STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 18, 2006
v	No. 260552 Genesee Circuit Court
TOMMY LOUIS TIGGS, Defendant-Appellant.	LC No. 04-014961-FC

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to life imprisonment for the first-degree murder conviction, to be served consecutively to concurrent sentences of 24 months' probation for the CCW conviction and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecutor presented insufficient evidence of premeditation and deliberation to support the first-degree premeditated murder conviction. We disagree. 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 factfinder 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.

To convict a defendant of first-degree premeditated murder, 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 (2002). 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). The following factors may be considered in determining whether premeditation has been established:

> (1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. [*Id.* at 300.]

Premeditated murder requires an opportunity for "cool and orderly reflection." *Id*. at 302. "The critical inquiry is not only whether the defendant had the time to premeditate, but also whether he had the *capacity* to do so." *Id*. at 301 (emphasis in original). Under certain circumstances, only a pause is necessary to show deliberation and premeditation. *Id*. Further, an individual may be found guilty of an offense on a theory of aiding and abetting if

> (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).]

Here, the evidence showed that defendant and codefendant Moses Keon Williams (Keon) together premeditated and carried out the murder of Edward Beasley. Defendant and Keon were sitting in Beasley's Cadillac with Beasley and witness Carole Cooper. Cooper heard either defendant or Keon say "Is you ready." Immediately thereafter, defendant got out of the car and Cooper heard a gunshot. Cooper turned around and saw defendant "clamp"[1] his gun before attempting to shoot a second time. Cooper then saw Keon exit the car and fire his gun through the back window of the car. Thereafter, defendant fled the scene. The evidence showed that the bullets recovered from Beasley's body had been fired from both Keon's gun and defendant's gun.

Cooper testified that no one was arguing before the shooting and that no one had seemed upset. However, the statement "Is you ready" supports an inference that defendant and Keon premeditated and planned the actions that immediately followed the statement, which led to Beasley's death. As evidenced by this statement, defendant and Keon had both the time and capacity to plan the shooting before it occurred.

The underlying circumstances surrounding the killing also support an inference that Beasley's murder was premeditated. Defendant admitted firing one shot before his gun jammed and stated that Keon fired four or five shots. Defendant also admitted that he and Keon had been carrying guns at the time of the shooting because of a "beef" with another individual, who defendant believed was planning to kill Keon as he sat in Beasley's Cadillac. Defendant stated that this individual had shot at him on past occasions and that this history had contributed to the shooting involved in this case. The circumstances surrounding Beasley's killing indicate that it

[1] Cooper's use of the term "clamp[ing]" apparently refers to pulling back the gun's slide in an attempt to chamber a round of ammunition.

was a deliberate and premeditated event. The prosecutor presented sufficient evidence to support defendant's first-degree murder conviction and accompanying felony-firearm conviction.

Defendant next contends that defense counsel's admissions of guilt to the CCW and felony-firearm charges denied him the effective assistance of counsel. We disagree. Because defendant limited this issue in his statement of questions presented to the CCW charge and did not challenge counsel's concession of guilt regarding the felony-firearm charge, he has waived appellate review as it relates to his felony-firearm conviction. An issue not contained in the statement of questions presented is waived on appeal. MCR 7.212(C)(5); *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). In any event, defendant's argument with respect to both convictions lacks merit.

Because defendant failed to raise this issue in a motion for a new trial or evidentiary hearing in the trial court, this Court's review is limited to errors apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). "'Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law.'" *Id.*, quoting *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced the defendant that it deprived him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Moorer*, 262 Mich App 64, 75-76; 683 NW2d 736 (2004). With respect to the prejudice requirement, a defendant must demonstrate a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). A defendant must also overcome the strong presumption that counsel's actions constituted sound trial strategy. *Id.* at 302.

Defendant argues that trial counsel was ineffective for conceding guilt on the CCW and felony-firearm charges. However, it can constitute sound trial strategy to admit guilt on lesser offenses and contest guilt on greater offenses. *Matuszak, supra* at 60-61; *People v Emerson (After Remand)*, 203 Mich App 345; 349; 512 NW2d 3 (1994). In *People v Wise*, 134 Mich App 82, 98; 351 NW2d 255 (1984), we stated that "arguing that the defendant is merely guilty of the lesser offense is not ineffective assistance of counsel." We also observed that "[w]here defense counsel . . . recognizes and candidly asserts the inevitable, he is often serving his client's interests best by bringing out the information and thus lessening the impact." *Id.*

Here, it is evident from defense counsel's opening statement and closing arguments that his strategy was to admit guilt on the lesser firearm charges while contesting guilt on the greater, first-degree murder charge. This was a permissible trial tactic and did not constitute ineffective assistance of counsel. *Emerson, supra* at 349; *Wise, supra* at 98. Defense counsel knew that defendant's second statement to the police would be admitted at trial, in which defendant admitted carrying a gun on the day of the offense and admitted firing his weapon one time before the gun jammed. Given defendant's confession, defense counsel conceded guilt on the obvious lesser charges and focused on the greater charge, which carried a life sentence. This strategy did not constitute ineffective assistance of counsel merely because it did not work. *Matuszak, supra* at 61. This Court will not second-guess trial counsel regarding matters of trial strategy, and will not assess counsel's performance with the benefit of hindsight. *Id.* at 58.

Defendant argues that a reasonable probability exists that but for defense counsel's concessions, the result of the proceeding would have been different. He contends that although the evidence showed that at least two guns were used, it did not establish that he fired either of the guns because the trajectory of the bullets showed that the shots were not fired from where he was standing. This argument disregards defendant's confession to firing one of the shots into the car. Defendant's argument that the result of the proceeding would have been different but for counsel's actions is unconvincing. Defendant has failed to overcome the strong presumption that counsel's actions constituted sound trial strategy. *Matuszak, supra* at 61.

Finally, defendant argues that his judgment of sentence erroneously indicates that his felony-firearm sentence is to run consecutively to his CCW sentence. He argues that the judgment of sentence should be amended to reflect that his felony-firearm and CCW sentences are to run concurrently with one another and that only his first-degree murder sentence should run consecutively to the remaining sentences. Because the trial court has already amended the judgment of sentence in conformance with defendant's assertions, defendant is entitled to no further relief on this issue.

Affirmed.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Karen M. Fort Hood