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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH DEVON TURNER,

Defendant-Appellant.

UNPUBLISHED
July 18, 2024

No. 358748
Genesee Circuit Court
LC No. 19-045042-FC

Before: MALDONADO, P.J., and K. F. KELLY and REDFORD, JJ.

MALDONADO, P.J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusions that defendant did not establish a speedy trial violation, defendant's peremptory challenges argument was moot, defendant was not denied the right to a public trial, defendant was not denied the effective assistance of counsel, the trial court did not err by declining to conduct an evidentiary hearing regarding the alleged conflict of interests, the prosecution did not offer false testimony, and the prosecution did not wrongfully suppress evidence. However, I do not agree with the majority's conclusion that the prosecution presented sufficient evidence to establish premeditation. Accordingly, I would vacate defendant's conviction of first-degree murder and remand for entry of a conviction of second-degree murder as well as resentencing.

In this case, it is undisputed that defendant had no prior relationship with Watson, so he clearly did not go to the club with the intent to kill. The only inference supported by the evidence is that defendant's intent to kill did not form until at some point after the chaos outside the club began. The three eyewitnesses who testified—Robinson, Mitchell, and Flowers—all presented very different versions of defendant's interactions that night. Robinson testified that she and defendant were almost hit by a car, and the next thing that happened was the gunshots; the only inference this statement can support is that the murder was an impulsive reaction by defendant to having been nearly struck by the car. Neither Mitchell nor Flowers, however, suggested that defendant was almost struck by a car. Mitchell testified that defendant came to check if he was okay after Mitchell's fight with Jackson ended, and the pair then walked in opposite directions. Mitchell testified that he heard defendant and the victim talking but could not hear what was being said. The last thing Mitchell heard was the victim say, "yeah, whatever [n-word]," and the

gunshots immediately followed. The only inference supported by this testimony was that the shooting was an impulsive reaction to something said between defendant and the victim. Flowers contradicted Mitchell's testimony that defendant and the victim spoke:

> *Q.* And what was [defendant] doing?
>
> *A.* Just standing there.
>
> *Q.* Was he talking?
>
> *A.* No.
>
> *Q.* Was he addressing anyone else?
>
> *A.* To my knowledge, no.

Flowers testified that he "felt as if something was about to happen" based on how defendant "was standing there looking at the other individuals." Flowers testified that he told defendant's brother, who also worked security at Club 69, to "grab" defendant "[b]ecause the look on his face and his body language was as if something was about to happen." This evidence was probative of intent to kill, but it did not suggest premeditation and deliberation. Indeed, Flowers's testimony regarding defendant's demeanor is opposite that which is necessary "for cool-headed reflection." *Plummer*, 229 Mich App at 302. The shooting immediately followed Flowers's "feeling" that "something was about to happen," so there was no "time to allow the defendant to take a second look." *Jackson*, 292 Mich App at 588.

Finally, the surveillance footage likewise provides no support for a rational inference of premeditation and deliberation. After the fight starts, defendant can be seen walking back to his car, opening the door, reaching into the car, then getting into it. He eventually gets back up and walks over to toward where the fight was happening. Simply put, it is not clear at all what defendant is doing, and the video does not help establish defendant's state of mind.

Therefore, with respect to defendant's first-degree murder conviction, I respectfully dissent.

/s/ Allie Greenleaf Maldonado