

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 8, 2011

v

ANTON JORDAN CARR,
Defendant-Appellant.

No. 298143
Wayne Circuit Court
LC No. 09-029945-FC

Before: SERVITTO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree felony murder, MCL 750.316(1)(b), and possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b. He was sentenced to life imprisonment for the felony murder conviction and two years’ imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court erred by denying his motion to quash the murder charges against him. We disagree. “[We] review[] for an abuse of discretion both a district court’s decision to bind a defendant over for trial and a trial court’s decision on a motion to quash an information.” *People v Fletcher*, 260 Mich App 531, 551-552; 679 NW2d 127 (2004). An abuse of discretion occurs when the outcome falls outside the range of reasonable and principled outcomes. *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008).

The purpose of a preliminary examination is to determine whether probable cause exists to believe that a crime was committed and that the defendant committed it. *People v Perkins*, 468 Mich 448, 452; 662 NW2d 727 (2003). The prosecutor need not establish guilt beyond a reasonable doubt, but must present “evidence sufficient to make a person of ordinary caution and prudence to conscientiously entertain a reasonable belief of the defendant’s guilt.” *People v Hill*, 269 Mich App 505, 514; 715 NW2d 301 (2006). Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to support a defendant’s bindover if such evidence establishes probable cause. *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). If probable cause exists to believe that a felony was committed and that the defendant committed it, the district court must bind the defendant over for trial. MCL 766.13; MCR 6.110(E); *Hill*, 269 Mich App at 514.

Defendant’s challenge to his bindover on the felony murder charge lacks merit because any error was harmless. As discussed more thoroughly later in this opinion, the prosecutor

presented sufficient evidence during trial to support defendant's felony murder conviction. "[A] magistrate's erroneous conclusion that sufficient evidence was presented at the preliminary examination is rendered harmless by the presentation at trial of sufficient evidence to convict." *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002); see also *People v Wilson*, 469 Mich 1018; 677 NW2d 29 (2004) ("If a defendant is fairly convicted at trial, no appeal lies regarding whether the evidence at the preliminary examination was sufficient to warrant a bindover.") Thus, defendant's argument with respect to the felony murder charge fails.

Defendant's challenge regarding his first-degree premeditated murder charge likewise lacks merit. To convict a defendant of first-degree premeditated murder, MCL 750.316(1)(a), a prosecutor must establish that the killing was intentional and that "the act of killing was premeditated and deliberate." *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001). Premeditation and deliberation may be inferred from the circumstances surrounding the killing, but the inference must have support in the record and cannot be based on mere speculation. *Id.*; *People v Plummer*, 229 Mich App 293, 301; 581 NW2d 753 (1998). Further, aiding and abetting requires that

(1) the underlying crime was committed by either the defendant or some other person, (2) the defendant performed acts or gave encouragement that aided and assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time of giving aid and encouragement. [*People v Smielewski*, 235 Mich App 196, 207; 596 NW2d 636 (1999).]

The evidence presented at defendant's preliminary examination was sufficient to support his bindover on the first-degree premeditated murder charge.

Ruby Moore testified that she asked Corey Bailey to rob Terrance Richards after she saw Richards's Cartier glasses and watch. Bailey maintained that he did not want to rob Richards because he thought that Richards might have a gun. He called defendant and asked defendant if he wanted to do it. Thereafter, Bailey and Moore awoke when they heard gunshots. They were in a back bedroom at the Ohio Street residence. Moore admitted that she was lying down because she was intoxicated. She insisted that Bailey was with her when she heard the gunshots.

After hearing the gunshots, Bailey went to a window and saw defendant and an unknown man standing behind Richards's car. All of the car doors and the trunk were open. Both men had guns. Defendant took a plastic bag out of the trunk, and both men ran away. Patrice Rice then came inside the house. She was crying and said, "Why did they shoot him? They was just supposed to rob him." Bailey, Moore, and Rice ran to the Cloverlawn house, a few streets away. Bailey called defendant using Moore's cell phone, and defendant said that he had the money. They argued about how much money was recovered from the car. Defendant arrived at the Cloverlawn house approximately 30 minutes later. Bailey asked defendant why he killed Richards, and defendant responded that he did not care. Bailey testified that defendant gave him \$500, which he gave to Rice. Moore, however, testified that after defendant gave Bailey some money, Bailey gave her and Rice \$65. Richards died from a single, close-range gunshot to the head.

This evidence, and reasonable inferences arising from it, was sufficient to establish probable cause that defendant killed Richards with premeditation. Defendant argues that the evidence supporting his bindover was insufficient because Bailey admitted at his plea hearing that he shot Richards.¹ Bailey's preliminary examination testimony regarding what he admitted at his plea hearing was equivocal. When questioned by defense counsel, Bailey denied shooting Richards but claimed that he admitted at his plea hearing that he had shot Richards. When the prosecutor questioned Bailey, however, Bailey testified that he did not admit shooting Richards at his plea hearing and that he had not paid attention to defense counsel's questions. Although Bailey's testimony regarding what he admitted at the plea hearing was equivocal, at the preliminary examination, he repeatedly denied shooting Richards.

In making a bindover determination, the district court may weigh the credibility of the witnesses. When evidence conflicts, the district court should bind the defendant over so that the jury may resolve the conflicts. *People v Laws*, 218 Mich App 447, 452; 554 NW2d 586 (1996). Witness credibility is not a question that the circuit court should determine when reviewing the district court's decision. *People v Northey*, 231 Mich App 568, 577; 591 NW2d 227 (1998). Therefore, despite Bailey's conflicting statements, the district court properly bound defendant over for trial on the first-degree murder charge, and the trial court did not abuse its discretion by denying defendant's motion to quash the charge.

Defendant next argues that the evidence was insufficient to support his convictions. We disagree. We review de novo a trial court's denial of a motion for directed verdict. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). When determining whether sufficient evidence exists to support a conviction, a court must view the evidence in the light most favorable to the prosecution and determine whether a rational fact finder could conclude that the prosecutor proved every element of the crime charged beyond a reasonable doubt. *People v Sherman-Huffman*, 466 Mich 39, 40-41; 642 NW2d 339 (2002); *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). A reviewing court must draw all reasonable inferences and make credibility determinations in support of the jury verdict. *Id.* at 400. Circumstantial evidence and reasonable inferences drawn therefrom can constitute sufficient proof of the elements of an offense. *Id.*, citing *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

To establish first-degree felony murder, the prosecution must prove: (1) that a human being was killed, (2) that the defendant had the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with the knowledge that death or great bodily harm was the probable result, and (3) that the killing occurred while the defendant was committing, attempting to commit, or assisting in the commission of any of the felonies enumerated in MCL 750.316(1), including robbery. *People v Smith*, 478 Mich 292, 318-319; 733 NW2d 351 (2007). "The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007), quoting *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

¹ In exchange for his testimony in this case, Bailey pleaded guilty to second-degree murder.

The evidence presented during trial supported defendant's convictions. It showed that Rice and Moore discussed robbing Richards to obtain his Cartier eyeglasses, watch with diamonds in it, and bag of money. They asked Bailey to commit the robbery, but he declined because he thought that Richards had a gun. Bailey recruited defendant to commit the robbery, and he agreed to do it. Moore heard Bailey talking to "Anton" about the robbery on her cell phone and identified defendant as "Anton." Several more calls were placed between Moore's cell phone and defendant's cell phone, a "918" number. Bailey told defendant that the man whom he should rob would be arriving at the Ohio residence in a gray Dodge Magnum.

Thereafter, two men with guns approached the Magnum and started shooting toward it when it was parked across the street from the Ohio house. One of the shooters ordered Rice to get out of the car and put her face in the snow. Rice did not know who the shooters were but maintained that Bailey was not one of them because both shooters were taller than Bailey. Bailey and Moore were together in a back bedroom when they heard gunshots. Bailey ran to the window and saw defendant and another man holding guns and standing near the Magnum. They grabbed a bag out of the trunk and ran away. When Rice came into the house, she was upset and exclaimed, "why did they kill him? They was just supposed to rob him."

Thereafter, at the Cloverlawn house, Bailey called defendant's cell phone several times using Moore's cell phone in an attempt to get his share of the money recovered from the vehicle. When Bailey asked why defendant killed Richards, defendant responded that he wanted the cash. Defendant eventually arrived and gave Bailey money. Bailey used Moore's cell phone to call defendant's cell phone twice afterward because he was not satisfied with the amount of money that defendant had given to him. Cell phone records revealed that 26 calls were placed between Moore's and defendant's cell phones from 11:00 p.m. on January 20, 2009, to 3:00 a.m. on January 21, 2009.

Defendant contends that Bailey's testimony was unreliable because he was given a very generous plea agreement and had to connect defendant to the shooting in order to keep the agreement and avoid a first-degree murder charge. Defense counsel questioned Bailey about his plea agreement during trial and tried to impeach him with his preliminary examination testimony stating that he admitted at his plea hearing that he had shot Richards. Bailey denied shooting Richards and maintained that he had been confused at the preliminary examination. Bailey's credibility was an issue for the jury to determine. See *Fletcher*, 260 Mich App at 561. Thus, viewing the evidence in the light most favorable to the prosecution, sufficient evidence supported defendant's convictions.

Defendant next argues that he is entitled to a new trial because the prosecutor committed misconduct during her rebuttal closing argument. We again disagree. We review claims of prosecutorial misconduct de novo to determine whether a defendant was denied a fair and impartial trial. *People v Cox*, 268 Mich App 440, 450-451; 709 NW2d 152 (2005). "When reviewing a claim of prosecutorial misconduct, we examine the pertinent portion of the record and evaluate a prosecutor's remarks in context." *Id.* at 451.

Defendant challenges the following remarks that the prosecutor made during her rebuttal closing argument:

Agreement for Special Consideration, ladies and gentlemen, does not say that Corey Bailey or Ruby Moore must testify against Anton Carr. We have been up front. We have been open, and we have put those agreements for special consideration on evidence. They are Exhibits.

Ask for them. Read them. Study them. It says you will testify about the person or persons known to you to be involved. Doesn't specify if you testify against Anton Carr. I don't know Anton Carr. I have no interest in having someone testify about Anton Carr if he didn't commit murder.

My supervisors are not going to –

THE COURT: Let's talk about the evidence. That is improper.

MR. CRIPPS [defense counsel]: I strongly object.

Defendant contends that the prosecutor's remarks improperly vouched for Bailey's credibility. A prosecutor may not "vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness' truthfulness." *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). Here, the prosecutor's remarks did not convey that she had special knowledge regarding Bailey's credibility. Rather, she argued that Bailey and Moore were credible because, contrary to defense counsel's argument, their agreements did not require them to testify against defendant specifically. To be sure, their agreements required them to testify about "the person or persons" involved in the shooting. The prosecutor's argument responded to defense counsel's contention that, in order for Bailey and Moore to maintain their agreements, they had to testify specifically against defendant. A prosecutor may properly argue based on the facts that certain witnesses are credible. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Moreover, "[a] prosecutor's comments are be considered in light of defense counsel's arguments." *People v Vaughn*, 200 Mich App 32, 39; 504 NW2d 2 (1993).

The only improper remark that the prosecutor made was the reference to her supervisors. At that point, however, the trial court interjected and told her to focus on the evidence. The prosecutor did not complete her statement about her supervisors, and the point that she was trying to make is unclear. Moreover, the trial court instructed the jury that it should consider only the evidence that was admitted and that the attorneys' comments are not evidence. "[J]uries are presumed to follow their instructions." *People v Torres*, 222 Mich App 411, 423; 564 NW2d 149 (1997). Accordingly, the prosecutor's remark did not deny defendant a fair and impartial trial. *Cox*, 268 Mich App at 450-451.

Affirmed.

/s/ Deborah A. Servitto

/s/ Mark J. Cavanagh

/s/ Cynthia Diane Stephens