Hart, although Kemp was unaware of the dates and times of the attempts.

The record demonstrates that reasonable efforts constituting due diligence were utilized in attempting to secure Hart’s attendance at trial. Although Hart did not appear at the second trial, she did appear at the first trial. Prior to the second trial, Kemp went to Hart’s last known address on numerous occasions and at various times during the day in order to secure Hart’s attendance. There was, in fact, verification that Hart resided at that address. Hart’s father informed Kemp that she knew of the trial date. In fact, Hart drove her family members to court for their appearances, although she did not herself appear for trial. Finally, defendant had the full opportunity to cross-examine Hart at the previous trial. Although defendant cites other possible means for locating witnesses that were not used in this instance, it is not necessary that the authorities exhaust all possible avenues for locating a witness. Rather, the prosecution has the duty only to exercise a reasonable, good faith effort in locating the witness. *Briseno, supra* at

16. Here, the efforts made were reasonable good faith efforts constituting due diligence, and the trial court did not abuse its discretion in admitting the prior testimony.

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Donald S. Owens