STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0589

State of Minnesota,
Respondent,

vs.

Antoine Lamon Donaldson,
Appellant.

Filed July 7, 2009
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-07-102815

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges his conviction of aiding and abetting attempted first-degree murder, arguing that the evidence was insufficient to prove premeditation beyond a reasonable doubt. We affirm.

FACTS

On July 19, 2007, appellant Antoine Lamon Donaldson's sister, Justine Humphrey, took her infant nephew to a house in south Minneapolis (the house) so that he could visit with his mother, L.W. Upon her entry to the house, residents instructed Humphrey to remove her shoes because the carpet had recently been cleaned. After Humphrey refused to remove her shoes, a resident asked her to leave. Victim E.R. was in the house but did not participate in this exchange. Humphrey left the house and called her mother at work to complain about the incident.

Over the next 30 minutes, E.R. received two telephone calls from Donaldson's brother. During the first call, Donaldson's brother told E.R. that he and his family were on their way to the house. During the second call, Donaldson's brother threatened to "whack" E.R. if he did not put L.W.'s brother on the telephone. After Donaldson's brother repeated his threat to "whack" E.R., E.R. said, "So you all are bringing guns, I don't care, bring them. I ain't scared."

After calling her mother, Humphrey went to her residence and telephoned Donaldson's roommate about the incident. Donaldson's roommate picked up Donaldson at school, informed him of the incident, and drove to Humphrey's residence. Eventually,

Donaldson, his roommate, Humphrey, Donaldson's brother and mother, and two cousins congregated at Humphrey's residence. After discussing the incident, Donaldson and his family members decided to drive to E.R.'s house.

Donaldson and his family members parked some distance away from E.R.'s house and walked down the middle of the street to the front of E.R.'s house, where Donaldson yelled for E.R. to come outside. E.R.'s brother called 911 from inside the house and stayed on the telephone with the 911 operator during the entire altercation. Once outside, E.R. saw Donaldson and his family members and observed Donaldson's mother standing in the middle of the street swinging a golf club. She called for E.R.'s aunt to come outside, calling her "the dyke bitch." When E.R.'s aunt did not come out of the house and after Donaldson's mother heard a female inside the house laugh, Donaldson's mother smashed E.R.'s aunt's car window with the golf club.

At this time, E.R. was standing outside of the house by the front gate with his hands in his pockets. Donaldson's brother expressed alarm that E.R.'s hands were in his pockets, so E.R. removed his hands, showing that he did not have a weapon. E.R. then asked the group if they wanted to fight and removed his shirt. When no one offered to fight him, E.R. stated, "That's what I thought, you all ain't s--t." Donaldson then stepped from behind a car with a gun in his hand and pointed it at E.R. A witness reported that Humphrey handed Donaldson the gun and that Donaldson's mother told him to shoot E.R. in head. E.R. backed away slowly toward the house, and once he reached the steps to the house, he turned to run up them. Donaldson fired the gun toward E.R.'s head. The bullet struck E.R.'s head, exiting his skull. Donaldson fired three more times. E.R. fell

on the porch, yelling and identifying Donaldson as the shooter. E.R.'s identification of Donaldson was recorded on the tape recording of the 911 call made by E.R.'s brother. After the shooting, Donaldson and his family left the area and returned to Humphrey's residence. E.R.'s injury was not fatal.

After a four-day jury trial, Donaldson was convicted of aiding and abetting attempted first-degree murder and aiding and abetting second-degree assault and was sentenced to 180 months' imprisonment. This appeal follows.

D E C I S I O N

Donaldson appeals his conviction of aiding and abetting attempted first-degree murder, arguing that the evidence was insufficient to convict him.

In considering a claim of insufficient evidence, this court conducts a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Additionally, "[w]hile it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Jones*, 516 N.W.2d 545, 549

(Minn. 1999). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Id.* A jury is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

Donaldson argues that the evidence was insufficient to convict him of aiding and abetting attempted first-degree murder because the state failed to prove the element of premeditation beyond a reasonable doubt. We disagree.

To be guilty of first-degree murder, a defendant must do an act that is a substantial step toward causing "the death of a human being with *premeditation* and with intent to effect the death of the person." Minn. Stat. § 609.185, subd. (a)(1) (2006) (emphasis added); *see also* Minn. Stat. § 609.17, subd. 1 (2006) (defining an attempted crime as "an act which is a substantial step toward, and more than preparation for, the commission of the crime . . ."). "Premeditation" is "to consider, plan or prepare for, or determine to commit" the act. Minn. Stat. § 609.18 (2006). Because premeditation is a state of mind, it is therefore generally proven through circumstantial evidence. *State v. Kendell*, 723 N.W.2d 597, 605 (Minn. 2006).

Premeditation does not require that a specific period of time passes for deliberation, nor does it require proof of extensive plans and preparation to kill. *State v. Cooper*, 561 N.W.2d 175, 180 (Minn. 1997). The state is, however, required to prove that "after the defendant formed the intent to kill, some appreciable time passed." *Id.* And a defendant's actions before and after the crime are relevant to the question of

premeditation. *Kendell*, 723 N.W.2d at 605. Minnesota courts have recognized three categories of evidence relevant to infer the existence of premeditation: (1) evidence of planning; (2) motive evidence; and (3) evidence as to the nature of the (attempted) killing. *State v. Moua*, 678 N.W.2d 29, 40-41 (Minn. 2004). Notably, the state need not "present evidence from each of the three categories relevant to premeditation in order to support a finding of premeditation." *State v. Goodloe*, 718 N.W.2d 413, 420 n.4 (Minn. 2006). However, premeditation must be inferred from the totality of the circumstances. *State v. Ulm*, 326 N.W.2d 159, 162 (Minn. 1982).

Evidence of Planning

"Premeditation may be shown by evidence that the defendant planned his attack." *State v. Hughes*, 749 N.W.2d 307, 313 (Minn. 2008). A determination regarding the planning activity includes consideration of "facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing." *State v. Moore*, 481 N.W.2d 355, 361 (Minn. 1992). And procurement of a weapon constitutes evidence of premeditation. *See e.g.*, *id.* (concluding that the defendant's action in removing "the shotgun from its normal storage place under the bed," loading it, and then placing it on a living room shelf the day of the killing supported an inference of premeditation); *Bangert v. State*, 282 N.W.2d 540, 544 (Minn. 1979) (determining that premeditation existed when the defendant procured a rifle, walked down a hallway, aimed, and pulled the trigger three times).

Donaldson asserts that the evidence presented by the state shows only "an unplanned, rash decision on [his part], not a planned killing." We disagree.

The evidence reveals that Donaldson and his family members drove over to the house where E.R. was located to confront E.R. after Donaldson's brother made threats to him, including threats of violence and gun possession. And the evidence reveals that after arriving at the house, Donaldson called for E.R. to come outside of the house and shot E.R. in the head. The jury heard this evidence, which included evidence that Donaldson went to the house, either possessing a gun himself or being with others who possessed a gun, intending specifically to confront E.R.

We find unpersuasive Donaldson's argument that, if he was not the person who brought the gun to the house, he could not be guilty of premeditation. It is irrelevant whether Donaldson brought the gun to the house or was handed the gun after arriving at the house. "The requisite plan to commit a first-degree murder can be formulated virtually instantaneously by a killer." *State v. Neumann*, 262 N.W.2d 426, 430 (Minn. 1978) (quotation marks omitted). And the Minnesota Supreme Court has recognized that premeditation "could well [be] formed in those moments of hostile confrontation between [a] defendant and [the] decedent." *State v. Campbell*, 281 Minn. 1, 13, 161 N.W.2d 47, 55 (1968). Because the record reveals that Donaldson shot E.R. after several "hostile confrontations," the plan to shoot E.R. may have formulated instantaneously. And once this plan was formed, Donaldson had the means to shoot E.R., either as a result of his or someone else's forethought in bringing a gun to the house.

It is well settled that in criminal cases judging the credibility of witnesses and the weight given to their testimony rests within the province of the fact finder. *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997). This court shows great deference to a

jury's determinations of witness credibility. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *affirmed*, 508 U.S. 366, 113 S. Ct. 2130 (1993). And the fact that a party offers a plausible alternative explanation of what occurred does not compel the trier of fact to accept his explanation. *State v. Larson*, 393 N.W.2d 238, 241-42 (Minn. App. 1986); *see also State v. Steinbuch*, 514 N.W.2d 793, 800 (Minn. 1994) (concluding that a jury is free to question a party's credibility, and is under no obligation to believe a party's version of events). Here, the jury heard testimony that Donaldson and his family devised a plan to go to the house to confront E.R. and that in the phone conversations preceding the trip, there were threats of "whacking" E.R. and mention of Donaldson's family bringing guns to the confrontation. We conclude that the jury's verdict reflects that it found credible the testimony suggesting that Donaldson was involved in a plan to go to the house with guns to confront those present.

Ample evidence supports the finding that Donaldson's actions before the shooting showed that he engaged in planning activity directed at killing of E.R.

Motive Evidence

"Motive may be inferred from the defendant's prior relationship and conduct with the victim." *Hughes*, 749 N.W.2d at 314 (citation omitted). Motive evidence includes "prior threats by the defendant to do violence to the victim, plans or desires of the defendant which would be facilitated by the death of the victim, and prior conduct of the victim known to have angered the defendant." *Moore*, 481 N.W.2d at 361. And "[w]hile proof of a motive is not a necessary element of premeditated murder, presence of a

motive strengthens a finding that defendant deliberated over his actions and weakens the argument that the killing was spontaneous." *Id.* at 362.

Donaldson argues that "although there was certainly evidence that there were strong emotions running between the families, there was no motive for cold blooded murder." We disagree.

The evidence shows that there was a prior relationship and conduct between Donaldson and E.R. that was, at times, volatile, and the families of Donaldson and E.R. were often in conflict. *See State v. Pendleton*, 759 N.W.2d 900, 910 (Minn. 2009) (concluding that motive could be inferred from the defendant's prior relationship with the victim because it was "undisputed that appellant and [victim] had fought the night of the killing" and there was testimony that appellant and the victim had a "rocky relationship" prior to that night). Although the exact motive for the shooting is unclear, based on the evidence about ongoing fights between family members, we conclude that it is possible that the jury could have determined that Donaldson was motivated to shoot E.R. due to the conflicts between their families. Under *Pendleton*, the volatile relationship between Donaldson and E.R. and their families may be sufficient to infer Donaldson's motive for the shooting.

And even if there was insufficient evidence presented regarding Donaldson's motive, Minnesota courts have determined that proof of motive is not a necessary element of premeditation. *Moore*, 481 N.W.2d at 362. And Minnesota courts "have never held that the state must present evidence from each of the three categories relevant

to premeditation in order to support a finding of premeditation." *State v. Goodloe*, 718 N.W.2d 413, 420 (Minn. 2006).

Nature of the Killing

"[P]remeditation may be shown through evidence of the nature of the killing itself." *Hughes*, 749 N.W.2d at 314. This evidence includes the number of wounds inflicted, infliction of wounds to certain vital areas, infliction of gunshot wounds from close proximity, and a defendant's concern with escape rather than rendering aid to the injured victim. *State v. McArthur*, 730 N.W.2d 44, 50 (Minn. 2007).

Donaldson asserts that "the nature of the attempted killing does not support a finding of premeditation" because E.R. was shot only once. We disagree.

The nature of the attempted killing of E.R. supports a finding of premeditation for four reasons. First, although E.R. received only one gunshot wound, multiple shots were fired at him. An officer from the Minneapolis Police Department Crime Unit testified that the police found four shell casings and two live rounds all from the same kind of gun, a .9 Luger, as well as a shell casing from a different gun, a .380 automatic, in front of the house. And witnesses testified that after seeing Donaldson with a gun, they heard three to four shots fired, corroborating the evidence at the scene. A forensic scientist with the Minnesota Police Department Crime Lab Unit opined that one of the live rounds was found at the scene possibly as a result of the gun misfiring, meaning that the shooter may have had to discharge a misfired bullet and then chambering another bullet by pulling the slide back to continue shooting. Explaining the live round that had no misfire markings, the scientist opined that a person who was handed a gun not knowing whether a bullet

was in the chamber, might pull the slide back to chamber a bullet, and in doing so a live round would be ejected from the gun. Based on this testimony, the jury could assume that Donaldson fired multiple shots at E.R. and also fired the gun after it misfired.

Second, evidence was presented that Donaldson slowly pulled up the gun as he was walking around a car, aiming at E.R. before he fired. And witnesses testified that Donaldson was not arguing or yelling during the confrontation, suggesting a calculating, calm demeanor. Considered with the evidence of planning activity and motive, we conclude that a jury could interpret Donaldson's actions to indicate premeditation. *See State v. Kendell*, 723 N.W.2d 597, 606 (Minn. 2006) (determining that a defendant's "cool, calm demeanor consistent with premeditation" is a factor to consider in the totality of the circumstances analysis regarding premeditation).

Third, E.R. testified that after Donaldson shot him, Donaldson stated, "I told you so, Man." This statement also demonstrates planning and premeditation. *Id.*

Finally, E.R. suffered a gunshot wound to his head, which is a "vital area," and witnesses testified that Donaldson fled from the scene rather than render aid to E.R.. These are both factors to consider under the "nature of the killing" element of premeditation. *See McArthur*, 730 N.W.2d at 50 (concluding that evidence of premeditation includes "infliction of wounds to certain vital areas" and "a defendant's concern with escape rather than rendering aid to the injured victim").

The evidence shows that Donaldson (1) traveled to the house where E.R. was located after threats were made, including the threat of bringing guns, (2) fired multiple times, (3) wounded E.R. in a vital area, and (4) fled the scene after the shooting.

Although any single individual fact may not have justified the inference of premeditation, the combination of all of these facts provided a sufficient basis for the jury to find premeditation. *See State v. Lodermeier*, 539 N.W.2d 396, 398 (Minn. 1995) ("While any one of the individual factors in this case by itself might not have justified the inference of premeditation, the combination of all the facts clearly provided a sufficient basis to justify the jury's inferring beyond a reasonable doubt that . . . defendant premeditated her death.").

Viewed in the light most favorable to the conviction, the evidence was sufficient to support the jury's verdict that Donaldson is guilty of the charged offense of aiding and abetting attempted first-degree murder.

Affirmed.