

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD McALLISTER,

Defendant-Appellant.

UNPUBLISHED

June 4, 2002

No. 230524

Wayne Circuit Court

LC No. 99-010814

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317, and sentenced to fifteen to sixty years' imprisonment. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of the death of Fredrick Curry following a beating by defendant and an individual identified as "Doc." Trial testimony indicated that Doc punched the back of Curry's head, knocking him out, while defendant simultaneously hit him in the face. Then, while Curry lay on the ground, defendant repeatedly jumped up and down on Curry's head with both feet while Doc kicked his stomach and leg area. According to medical witnesses, the beating left Curry with a severe closed head injury that led to a series of medical complications, ultimately resulting in pneumonia and Curry's death.

Defendant's sole claim on appeal is that there was insufficient evidence to support his conviction. We disagree. When reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-269; 380 NW2d 11 (1985); *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). Malice is defined as the intent to kill, the intent to do great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *Id.* at 464.

Defendant's argument on appeal is cursory and vague. Assuming that defendant is challenging the causation element, the evidence viewed in a light most favorable to the

prosecution showed that defendant repeatedly jumped up and down on the victim's head, contributing to a closed head injury, and the victim's subsequent death was directly linked to that head injury. This evidence was sufficient to support his conviction. If defendant is arguing that there was insufficient evidence that he aided and abetted Doc's murder of Curry, we also conclude that sufficient evidence was adduced to support his conviction. The prosecution was required to show that (1) the crime was committed by defendant or some other person, (2) defendant performed acts or gave encouragement that assisted in the commission of the crime, and (3) defendant intended the commission of the crime or had knowledge that Doc intended its commission at the time he gave aid and encouragement. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Here, the evidence showed that both defendant and Doc tried to get money from Curry, Doc delivered a hard blow to Curry's head, and then defendant repeatedly kicked Curry in the head while Doc kicked him in the stomach. This evidence was sufficient to establish that defendant was aware that Doc intended to cause great bodily harm to Curry and assisted him in the commission of the crime.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff