

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
May 16, 2013

v

JOSEPH THORNTON WRIGHT,
Defendant-Appellant.

No. 308158
Wayne Circuit Court
LC No. 11-002197-FC

Before: BECKERING, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

Defendant Joseph Thornton Wright appeals by right his jury trial convictions of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced Wright to serve life in prison without the possibility of parole for his first-degree murder conviction and to two years in prison for his felony-firearm conviction. Because we conclude there were no errors warranting relief, we affirm.

On appeal, Wright argues that there was generally insufficient evidence to support his convictions; he also argues that the prosecutor failed to present sufficient evidence to prove that he was not acting in self-defense when he shot and killed Duane Gilmore. This Court reviews a challenge to the sufficiency of the evidence by reviewing “the record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009).

In order to convict Wright of first-degree murder, the prosecutor had to prove that Wright intentionally killed Gilmore and that he did so with premeditation and deliberation. *People v Taylor*, 275 Mich App 177, 179; 737 NW3d 790 (2007). Here, the prosecutor presented evidence that, although Gilmore had gotten into a verbal argument with Wright, Gilmore was unarmed and had not threatened Wright. Testimony established that, after Wright and Gilmore started to again verbally argue, Wright asked Gilmore if he thought he was tough and said, “I got something for tough niggers.” At that point, he pulled a firearm and shot Gilmore. Gilmore fell from the porch and Wright again pointed his weapon at Gilmore while he was lying on the ground and shot him in the chest. This evidence was sufficient to establish that Wright intentionally shot and killed Gilmore and did so after an opportunity to think about his actions.

See *People v Tilley*, 405 Mich 38, 45; 273 NW2d 471 (1979) (explaining that a jury can find premeditation where there is sufficient time between the initial homicidal intent and ultimate action for a reasonable person to subject his or her actions to a second look). Furthermore, this evidence established that Wright possessed a firearm during the commission of the murder. *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011) (stating the elements of felony-firearm). Wright nevertheless contends that the jury could not convict him because the primary witness, Gilmore's current girlfriend and Wright's former girlfriend, was not credible. However, it is for the jury to decide the weight and credibility to afford a witness' testimony and this Court will not second-guess that determination. See *People v Wolfe*, 440 Mich 508, 514-515; 441 NW2d 1201 (1992). When the evidence is viewed in the light most favorable to the prosecution, there was sufficient evidence from which a reasonable jury could find beyond a reasonable doubt that Wright committed first-degree premeditated murder and felony-firearm.

Wright also argues that the prosecution failed to prove beyond a reasonable doubt that he was not acting in self-defense when he shot Gilmore. A person may use deadly force to defend himself if he honestly and reasonably believes that it is necessary to use deadly force to prevent imminent death or imminent great bodily harm to himself or another person. MCL 780.972(1); *People v Dupree*, 486 Mich 693, 707; 788 NW2d 399 (2010). The prosecutor bears the burden of disproving self-defense, once the defendant properly presents evidence to support that defense. *Dupree*, 486 Mich at 709-710. Assuming that Wright presented evidence to establish his defense, the prosecutor's evidence was sufficient to justify a reasonable jury in finding beyond a reasonable doubt that Wright did not in fact have an honest and reasonable belief that it was necessary to resort to deadly force. When viewed in the light most favorable to the prosecution, the evidence tended to show that Gilmore did nothing to justify a belief that Wright was in imminent danger of being killed or suffering great bodily harm; Gilmore was unarmed and had not threatened Wright. There was also testimony that Wright taunted Gilmore just before shooting him the first time and then deliberately shot him a second time after he fell from the porch and while he was prone and defenseless. When viewed in the light most favorable to the prosecution, these actions support an inference that Wright did not fear Gilmore, but rather was acting deliberately out of animus.

There were no errors warranting relief.

Affirmed.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Kelly