STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORNELL JEROME STRICKLEN, JR. a/k/a CARNELL JEROME STRICKLEN, JR. a/k/a JEROME SMITH a/k/a CORNELL STRICKLAND,

Defendant-Appellant.

UNPUBLISHED
June 14, 2002

No. 228138
Washtenaw Circuit Court
LC No. 99-012515-FH

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

After a trial by jury, defendant was convicted of felony murder, MCL 750.316(1)(b).[1] Defendant was sentenced to life imprisonment for his conviction. Defendant appeals as of right. We affirm.

The prosecution alleged that defendant forcefully entered the apartment of Lyndsey Matthews and Theresa Tafoya, defendant's girlfriend, along with his brother, Benjamin Ragan, in the early morning hours of July 17, 1999. Matthews, the only occupant of the apartment at that time, was stabbed to death with two different knives, a fork, and a screwdriver. Earlier that day, defendant was involved in a physical altercation at that same apartment with Tafoya. Defendant struck Tafoya in the face, knocking her to the ground. Marcus Markey and Edward Harris defended Tafoya, fighting with defendant and chasing him away. As defendant left, he vowed to return. Thereafter, Mackey and Harris left for Mackey's apartment. Approximately fifteen minutes after Mackey and Harris left, they returned. Peering into the building, they saw defendant's brother leaving the apartment and heard him speaking to someone. When they were finally let into the building they went to Matthews' apartment, where they found her dying. At trial, defendant acknowledged that Ragan was possibly involved in the murder, but disputed that he had assisted Ragan in any way.

[1] We note that defendant was also convicted of second-degree murder, MCL 750.317, and first-degree home invasion, MCL 750.110a(2)(b). However, these convictions were vacated.

First, defendant argues that there was insufficient evidence presented to convict him of felony murder because there was no evidence that the murder of Matthews occurred during the perpetration or attempted perpetration of a felony.[2] We disagree.

In reviewing the sufficiency of the evidence, we view 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 proven beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). This review is de novo. See *People v Kim*, 245 Mich App 609, 615; 630 NW2d 627 (2001).

> "The elements of felony murder are: (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 probably result [i.e., malice]; (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in [the statute, including armed robbery]." [*People v Carines*, 460 Mich 750, 758-759; 597 NW2d 130 (1999) (quotation omitted).]

Furthermore, we have explained, "[T]o qualify as felony murder, the homicide must be incident to the felony and associated with it as one of its hazards. *It is not necessary that the murder be contemporaneous with the felony*. A lapse of time and distance are factors to be considered, but are not determinative. Defendant must intend to commit the felony at the time the killing occurs." *People v Thew*, 201 Mich App 78, 86-87; 506 NW2d 547 (1993), quoting *People v Goddard*, 135 Mich App 128, 136; 352 NW2d 367 (1984), rev'd on other grounds 492 Mich 505 (1988) (emphasis added). Indeed, "where the predicate crime underlying a charge of felony murder is part of a continuous transaction or is otherwise immediately connected with the killing, it is immaterial whether the underlying felony occurs before or after the killing." *People v Hutner*, 209 Mich App 280, 284; 530 NW2d 174 (1995). "The statute requires only that the defendant intended to commit the underlying felony at the time the homicide occurred." *People v Kelly*, 231 Mich App 627, 643; 588 NW2d 480 (1998), citing *People v Brannon*, 194 Mich App 121, 125; 486 NW2d 83 (1992). However, we have also explained that a defendant has committed felony murder if the murder "is committed while a defendant is attempting to escape from or prevent detection of the felony, and if it is immediately connected with the underlying felony." *Goddard*, *supra* at 135.

We find that a reasonable trier of fact could have concluded, based on the evidence presented, that the death of Matthews occurred immediately after the home invasion and that defendant's actions were part of one continuous transaction. A neighbor testified that she heard the door of the apartment being kicked in, heard the girl screaming, and then the screaming stopped. Then, the neighbor heard two men discussing cleaning "up the mess" and eliminating any fingerprints. Thus, the evidence permitted the reasonable inference that, immediately after

---

[2] We have also considered defendant's "amended and supplemental pleadings," which he filed in propria persona.

defendant and Ragan entered the apartment, a struggle ensued with Matthews, which resulted in her death.

Furthermore, a rational trier of fact could have also concluded that defendant and Ragan murdered Matthews in an effort to avoid detection. When defendant and Ragan forcefully entered the apartment, they committed the crime of home invasion. Matthews was the only individual in the apartment at that time, and defendant and Ragan could have decided to kill Matthews to prevent her confirmation to police about what defendant and Ragan had done. In any event, murder is certainly associated with home invasion as one of its hazards. Consequently, defendant's argument fails.

Second, defendant argues that there was insufficient evidence presented to convict him of felony murder because the elements of the underlying felony, first-degree home invasion, were not satisfied. Again, we disagree.

In this case, defendant's felony murder conviction was premised on the underlying felony of first-degree home invasion. MCL 750.110a(2)[3] explains:

> A person who breaks and enters a dwelling *with intent to commit a felony or a larceny in the dwelling* or a person who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exist:
>
> (a) The person is armed with a dangerous weapon.

---

[3] We are mindful of the fact that, in 1999, MCL 750.110a(2) was amended to read:

> A person who breaks and enters a dwelling with intent to commit a felony, larceny, *or assault in the dwelling*, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:
>
> (a) The person is armed with a dangerous weapon.
>
> (b) Another person is lawfully present in the dwelling. [Emphasis added.]

However, the amendments to MCL 750.110a(2) were not effective until October 1, 1999. Therefore, because defendant's crime occurred on July 17, 1999, the previously stated version of MCL 750.110a(2) applies to the instant case.

(b) Another person is lawfully present in the dwelling. [Emphasis added.]

[See also generally *People v Bigelow*, 225 Mich App 806, 809; 571 NW2d 520 (1997), opinion reinstated 229 Mich App 218 (1998).]

Here, defendant argues that plaintiff did not present sufficient evidence for a rational trier of fact to conclude that defendant had the intent to commit a felony or a larceny. In particular, we must decide whether plaintiff presented sufficient evidence for a rational trier of fact to conclude that defendant entered the apartment with the intent to commit the felony of assault with intent to do great bodily harm. Plaintiff argues that sufficient evidence was presented that defendant intended to assault Matthews. We disagree.[4] There was no evidence presented that Matthews was in any way involved in the earlier physical fight between Tafoya, Mackey, Harris, and defendant. Further, the testimony indicates that the weapons used to murder Matthews, two knives, a fork, and a screwdriver, were from inside the apartment. Therefore, a rational trier of fact could not infer that defendant and Ragan entered the apartment with the weapons and, therefore, had the intent to commit an assault with intent to do great bodily harm against Matthews.

However, as plaintiff points out, it is not necessary for plaintiff to demonstrate that defendant entered the apartment with the intent to commit an assault with intent to do great bodily harm to Matthews. See generally *Carines*, *supra* at 758-759. Instead, plaintiff argues that there was sufficient evidence that defendant entered the apartment with the intent to commit a felony because defendant entered the apartment with the intent to commit an assault with intent to do great bodily harm to Mackey and Harris. We agree. As a result, a rational trier of fact could have concluded that defendant entered the apartment with the intent to commit an assault with intent to do great bodily harm against Mackey and Harris. In particular, defendant's aggressive behavior towards Harris and Mackey before he left, defendant's promise to return, and the short amount of time that passed between the fight and the murder of Matthews all support this conclusion. See generally *id*.; *Bigelow*, *supra* at 809.

Third, defendant argues that there was insufficient evidence to support his conviction because there was no evidence presented linking defendant with this crime. We disagree.

While fighting with Mackey and Harris, defendant tried to get assistance from someone in a nearby apartment. Defendant left the apartment building after this strategy proved unsuccessful, but promised to return. When Mackey and Harris returned to the apartment, Mackey observed Ragan on the balcony of Matthews' and Tafoya's apartment. Ragan was speaking to another person and Mackey heard the other person reply, "I don't care. Let the mother f---ers in." Although Mackey could not identify this person's voice as defendant's voice, Betty Smith, a neighbor, testified that she heard two men talking on the balcony. Smith recognized one of the voices as belonging to the man she had seen involved in the earlier fight.

---

[4] While we agree with defendant that sufficient evidence was not presented that defendant intended to assault Matthews, we find this argument to be unsuccessful, because sufficient evidence was presented that defendant entered the apartment with the intent to commit an assault with intent to do great bodily harm to Mackey and Harris.

Furthermore, blood retrieved from the exit door of Matthews' and Tafoya's apartment matched defendant. Blood retrieved from the light switch and doorjamb in the bathroom of the Green Road apartment, where defendant and Ragan resided, contained a mixture of defendant's DNA, Matthews' DNA, and Ragan's DNA. When arrested by police, defendant had lacerations on his knuckles and gave police a false name. Finally, while in jail, defendant questioned an inmate and former law student about the ability of the police to determine which knife was used as a murder weapon. Thus, when considering the evidence in a light most favorable to plaintiff, there was evidence presented linking defendant to the crime. See generally MCL 750.110a(2); *Carines*, *supra* at 758-759.

Fourth, defendant argues that there was insufficient evidence to support his conviction because the testimony of witnesses was contradictory and unreliable. Defendant's argument fails. We will not interfere with the role of the jury when reviewing an appeal based on the sufficiency of evidence. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

> [An appellate court] must remember that the jury is the sole judge of the facts. It is the function of the jury alone to listen to testimony, weigh the evidence and decide the questions of fact . . . . Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony. [*Id*., quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974).]

In this case the jurors were presented with conflicting testimony, which required them to make a determination concerning the credibility of each witness and the weight to afford each witness' testimony. The jury must have found the testimony of the witnesses credible because it found defendant guilty of felony murder. Therefore, we will not interfere with that determination. *Id.*

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell