

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEQUAVIOUS TRAYONNE JOHNSON,

Defendant-Appellant.

UNPUBLISHED

November 19, 2009

No. 285888

Saginaw Circuit Court

LC No. 07-029125-FJ

Before: Borrello, P.J., and Whitbeck and K. F. Kelly, JJ.

PER CURIAM.

A jury convicted defendant Dequavious Johnson of first-degree murder,¹ conspiracy to commit first-degree murder,² three counts of assault with intent to murder,³ two counts of intentionally discharging a firearm from a motor vehicle,⁴ carrying a concealed weapon (CCW),⁵ and seven counts of possession of a firearm during the commission of a felony (felony-firearm).⁶ The trial court sentenced Johnson to life imprisonment for both the first-degree murder and conspiracy convictions, 285 months to 40 years' imprisonment for each of the assault with intent to murder convictions, 38 to 60 months' imprisonment for the CCW conviction, 24 to 48 months' imprisonment for each intentional discharge of a firearm from a motor vehicle conviction, and two years' imprisonment for each of the felony-firearm convictions. Johnson appeals as of right. We affirm.

¹ MCL 750.316(1)(a).

² MCL 750.157a and MCL 750.316(1)(a).

³ MCL 750.83.

⁴ MCL 750.234a.

⁵ MCL 750.227.

⁶ MCL 750.227b.

I. Basic Facts And Procedural History

A. Overview

This case stems from a series of shootings that involve multiple victims, including an infant, Stacy Evans, Jr., who was shot and killed while riding in his car seat. At the outset, we note that this series of shootings was both shockingly callous and exceedingly dangerous. The studied indifference of the young men involved to the threat of death their behavior caused is truly astonishing. In order to place this behavior in context, we set out the facts below at some length.

B. The Basketball Game Fight And Its Aftermath

According to Cameron Evans, on March 2, 2007, he and his brother Malcolm Evans were at the home of Jerry Long, shooting dice with a number of others for money and smoking marijuana. Eventually, Johnson, Jhirnea Harris, Shaquille Harris, and Daviario Barrera arrived. Cameron Evans, who was granted immunity for his trial testimony, stated that he knew Johnson from their time in eighth grade, about a year before. Cameron Evans reported that at some point Jhirnea Harris left to go to a basketball game at Saginaw High School.

We note that there was evidence that all three of the subsequent shootings occurred after a fight, between persons from different parts of the Saginaw area, at this basketball game. There was evidence of tension between residents from these different areas of town. For example, Barretta Epperson stated that she was living on the north side of Saginaw when her son Stacy Evans, Jr. was killed and that her companion Joseph Ball lived in Buena Vista, which has had a rivalry with the north side. Barretta Epperson also thought that there was tension between people from the north side and the south side, or sunnyside, and she noted that the phrase “sunny bitch” was subsequently carved into her car.

Perhaps because of this rivalry and immediately before the varsity basketball game at the school, Jhirnea Harris and Cruz Hinds got into a fight on the gym floor. Hinds testified that Jhirnea Harris approached him and head-butted him without saying anything, and the fight followed. Cruz Hinds said that he lived in the south side of Saginaw and felt uncomfortable for safety reasons on the north side, where Jhirnea Harris lived. Jhirnea Harris, aged 18 as of trial and a life long close friend of Johnson, testified that the fight with Cruz Hinds was a misunderstanding; we note that Jhirnea Harris pleaded guilty to a number of crimes stemming from the incidents of that night, including second-degree murder. Cruz Hinds and Jhirnea Harris were escorted off the property and did not return to the gym. Cruz Hinds said that he then called his sister to pick him up and spent the rest of the night at home with a headache, a headache that may have saved his life.

C. The Van Shooting

Cameron Evans stated that when Jhirnea Harris returned to Jerry Long’s house, he was angry and wanted to go back to the game. Shaquille Harris, who was 15 years old at the time of trial and who pleaded guilty to assault with intent to murder in exchange for his trial testimony, said that Jhirnea Harris asked his group of friends to return to the basketball game to fight. Cameron Evans stated that they eventually left to go back to the basketball game in Jerry Long’s

Hummer, which had front-end damage. Cameron Evans said that Jerry Long drove, Johnson sat in the front seat, and he, Jhirnea Harris, and Shaquille Harris sat in the back.

According to Cameron Evans, when they saw that the basketball game was still in progress, they went to Cass River Market because Shaquille Harris wanted to purchase bullets. Shaquille Harris acknowledged that he had a .22-caliber gun that he was trying to buy bullets for at the store. After Shaquille Harris was unable to buy the ammunition, Jerry Long purchased some .22 caliber bullets. Ghadeer Ibrahim, who owns Cass River Market with her husband, testified that her husband refused to sell bullets to some teenagers on March 2, 2007, but that an adult purchased bullets shortly after the teens left. Ibrahim could not identify any of the men.

Cameron Evans stated that after they left the store, Jhirnea Harris thought that he saw Cruz Hinds walking on the street. Shaquille Harris also recalled Jhirnea Harris stating that he saw a person who looked like Cruz Hinds walking. Shaquille Harris testified that Jhirnea Harris asked Johnson for a gun, and Cameron Evans stated that Johnson produced a gun, gave it to Jhirnea Harris, and then “racked” it for him. Jhirnea Harris, however, stated that he always had the gun he shot with and that Johnson did not offer to help him load it.

Cameron Evans recounted that Jhirnea Harris then got out of the truck and shortly returned, saying he had spotted someone hiding under a van. Cameron Evans stated that Jhirnea Harris began shooting under the van and through its windshield. Cameron Evans saw Jhirnea Harris shoot 20 to 30 times through and under the van. According to Cameron Evans and Shaquille Harris, when Jhirnea Harris returned, he said that he was shooting at Devonte Barnes and that, if he did not shoot him, they should shoot him when they returned to “the city,” described as being a specific neighborhood in Saginaw.

Devonte Barnes testified that he lived on the south side of Saginaw. Devonte Barnes stated that on the night of the shootings he attempted to hide behind a van, but that a man with a gun approached him and started shooting. Devonte Barnes said that he escaped by jumping a fence and running to a nearby house. Saginaw Police Officer Mark Scott responded to the van shooting and found 13 bullet holes in the hood, front windshield, and driver’s side windows. Officer Scott also found bullet holes in a garage near the van. In all, Officer Scott found 19 shell casings at the scene of the van shooting and Buena Vista Township Police Detective Kevin Kratz stated that three more casings were later located at the scene.

D. The South Side Shooting

Cameron Evans stated that the gun was now empty, so they drove to Johnson’s home and got more bullets. Shaquille Harris also recalled stopping at Johnson’s home, where Johnson obtained more bullets from another man standing outside the home. Jhirnea Harris, however, stated that he lied when he said during his guilty plea that they got ammunition to reload the gun from Johnson’s house.

Cameron Evans said that after they got more ammunition, the group went back to Jerry Long’s house, and Jhirnea Harris re-loaded the gun, helped along by suggestions from Johnson about how to order the bullets. Johnson also helped Shaquille Harris load a gun with the .22 caliber bullets from the Cass River Market. Cameron testified that Shaquille Harris put the .22 caliber gun with a blue rag attached in his pocket and that another gun was sitting on a stool in

the room as they played dice and smoked marijuana. Daviario Barrera also arrived at the Long home about this time. Eventually, the group drove back to Saginaw High School, but saw that the basketball game was over. Jhirnea Harris, however, denied going back to the school, stating that the second trip was back to the south side of Saginaw.

Shaquille Harris stated that the group was driving around looking for somebody who might be out on the street, and Cameron Evans confirmed that the purpose of the driving was to find people to shoot. Cameron Evans reported that Jerry Long slowed as they drove by a south side home, and Daviario Barrera leaned over Shaquille Harris and Jhirnea Harris to shoot at some people on the porch of that home. Cameron Evans described loud shots inside the vehicle with used shells flying around the car and the smell of gunpowder. Shaquille Harris also recalled Daviario Barrera shooting out the window at someone on a porch. Cameron Evans stated that he believed that Daviario Barrera shot with a MAC 11 gun that belonged to Johnson. Cameron Evans believed that the gun was Johnson's because it was the same gun Johnson pulled out of his pants and set on a stool during the dice game at the Long home. Cameron Evans thought that Daviario Barrera shot four or five times and that the target shot back. However, Jhirnea Harris stated that *he* shot at the people on the porch, rather than Daviario Barrera as he testified to during his plea. Jhirnea Harris stated that he wanted to scare, rather than kill, the people on the porch.

E. The Stacy Evans, Jr. Shooting

Cameron Evan stated that after stopping at another store, they were driving home when Daviario Barrera saw Joseph Ball, who was the boyfriend of Barretta Epperson. As noted previously, Barretta Epperson is the mother of shooting victim Stacy Evans, Jr. Shaquille Harris also remembered Daviario Barrera identifying Joseph Ball as Ball came out of a house.

Barretta Epperson testified that she was sitting in a car in her driveway at about 10:30 p.m. on March 2, 2007, while Joseph Ball was bringing his clothes back from her home. Barretta Epperson stated that she had the light on inside the car and was attempting to give her son a bottle. Joseph Ball stated that he made two trips from the house to the car. Barretta Epperson testified that she noticed a Hummer with damage to the front driver's side at the street corner, and Joseph Ball stated that he noticed the Hummer standing at a stop sign near the home the first time he placed a bag in the car. Barretta Epperson testified that the Hummer followed along with them as she drove Joseph Ball and her son away from the residence. Barretta Epperson was in the driver's seat, Joseph Ball was beside her, and the infant was behind Joseph Ball in a car seat in the back. Cameron Evans said that Daviario Barrera asked Jerry Long to follow the car, and they drove fast to catch up to it.

Joseph Ball stated that they drove a block before the Hummer pulled up behind them. Cameron Evans testified that when Joseph Ball's car turned, Johnson rolled down his window and asked Daviario Barrera if he should shoot. Cameron Evans stated that Daviario Barrera then told Johnson to shoot and that Johnson shot 10 or 11 times from the front seat of the Hummer. Cameron Evans did not know, however, if Johnson aimed the gun. Shaquille Harris stated that when Joseph Ball's car turned, Daviario Barrera gave the gun to Johnson who started shooting out the window at Daviario Barrera's command. Shaquille Harris said that Johnson hesitated at first and asked Daviario Barrera if he should shoot before he began shooting at the car.

Barretta Epperson testified that they heard shots fired and heard two or three shots hitting a road sign. Joseph Ball thought that he heard around 10 total shots fired at them. Joseph Ball stated that the Hummer followed them around the corner, shot, and then turned onto another street. Joseph Ball said that he heard a shot hitting the car. Barretta Epperson stated she did not see the shooter, but it was just her car and the Hummer behind her on the road in an area of abandoned houses. Joseph Ball also said that the Hummer was the only other vehicle in the area.

According to Barretta Epperson, when the shooting stopped, she saw that her son had been shot while in his car seat, and she drove to the hospital.

Once back at the Long home, Shaquille Harris heard a call on a cell phone that Barretta Epperson's baby was shot. Shaquille Harris stated that he and his brother Jhirnea Harris left with Johnson. Cameron Evans reported that they went back to the Long home where Johnson gave the gun to Jhirnea Harris.

Buena Vista Township Police Officer Tim Patterson responded to a call about the shooting of a one-year-old male and went to the hospital on March 2, 2007. When Officer Patterson arrived at the hospital, he encountered Barretta Epperson's car empty and running outside the emergency room. He noted a bullet hole just above a child seat in the rear of the vehicle and what looked like blood in the seat. Joseph Ball also stated that he saw a bullet hole that entered the car at the taillight.

At the hospital, Officer Patterson spoke to Joseph Ball and Barretta Epperson, both of whom described the Hummer. Barretta Epperson also identified Daviario Barrera as someone who may have been involved in the Stacy Evans, Jr. shooting. Officer Patterson later found Joseph Ball in the parking lot of the hospital arguing with the Evans family, who were saying that it was Joseph Ball's fault that the Stacy Evans, Jr. shooting occurred. Barretta Epperson testified that she later saw that "sunny bitch" was carved into her car. Cameron Evans, along with his brother Malcolm Evans and his mother, went to talk to the police a few days later after Malcolm Evans was wrongly identified as being in the Hummer on the night of the Stacy Evans, Jr. shooting.

Kanu Virani, M.D. was the medical examiner that performed the autopsy on the infant Stacy Evans, Jr. Dr. Virani stated that the infant had a gunshot wound on the top left part of his head that traveled straight through his brain to the top part of his nose. Dr. Virani's opinion was that the infant had no way of surviving the gunshot. Buena Vista Township Police Sergeant Sean Waterman also attended the autopsy and recovered a nine-millimeter bullet from the body of the infant.

Detective Kratz testified that he collected 11 shell casings and one fired bullet at the location of the Stacy Evans, Jr. shooting. Michigan State Police Detective Lieutenant Ronald Crichton collected a used bullet casing from the Hummer. Detective Crichton demonstrated the path of the bullet that struck the rear of Barretta Epperson's car and then the infant. Detective Crichton stated that all bullet casings that he examined were fired from the same gun and Detective Kratz stated that ballistic evidence found in the Hummer matched that ballistic evidence that he had from the scene of the Stacy Evans, Jr. shooting.

II. Sufficiency Of The Evidence

A. Standard Of Review

Johnson argues that the evidence was insufficient to demonstrate that he, or any of his cohorts, had the requisite intent to kill to support his murder, conspiracy, and assault with intent to murder convictions. We review claims of insufficient evidence de novo.⁷

B. Legal Standards

When considering a challenge to the sufficiency of the evidence, we view that evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the required elements of the crime were proved beyond a reasonable doubt.⁸ In order to convict a defendant of crimes of this type, the prosecutor must prove that the defendant intentionally killed the victim with premeditation and deliberation.⁹ Intent is the purpose to use a particular means to effect a particular result.¹⁰

C. Applying The Standards

Here, Johnson asserted that the result he was attempting to effect was to terrorize Barrera Epperson and Joseph Ball when he shot at the car in which the infant Stacy Evans, Jr. was riding. He notes that even though there were 11 fired shell casings found at the scene of the shooting, only one bullet was found to have struck the car. The implication that Johnson draws is that he was not trying to hit the car or its occupants. However, when viewed in the appropriate light, the evidence that a bullet struck the passenger side of the car leads to the reasonable conclusion that Johnson was firing at the vehicle.

The evidence also clearly demonstrated that this was the last of three shootings at different people that Johnson and his cohorts engaged as they drove around the Saginaw community. There was also evidence that after the van shooting, Johnson and his cohorts obtained more ammunition and then returned to the Long home where two guns were loaded prior to the group again heading out into the night. There was also evidence that all three shootings occurred after a fight at a basketball game between residents from different areas of town. There was evidence of tension between residents from these different areas of town.

Additionally, the severity of the victim's injuries and use of a dangerous weapon evidence an intent to kill.¹¹ Even if the child was not the intended target, the intent to kill a

⁷ *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008).

⁸ *People v Bulmer*, 256 Mich App 33, 36; 662 NW2d 117 (2003).

⁹ *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007).

¹⁰ *People v Hoffman*, 225 Mich App 103, 106; 570 NW2d 146 (1997).

¹¹ See *People v Dumas*, 454 Mich 390, 430; 563 NW2d 31 (1997); *People v Mills*, 450 Mich 61, 71; 537 NW2d 909, mod on other grounds 450 Mich 1212 (1995).

person may be transferred from the intended victim to the actual victim.¹² From these facts, it is evident that a rational juror could conclude beyond a reasonable doubt that Johnson intended to kill the victim.¹³

Johnson also contends that the evidence was insufficient to support his conviction of conspiracy to murder because neither he nor his cohorts had an intention to kill anyone. The essence of a criminal conspiracy is the agreement of the conspirators to commit an unlawful act, where one or more of the coconspirators do any act to effect the object of the conspiracy.¹⁴ To prove a conspiracy to commit murder, it must be established that each of the conspirators had the intent required for murder and, to establish that intent, there must have been knowledge of that intent.¹⁵

In particular, Johnson argues that there had to be a reasonable doubt about the requisite intent to kill because, in its rampage through Saginaw, the group shot a number of times without striking any purported target. The evidence at trial indicates that Johnson and his cohorts had been driving around the Saginaw area shooting at identified targets. They discontinued the assaults for a period of time, only to return to shoot and kill the one-year-old victim. As they were driving, one of Johnson's cohorts identified a person of interest to the group, Joseph Ball, and asked the group's driver to follow the car in which Ball was riding. They caught up to this car and then one of Johnson's cohorts, Daviario Barrera, gave him a gun and told him to shoot. Reasonable inferences drawn from the evidence¹⁶ establish the intent to kill, at the end of if not throughout the shooting rampage, for each member of Johnson's group.

Johnson also argues that the evidence was not sufficient to find that he had an intent to kill Barretta Epperson and Joseph Ball, and therefore, his convictions for assault with intent to murder them were in error. In order to prove this crime, the prosecution must establish (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.¹⁷ As discussed above, the evidence demonstrated that Johnson shot a gun 11 times at this car, striking it once. Johnson inquired of his companions if he should shoot prior to doing so and received an affirmative response. Prior to this, Johnson and his cohorts, without provocation, identified Joseph Ball and targeted the car. These facts support the reasonable conclusion that Johnson was trying to kill when he shot at the car. A person may have the intent to kill without directing it at any particular victim.¹⁸ From these facts, a rational juror could conclude beyond a reasonable doubt that Johnson intended to kill persons in the car.

¹² *People v Lawton*, 196 Mich App 341, 350-351; 492 NW2d 810 (1992).

¹³ *Bulmer*, *supra* at 36.

¹⁴ *People v Wilson*, 454 Mich 421, 429; 563 NW2d 44 (1997).

¹⁵ *People v Buck*, 197 Mich App 404, 412; 496 NW2d 321 (1992).

¹⁶ *Bulmer*, *supra* at 36-37.

¹⁷ *Hoffman*, *supra* at 111.

¹⁸ *People v Abraham*, 234 Mich App 640, 658; 599 NW2d 736 (1999).

Johnson also argues that the evidence did not support his conviction for assault with intent to murder Davonte Barnes. Johnson's cohort, Jhirnea Harris, shot a number of times at Devonte Barnes as Barnes was hiding underneath a parked van, and Johnson was charged as aiding or abetting the crime. Johnson argues that the evidence did not support that Jhirnea Harris intended to kill Devonte Barnes.

Aiding and abetting is a theory of prosecution that allows for the imposition of vicarious liability for accomplices.¹⁹ The elements required to convict under an aiding and abetting theory are: (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that 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 that the defendant gave aid and encouragement.²⁰

In this case, Johnson was with Jhirnea Harris when Harris gave him a gun, and he racked it. Jhirnea Harris got out of the vehicle and shot at the person whom he said was then hiding under a van. The police found 22 fired shell casings near the van. There was evidence that Jhirnea Harris shot the front, side, and underneath the van. Johnson argues that Jhirnea Harris's intent could not have been to kill because every shot missed Devonte Barnes. However, Jhirnea Harris even agreed with the prosecutor that he was shooting at Devonte Barnes. Further, the large number of shots at close range over several different areas is evidence that Jhirnea Harris was moving in an attempt to locate Devonte Barnes. Jhirnea Harris also had the gun loaded and left the van to pursue Devonte Barnes more closely before he began firing. From these facts, it is evident that a rational juror could conclude that Jhirnea Harris intended to kill Devonte Barnes beyond a reasonable doubt.²¹ Therefore, Johnson was culpable in aiding and abetting this crime.

III. Voir Dire

A. Standard Of Review

Johnson argues that the trial court abused its discretion when it refused to allow him to question some potential jurors about their occupations. Johnson told the court that he was seeking the cited information where a prospective juror's occupation was unclear from the questionnaire because it was unknown or the person retired. Johnson argues that occupation might be an important factor in determining peremptory challenges.²² Johnson did not issue any challenges for cause, but used 11 peremptory challenges. We review for an abuse of discretion decisions concerning the conduct of voir dire.²³

¹⁹ *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006).

²⁰ *Id.*

²¹ *Bulmer, supra* at 36.

²² See *Commonwealth v Garrey*, 436 Mass 422, 429-430; 765 NE2d 725 (2002).

²³ *People v Williams*, 241 Mich App 519, 522; 616 NW2d 710 (2000).

B. The Circumstances Of The Voir Dire

The trial court allowed Johnson to question some prospective jurors about their work. Johnson asked juror number two about his employment and his wife's employment, and then asked juror number three about where he and his wife worked before they retired. The trial court then stopped this line of questioning. The trial court stated that "to go into a retired person and their spouse's occupation . . . is unnecessary and would not get to the truth of the matter of whether or not they could be fair and impartial."

C. Legal Standards And Applying The Standards

What comprises permissible and impermissible voir dire practice "does not lend itself to hard and fast rules," and trial courts are allowed wide discretion in determining the manner to achieve the goal of an impartial jury.²⁴ Here, clearly, Johnson was not permitted to gather some occupational information from some of the jurors. Nonetheless, he did have information on occupations from the jury questionnaires and was able to ask some questions about present occupation when the questionnaires were not clear. For example, even after the trial court's ruling, Johnson was allowed to ask juror number 17 what she meant by listing "unknown" occupation both for herself and her husband on her questionnaire. Juror 17 explained that she was not working and that her husband was deceased.

A defendant is entitled to relief from a verdict because of limitation of voir dire only if it is shown that a juror was properly excusable for cause or the defendant was actually prejudiced by the presence of the juror in question.²⁵ Here, Johnson has not met these criteria.

Affirmed.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly

²⁴ *People v Sawyer*, 215 Mich App 183, 186-187; 545 NW2d 6 (1996), quoting *People v Tyburski*, 445 Mich 606, 623; 518 NW2d 441 (1994).

²⁵ *People v Washington*, 468 Mich 667, 675; 664 NW2d 203 (2003).