STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 12, 2013
v	No. 305314 Genesee Circuit Court
CALVIN JEROME LESEARS, Defendant-Appellant.	LC No. 10-027292-FC

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant, Calvin Jerome LeSears, appeals as of right from his jury trial convictions of first-degree murder, MCL 750.316(1)(a), carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. LeSears was sentenced to life in prison on the first-degree murder conviction, 24 to 60 months' imprisonment on the carrying a concealed weapon conviction, and two years in prison for the felony-firearm conviction. This case arises from the murder of Gregory Ingram, Jr. on February 26, 2010, in Flint, Michigan. LeSears was tried with his co-defendants, Gary Lee Robinson and Dequeze Dixon, before separate juries. Robinson and Dixon appeal separately in Docket Nos. 304936 and 305185, respectively. We affirm.

The primary witness was Jason Sutton, who was present during the murder but uninvolved. He testified that he knew Robinson and Dixon already at the time, but he discovered LeSears's identity later. Sutton testified that he was picked up by defendants while walking home. Dixon was driving a vehicle owned by his girlfriend, Devonda Jiles. Either Dixon or Robinson told Sutton, "If we didn't know who you was, we were going to get you." They drove past the victim, at which point Dixon said, "There's Greg, let's get on him." Robinson got out of the car first, and then Dixon turned the car around and parked, whereupon Dixon and LeSears also got out. Sutton remained in the vehicle using his telephone.

Sutton testified that he heard a barrage of gunfire from multiple guns: an assault rifle, a shotgun, and a handgun. He saw all three defendants outside shooting the victim. A medical examination would later identify the victim's cause of death as multiple gunshot wounds from at least three different kinds of guns. When defendants returned to the vehicle, Sutton observed Robinson with an assault rifle, Dixon with a shotgun, and LeSears with a handgun. Dixon advised Sutton that they would kill him if he told anyone about the events of the evening. They

then dropped Sutton off at his house. Sutton continued to associate with defendants out of fear that they would believe he had told authorities about the shooting. A few weeks later, Sutton was again in the same vehicle with Dixon and Sutton's cousin, when police attempted to pull the vehicle over, apparently for unrelated reasons. All of the occupants jumped out and fled; Sutton was the only one apprehended. He was taken into custody for fleeing and eluding, and Jiles's car was impounded.

While incarcerated, Sutton asked to talk to the police about the victim's murder. After Sutton was interviewed, Robinson was arrested two days later, and Dixon was arrested later that same day. Sutton subsequently picked LeSears out of a photographic lineup as the third individual, asserting that he was about 80 percent certain. LeSears was arrested about a month later for an unrelated matter, after which Sutton identified LeSears with certainty out of a physical lineup. After being informed that he had been identified, LeSears explained that he had been attempting to contact the police "for a few days," wishing to speak about the homicide. An interview was conducted and recorded, and LeSears made a statement indicating, among other things, that he had not been attempting to hit the victim, but rather fire in his direction "trying to scare him off."

LeSears argues that his conviction of first-degree murder cannot be sustained because there was insufficient evidence to demonstrate his participation as a principal or an aider and abettor in the murder. He specifically argues a lack of evidence of premeditation or deliberation and a lack of evidence of aiding and abetting. We disagree. We review a challenge to the sufficiency of the evidence de novo to determine whether a rational trier of fact could have found the elements of the charged offense proven beyond a reasonable doubt. *People v Lockett*, 295 Mich App 165, 180; 814 NW2d 295 (2012). In so doing, we "will not interfere with the trier of fact's role in determining the weight of the evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

First-degree premeditated murder is a specific intent crime that requires proof that the defendant had an intention to kill. *People v Herndon*, 246 Mich App 371, 386; 633 NW2d 376 (2001). The killing must furthermore be deliberate and premeditated. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992); MCL 750.316(1)(1). "To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem." *People v Furman*, 158 Mich App 302, 308; 404 NW2d 246 (1987). A defendant's state of mind may be inferred from any facts in evidence, including circumstantial evidence. *People v Unger*, 278 Mich App 210, 229; 749 NW2d 272 (2008).

The evidence showed that defendant had a handgun not only accessible and available, but in fact ready. The other two defendants also had guns, a fact of which LeSears was impliedly aware. After Dixon said, "let's get him," Robinson was the first to exit the vehicle. LeSears did not: rather, Dixon turned the vehicle around and parked. The length of time necessary to show premeditation and deliberation need only be sufficient for a reasonable person to be able to take a "second look" at the situation. *People v Tilley*, 405 Mich 38, 45; 273 NW2d 471 (1979). We find that LeSears had that opportunity. Furthermore, we are not impressed with the contention that LeSears essentially "shot to miss." First, it is essentially axiomatic that discharging a firearm even in the general direction of a person demonstrates, at a minimum, a reckless disregard for ensuing harm. More significantly, LeSears did not, in fact, miss. The jury could

reasonably have found LeSears's statement that he did not intend to shoot the victim unworthy of credibility in light of Sutton's testimony that he saw all three defendants standing *over* the victim and firing their guns, as well as the evidence of handgun-inflicted injuries to the victim.

While conflicting evidence may have existed, any such conflicts are resolved in favor of the jury's verdict and this Court defers to the jury's credibility determinations at trial. *Unger*, 278 Mich App at 222. The use of a dangerous weapon, the type and number of injuries inflicted, along with LeSears's conduct permit an inference of an intent to kill. *People v Mills*, 450 Mich 61, 71; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995).

Additionally, any advice, aid, or encouragement, however slight, is sufficient to establish guilt on an aiding and abetting theory. *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992). The intent element can be established by proof that a defendant had a specific intent to commit the crime, that the defendant had knowledge of the principal's intent, or that the criminal act committed by the principal was an incidental consequence that might reasonably have been expected to result as a natural and probable consequence of the intended wrong. *People v Robinson*, 475 Mich 1, 6–7, 9; 715 NW2d 44 (2006). Intent may be inferred from all of the facts and circumstances, and minimal circumstantial evidence is sufficient. *People v Fetterley*, 229 Mich App 511, 517–518; 583 NW2d 199 (1998). Here, defendant was unambiguously aware of the crime, and even if he had not in fact intended to shoot the victim, he participated in the crime and impliedly approved of it by standing over Ingram with his co-defendants. Simply because the medical examiner could not determine which bullet was the immediate cause of Ingram's death is irrelevant given the numerous wounds inflicted and their location, which reasonably leads to the conclusion that death would be the natural and probable consequence of defendants' actions. *Robinson*, 475 Mich at 6-7, 9.

LeSears also challenges the admissibility of his inculpatory statement to police. We find no error. We review a trial court's ultimate decision on a motion to suppress de novo, but we review the court's factual findings for clear error. *People v Elliott*, 295 Mich App 623, 631; 815 NW2d 575 (2012). At his first interview, LeSears was read his *Miranda*[1] rights, and in that interview he denied any involvement in the homicide. The police testified that LeSears participated in the physical lineup voluntarily, but LeSears testified that he only did so because he believed the lineup was for an entirely different matter. When the interviewing officer approached LeSears after the lineup, he immediately began discussing the Ingram murder. LeSears was again read his *Miranda* rights, and LeSears confirmed that he understood them. LeSears denied having been threatened by the interviewing officer and confirmed being offered food and drink. However, he asserted that he had been threatened by another officer, and that was why he spoke to the police about the Ingram homicide. The trial court denied the suppression motion.

Significantly, LeSears does not dispute that he was provided with his rights pursuant to *Miranda*, that he understood those rights, that he initiated his post-lineup interview, or that the police engaged in proper interrogation methods. He acknowledges that he did not provide any

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

indication during the first or second interviews that he wished to refuse to answer questions posed by police or that he wanted an attorney to be present. Rather, his assertion of error is premised on the appointment and availability of counsel to him on an unrelated matter, and the awareness of the police regarding the existence of counsel, when questioned regarding the Ingram homicide. This is, however, irrelevant: a "defendant may waive the right [to counsel] whether or not he is already represented by counsel; the decision to waive need not itself be counseled." *Montejo v Louisiana*, 556 US 778, 786; 129 S Ct 2079; 173 L Ed 2d 955 (2009). Defendant was in jail and had an attorney on another charge. The reality is any waiver of counsel is valid so long as it was not based on "intimidation, coercion, or deception" and was made with full comprehension of the waiver. *People v Daoud*, 462 Mich 621, 635-636; 614 NW2d 152 (2000) (citation omitted). Neither of those two elements is in dispute.[2]

In any event, even if the inculpatory statement should not have been admitted, we examine the remaining evidence against the defendant to determine whether the admission of the confession was harmless beyond a reasonable doubt. *People v Whitehead*, 238 Mich App 1, 10; 604 NW2d 737 (1999). Admission of mere cumulative evidence is not prejudicial. *People v Rodriquez (On Remand)*, 216 Mich App 329, 332; 549 NW2d 359 (1996). Sutton identified LeSears and placed him at the scene as an active participant in the homicide. Sutton's testimony, if believed, was sufficient to convict LeSears. While LeSears contends that Sutton was not a credible witness because of the leniency afforded to him in exchange for his testimony, credibility determinations are solely within the purview of the jury. *People v Hughes*, 217 Mich App 242, 248; 550 NW2d 871 (1996). LeSears's suggestion that Sutton lacked credibility does not constitute a sufficient basis to overturn his conviction on appeal. *Id.*

Finally, LeSears asserts as error the failure of the trial court, in accordance with the doctrine of completeness, to admit an earlier exculpatory statement he made to police. We disagree. The "rule of completeness," codified at MRE 106, requires the admission of the remainder of a writing or recorded statement if part of it has been introduced and "a thought or act cannot be accurately understood without considering the entire context and content in which the thought was expressed." *People v McReavy*, 436 Mich 197, 214-215; 462 NW2d 1 (1990). It does not permit the introduction of *other* pieces of evidence. Here, the admitted statement was already complete, so the "rule of completeness" simply has no applicability to a completely different statement. Otherwise, "[a]n exculpatory statement by a defendant made after his arrest

[2] Defendant appears to conflate the voluntariness of his statement with the alleged involuntariness of his participation in the lineup due to his misunderstanding of the lineup's purpose. These are independent issues, and his failure to elaborate an argument or provide citation to law on his contentions pertaining to the propriety of the live line-up results in an abandonment of that claim. MCR 7.212(C)(5); *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004).

is properly excluded at trial as self-serving." *People v Taylor*, 98 Mich App 685, 690; 296 NW2d 631 (1980). As a result, the trial court did not err in denying Lesears's request that the jury also be provided his exculpatory statement.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause