

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 26, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEVON BLEVINS, a/k/a “Osage”,

Defendant - Appellant.

No. 22-5097
(D.C. No. 4:21-CR-00207-JFH-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ, KELLY**, and **MATHESON**, Circuit Judges.

I. INTRODUCTION

Defendant Devon Blevins appeals his conviction for first-degree murder and causing a death by use of a firearm in relation to a crime of violence. Defendant argues that the evidence presented at trial was insufficient for a rational jury to find beyond a reasonable doubt that he acted with premeditation when he fatally shot Maurice Burgess. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

II. BACKGROUND

Most of the facts of the crime are undisputed. Our summary is based on the trial testimony of Jacob Banks and a video of Defendant's confession, which was played to the jury.

In April 2021, Defendant was being vetted by Jacob Banks for potential membership in the Savage Boys gang. The Savage Boys are known for drug dealing, and its members are expected to "put in work," which, according to Banks, means "do anything they want [you] to do." R. Vol. III at 128. The gang's color is red.

On April 12, while at Defendant's residence in Tulsa, Banks and Defendant noticed a "familiar" vehicle drive by. R. Vol. III at 131. They had seen the vehicle apparently surveilling Defendant's home for several days. Because the home was within the territory of a rival gang, the Crips, they were concerned that the other gang was planning action against them. They decided to try to follow the vehicle and perhaps learn something. Banks drove his girlfriend's car while Defendant sat in the front passenger seat. Defendant brought a revolver. Banks was wearing all red.

As they were driving around looking for the car, Banks said to Defendant, "[D]on't do nothing stupid." R. Vol. III at 131. The pair eventually drove to the Waterstone Apartments. Entering the apartment complex, Banks scraped the bottom of his car on a speed bump, so he decided to make a U-turn and leave. As Banks was pulling out, a man in a blue jacket—later identified as Maurice Burgess—approached the driver's side of the car while riding a bike. Burgess faced Banks and Blevins and

said “You-all some B[itche]s,” R. Vol. III at 135. Banks attributed this comment to his “flying the wrong colors.” R. Vol. III at 152. After making this remark, Burgess made a motion toward his waistband. Banks testified that he thought Burgess was just pulling up his pants; he saw no weapon and did not feel threatened. But Defendant, although acknowledging that Burgess may have just been “hitchin’” his pants, Supp. R. Ex. 19 at 25:09-13, 28:15-34, thought he might be reaching for a weapon. Defendant immediately responded; he climbed through the passenger-side window and, sitting on the window, fired his gun at Burgess. Defendant later admitted to police that he saw Burgess get hit by the first shot and fall over. But he still fired twice more. He said that he was not trying to kill Burgess but just wound him. Banks drove away. Burgess died at a local hospital.

A grand jury for the United States District Court for the Northern District of Oklahoma charged Blevins with first-degree murder in Indian Country, *see* 18 U.S.C. §§ 1151, 1153, 1111 (Count One); causing death by using and discharging a firearm during and in relation to crimes of violence, *see* 18 U.S.C. § 924(j) (Count Two); and assault resulting in serious bodily injury in Indian Country, *see* 18 U.S.C. §§ 1151, 1153, 113(a)(6) (Count Three). The jury convicted him on Counts One and Two, and Blevins was sentenced to concurrent terms of life imprisonment. On appeal he contends that there was insufficient evidence of premeditation, so the conviction on Count One must be reversed and the case remanded for dismissal of that count and resentencing on Count Two.

III. DISCUSSION

We “review the record de novo to determine whether, viewing the evidence in the light most favorable to the government, any rational trier of fact could have found Defendant guilty of the crime beyond a reasonable doubt.” *United States v. Wood*, 207 F.3d 1222, 1228 (10th Cir. 2000). “We must not weigh conflicting evidence or consider the credibility of the witnesses, but simply determine whether the evidence, if believed, would establish each element of the crime.” *United States v. Vallo*, 238 F.3d 1242, 1247 (10th Cir. 2001) (brackets and internal quotation marks omitted). We consider both direct and circumstantial evidence, *see United States v. Grissom*, 44 F.3d 1507, 1510 (10th Cir. 1995), and defer to the jury’s reasonable inferences “from the basic facts to ultimate facts,” *United States v. Nieto*, 60 F.3d 1464, 1469 (10th Cir.1995) (internal quotation marks omitted).

As the district court instructed the jury:

A killing is “premeditated” when it is the result of planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough for the killer, after forming the intent to kill, to be fully conscious of that intent.

R. Vol. I at 71. Defendant’s theory of the case is simple and straightforward.

He contends: “The evidence conclusively proved that [Defendant] acted immediately in response to Mr. Burgess’s act of reaching for his waist after Mr. Burgess made a confrontational statement that evoked gang rivalry.

[Defendant] fired in a panic.” Aplt. Br. at 7. Thus, Defendant’s “actions were a

reflexive reaction to a perceived threat, and he had no opportunity to plan or deliberate before firing his weapon.” *Id.*

The jury could have adopted that view, but it did not have to. The government was not required to show that Defendant “deliberated for any particular length of time.” *United States v. Treas-Wilson*, 3 F.3d 1406, 1409 (10th Cir. 1993) (internal quotation marks omitted). And the jury did not have to believe Defendant’s version of events. There was significant circumstantial evidence that Defendant was looking for an excuse to kill someone. His purpose for being with Banks was to show that he had the right stuff to be admitted to membership in the gang. Banks apparently thought that Defendant looked too eager to show his stuff since he warned him, “[D]on’t do nothing stupid.” R. Vol. III at 131. Banks did not think that Burgess posed a threat. And Defendant admitted that he fired two shots after seeing Burgess fall from the first shot, when the jury could have reasonably concluded there was no longer any possible threat.

In light of this evidence, the jury finding of premeditation was not unreasonable.

IV. CONCLUSION

We AFFIRM Mr. Blevins's convictions and the judgment below.

Entered for the Court

Harris L. Hartz

Circuit Judge