STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMIE BERDEN MACLAM,

Defendant-Appellant.

UNPUBLISHED
November 13, 2001

No. 223463
Calhoun Circuit Court
LC No. 99-001134-FC

Before: K.F. Kelly, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of felony murder, MCL 750.316(1)(b), two counts of second-degree murder, MCL 750.317, eight counts of possession of a firearm during the commission of a felony, MCL 750.227b, four counts of assault to rob while armed, MCL 750.89, two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count of possession of a firearm by a felon, MCL 750.224f. The trial court sentenced defendant as follows: Life imprisonment for second-degree murder; life imprisonment for felony murder; forty to sixty years' imprisonment for each assault to rob while armed; seven to fifteen years' imprisonment for each assault with intent to do great bodily harm; two years' imprisonment for each felony-firearm conviction; and three to seven years' imprisonment for possession of a firearm by a felon.

I. Basic Facts and Procedural History

This case involves the brutal attack of four women inside the King's Garden Health Spa, (hereinafter "King's Garden"), in the early morning hours of January 27, 1999. Defendant, Darrin Mills and Chavez Hall were tried separately for the offenses arising out of the incident.

Testimony at trial established that defendant, Mills, and Hall and were smoking marijuana and drinking alcohol. Defendant suggested to Mills and Hall that they "hit a lick."[1] Surmising that King's Garden would likely have money on the premises because of their belief that the employees sold drugs and were involved in prostitution, they proceeded to that location. There were four women present at King's Garden when defendant, along with Mills and Hall,

[1] Apparently this means to have sex or try to get some money.

arrived. After forcibly taking money at knife and gunpoint, defendant, Mills and Hall proceeded to beat all four victims. As a result of the assaults, all of the victims sustained lacerations and other injuries and one victim withstood a sexual assault. Before leaving, defendant, Mills and Hall poured gasoline in the premises and started a fire. Two of the women died as a result of the attacks. The third woman suffered a collapsed lung from a stab wound inflicted upon the upper region of her back. In addition to several lacerations, she also suffered carbon monoxide poisoning. The fourth woman had a broken arm, burns, and lacerations.

The pretrial publicity surrounding this case was extensive. Indeed, newspaper articles were both factual and sensational. Newspaper accounts detailed defendant's prior criminal record and his confession. The trial court denied a motion for change of venue based on pretrial publicity. After a lengthy trial, the jury convicted defendant. Defendant now appeals as of right. We affirm.

II. Change of Venue

Defendant first argues that the trial court erred when it denied his motion for a change of venue because of pretrial publicity. A motion for change of venue lies within the sound discretion of the trial court. *People v Jendrzejewski*, 455 Mich 495, 500; 566 NW2d 530 (1997). To succeed, incumbent upon a defendant is to establish a pattern of strong community feeling against that particular defendant and show that the publicity was so extensive and inflammatory that jurors could not remain impartial when exposed to it. *People v Passeno*, 195 Mich App 91, 98; 489 NW2d 152 (1992), overruled in part on other grounds, *People v Bigelow*, 229 Mich App 218, 221; 581 NW2d 744 (1998). Alternatively, a defendant may establish actual prejudice on the jury's part or show that the atmosphere surrounding the trial created a probability of prejudice. *Id*. The trial court's decision denying a change of venue will not be disturbed on appeal unless a palpable abuse of discretion is clearly apparent. *Jendrzejewski, supra* at 500. On the record herein presented, we decline to find an abuse of discretion.

After examining the record we find that some of the newspaper articles were purely factual. However, we note several articles contained sensational details, references to defendant's statements to police, and Hall's statements to police, which implicated defendant. One article, in particular, focused entirely on defendant and was replete with references to defendant's prior adult and a juvenile record. Nonetheless, "[j]uror exposure to information about a defendant's previous convictions or newspaper accounts of the crime for which he has been charged does not in itself establish a presumption that a defendant has been deprived of a fair trial by virtue of pretrial publicity." *Id.* at 502.

Our Supreme Court has further recognized that, when evaluating pretrial publicity, it "makes good sense" to rely on the judgment of the trial court. *Id.* at 502, 520. The judge of that court sits in the locale where the publicity is said to have had its effect and brings to his evaluation of any such claim his own perception of the depth and extent of news stories that might influence a juror. *Id.* at 502 (quoting *Mu'Min v Virginia*, 500 US 415, 442, n 3; 111 S Ct 1899; 114 L Ed 2d 493 (1991)). In the instant case, the trial court denied the motion for change of venue, explaining that:

> In my view, based upon the totality of the answers that the jurors gave, they were sworn to tell the truth, and every single one of the 14 remaining in the jury box,

> indicated either that they knew nothing about the case, or if they had read, seen, or heard something about it, they could put that aside. Secondly, they would not fill in any holes in the Prosecutor's case with that information. Third, they could be fair to both sides. Fourth, they would base their decision as to what the facts are only on the evidence that comes in during the trial. So in my view, this is not a tainted panel. This is a panel who will do their best, in my view, to follow the law and come up with a fair verdict. So the Motion for a Change of Venue is denied.

After careful scrutiny of the record and affording due deference to the trial court, we cannot conclude that the pretrial publicity was so "invidious" and "inflammatory" as to deprive defendant of a fair trial.

We further find that the method utilized by the trial court to conduct voir dire was appropriate to ensure that an impartial jury was impaneled. *Id.* at 517. Our Supreme Court explained "a sufficiently probing method must be employed to elicit information concerning exposure to publicity." *Id.* at 509. Proper considerations include whether the attorneys were allowed to participate in voir dire questioning, whether the trial court placed limitations on counsel in terms of time or content, and whether the trial court provided the attorneys with "ample opportunity to develop during voir dire a sufficient factual basis for challenging a juror's impartiality." *Id.* at 509-510

During voir dire in the present case, fifty-four potential jurors were interviewed. The trial court asked each juror if they had any prior information about the case. Twenty-six of the potential jurors responded in the affirmative. The trial court asked each of these jurors whether they formed an opinion about the case. Six jurors responded that indeed, they formulated an opinion and that they could not set their opinion aside. Consequently, the trial court excused these six jurors.

Additionally, the trial court permitted the attorneys to question the jurors and did not impose a time or content limitation on them. After defendant used all of his peremptory challenges, fourteen jurors were seated. Eight of these jurors admitted that they had some prior knowledge about this case from watching television or reading the newspaper. However, as the trial court pointed out, all eight of these jurors stated that they could put aside this information and thereby remain impartial. "In this state, as in the United States Supreme Court, the general rule holds that if a potential juror, under oath, can lay aside preexisting knowledge and opinions about the case, neither will be a ground for reversal of a denial of a motion for a change of venue." *Jendrzejewski, supra* at 517.

Thus, we conclude that the trial court did not abuse its discretion by denying defendant's motion for a change of venue.

III. Directed Verdict

Next, defendant argues that the trial court erred when it denied his motion for a directed verdict because a rational trier of fact could not find him guilty of felony murder. We review de novo, a trial court's decision denying a motion for a directed verdict. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). In applying this standard, we must consider the evidence presented by the prosecutor, in a light most favorable to the prosecution, and determine

if a rational trier of fact could find that the elements of the crime were proved beyond a reasonable doubt. *People v Warren*, 228 Mich App 336, 345-346; 578 NW2d 692 (1998), aff'd in part, rev'd in part 462 Mich 415; 615 NW2d 691 (2000)[2].

For felony murder, the prosecutor must present evidence to establish: (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of a felony specifically enumerated in MCL 750.316(1)(b). *People v Carines*, 460 Mich 750, 758-759; 597 NW2d 130 (1999) (citing *People v Turner,* 213 Mich App 558, 566; 540 NW2d 728 (1995)). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *Carines, supra* at 757[3].

In this case, the prosecution clearly presented sufficient evidence on the required elements of the crime charged. One of the surviving victims testified that she observed defendant hitting all of the women at different times. She observed the victim flee into a room and erect a massage bed in front of the door to the room. After that, she watched defendant storm into the room, thereby knocking the bed onto the victim. The witness then observed defendant repeatedly jump on the bed with the victim lying beneath, laughing, as the victim pleaded for defendant to stop jumping for fear that her leg was broken. Eventually, the deceased victim stopped crying and later died as a result of the extensive injuries inflicted by defendant.

This testimony was supported by the pathologist performing the autopsy on the victim, The autopsy established that the victim had burns, bruises, lacerations, and cuts on her body. The victim also had a fractured right index finger, injuries to her head from blunt force, and a fractured pelvis, which caused significant internal injuries. The pathologist stated that this injury could be caused by a direct impact, such as someone stomping on the victim. To the extent that defendant argues that the surviving victim's testimony is unbelievable or untrustworthy, this argument has no merit. We will not interfere with the role of the jury in deciding the credibility of witnesses when reviewing a motion for a directed verdict. See *People v Lemmon*, 456 Mich 625, 649; 576 NW2d 129 (1998)[4].

Contrary to defendant's assertions, the prosecution is not required to prove that defendant had the intent to kill. *Carines*, supra at 758-759. Indeed, the prosecution can satisfy this element by demonstrating that defendant knew that his actions created a very high risk of death or great

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[2] Defendant also argues that there was insufficient evidence to support his felony murder conviction. In reviewing the sufficiency of the evidence, we must view all of the evidence in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

[3] This is also true when reviewing the sufficiency of the evidence. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

[4] This is also true when reviewing a sufficiency of the evidence issue. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992).

bodily harm. *Id.* Indeed, "[t]he facts and circumstances of the killing may give rise to an inference of malice. A jury may infer malice from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm." *People v Nowack*, 462 Mich 392, 401; 614 NW2d 78 (2000).

Finally, the prosecution also presented evidence that the deceased victim's death occurred during the commission of a robbery. The evidence revealed that, while driving around, defendant suggested to Mills and Hall that they "hit a lick." Thereafter, defendant drove to King's Garden. Once inside, while holding a gun, defendant hit the women, and demanded money. One of the surviving victims testified that she gave defendant her jewelry along with her purse. Hours later, police arrested defendant and discovered a gun in his jacket.

When viewing the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have concluded that defendant was guilty of felony murder. The trial court properly denied the motion for a directed verdict.[5]

IV. Admissibility of Defendant's Confession

Finally, defendant argues that the trial court erroneously determined that his confession was voluntary, and therefore, admissible at trial. We disagree.

The voluntariness of a confession is evaluated under the totality of circumstances, with consideration given to the duration of detention and questioning, the defendant's age, education, intelligence and experience, the defendant's physical and mental state, and whether the defendant was threatened or promised leniency. No single factor is determinative. *People v Fike*, 228 Mich App 178, 181-182; 577 NW2d 903 (1998).

In this case, defendant is a twenty-two-year-old man with a tenth grade education. Defendant has an extensive prior record and numerous encounters with the Battle Creek police department. Defendant admitted that he had been in jail on eleven occasions and acknowledged his familiarity with his *Miranda*[6] rights.

Defendant was incarcerated for an unrelated charge when the interview occurred. Defendant initiated the interview because he feared that police were going to "pin the King's Garden spa murders on him." The interview was relatively brief, lasting only forty-five to sixty minutes. Defendant was advised of his *Miranda* rights. Defendant does not claim that he was injured, intoxicated, or drugged when he made the confession. Defendant also does not complain that he was deprived of food, sleep, or medical attention. These factors weigh in favor

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[5] For the same reasons, we also conclude that there was sufficient evidence to support defendant's conviction for felony murder. The only distinction between a sufficiency of the evidence issue and a directed verdict issue is the body of evidence considered. In the former, all of the evidence presented at trial may be considered, while in the latter, only that presented by the prosecutor is reviewed.

[6] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

of finding that defendant's confession was voluntary. Accordingly, we conclude that the trial court properly admitted defendant's confession at trial.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald