

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO VALDEZ BAYNES,

Defendant-Appellant.

UNPUBLISHED

August 27, 2002

No. 231519

Kalamazoo Circuit Court

LC No. 00-000803-FC

Before: Whitbeck, C.J., and Bandstra and Talbot, JJ.

PER CURIAM.

The prosecutor charged defendant Mario Valdez Baynes with first degree murder¹ under both premeditation and felony-murder theories, four counts of felony firearm,² assault with intent to murder,³ first degree home invasion,⁴ and assault with a dangerous weapon.⁵ A jury convicted Baynes of first degree felony murder with home invasion as the predicate felony,⁶ and acquitted him of the remaining charges. The trial court sentenced Baynes to life in prison without the possibility of parole. Baynes appeals as of right. We affirm.

I. Basic Facts

According to the prosecutor, Baynes fought with Clifford McCormack in the early morning hours of June 17, 2000. Shortly thereafter, Baynes and Charles Walker entered an apartment looking for McCormack, whom Baynes intended to kill. McCormack fled into the bedroom, at which point Baynes fired shots through the bedroom door, killing Angel Ryan while McCormack escaped through the window.

¹ MCL 750.316.

² MCL 750.227b.

³ MCL 750.83.

⁴ MCL 750.110a(2).

⁵ MCL 750.82.

⁶ MCL 750.316(1)(b).

The defense theory was that, while Baynes had been angry with McCormack as a result of the fight they had earlier in the night in question, he had no ill will or bad feelings toward Ryan. Baynes maintained that he was unarmed at the time of the shooting and that Walker shot and killed Ryan.

II. Insufficient Evidence

A. Standard Of Review And Legal Standard

Baynes argues that the jury's decision to acquit him of all but felony-murder was inconsistent because it revealed that the jury had doubts that he was "the culprit," and also demonstrated that the prosecutor's evidence was insufficient evidence. Case law does not specifically define a standard of review for a challenge to the sufficiency of the evidence. Instead, we take our cue on this point from the legal test we apply. To determine whether the evidence was sufficient to convict Baynes, we must review the evidence in the light most favorable to the prosecution to resolve whether a reasonable juror would conclude that he was guilty beyond a reasonable doubt.⁷ Despite this preferential perspective on the inferences that can be drawn from the evidence, this review is de novo because it entails examining the evidence on the record without according any deference to the jury, which positively concluded that the evidence was sufficient when convicting Baynes. Because the inconsistent verdict issue is so connected to the sufficiency of the evidence issue, we assume it also is subject to review de novo.

B. Sufficiency

The prosecutor had an obligation to prove beyond a reasonable doubt that Baynes (1) killed a human being, (2) with malice, (3) while committing, attempting to commit, or assisting someone in committing one of the felonies enumerated in MCL 750.316.⁸ The prosecutor alleged first-degree home invasion as the predicate felony for the felony-murder charge. The elements of first degree home invasion are: (1) breaking and entering or entering without permission, (2) a dwelling, (3) with the intent to commit a felony, larceny, or assault in the dwelling, and (4) while entering, present, or exiting, the defendant is armed with a dangerous weapon or another person is lawfully present.⁹

When we view the evidence in the light most favorable to the prosecutor, there is no question that the prosecutor satisfied the burden of proving Baynes' guilt beyond a reasonable doubt. A number of the elements were not in dispute. For instance, there was no question that the Ryan had been killed or that Ryan was present in the apartment when Baynes and Walker entered it. Numerous witnesses indicated that Baynes broke and entered, or entered without permission, Ryan's apartment, and assaulted McCormack, chasing him down the hallway while firing a gun at him. There was also significant evidence that Baynes intended to commit a felonious assault against McCormack when he broke into the apartment. According to Baynes'

⁷ *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

⁸ See *People v Watkins*, 247 Mich App 14, 33; 634 NW2d 370 (2001).

⁹ See MCL 750.110a(2).

own admission, he went to Ryan's apartment specifically to fight McCormack. Several witnesses testified that a physical fight had occurred between Baynes and McCormack at a gas station earlier on the night in question and that Baynes was quite angry about that fight before he went to Ryan's apartment. Witnesses also observed that Baynes possessed a gun at the time he entered Ryan's apartment.

Further, the evidence indicated that while committing the home invasion, Baynes killed Ryan by shooting into her bedroom, an action that was highly likely to cause death. Malice may be inferred from evidence that "defendant intentionally set in motion a force likely to cause death or great bodily harm."¹⁰ Accordingly, the evidence was clearly sufficient, when viewed in the light most favorable to the prosecution, to support the conviction of first degree felony murder.

C. Consistency

Baynes also contends that because the jury found him guilty of felony murder, and not of first degree home invasion or any of the remaining counts, the verdict was inconsistent and must be reversed. However, Michigan law does not require consistent verdicts.¹¹

Juries are not held to any rules of logic nor are they required to explain their decisions. The ability to convict or acquit another individual of a crime is a grave responsibility and an awesome power. An element of this power is the jury's capacity for leniency. Since we are unable to know just how the jurors reached their conclusion, whether the result of compassion or compromise, it is unrealistic to believe that a jury would intend that an acquittal on one count and conviction on another would serve as the reason for defendant's release.^[12]

Nor must a jury convict a defendant of the underlying felony in order to convict him of another felony that incorporates the elements of the underlying felony.¹³ Instead, the proper inquiry is whether the evidence supported the jury's verdict.¹⁴ Having already concluded that the evidence, when viewed in the light most favorable to the prosecutor, supported the jury's guilty verdict, Baynes has failed to identify any error requiring reversal in the jury's inconsistent verdicts.

III. Intent

A. Standard Of Review

Baynes argues that the trial court erroneously instructed the jury that felony murder is not a specific intent crime, which denied him due process and a fair trial. Because Baynes failed to

¹⁰ *Nowack, supra* at 401-402.

¹¹ See *People v Vaughn*, 409 Mich 463, 465; 295 NW2d 354 (1980).

¹² *Id.* at 466.

¹³ See *People v Lewis*, 415 Mich 443, 454; 330 NW2d 16 (1982).

¹⁴ See *People v Cazal*, 412 Mich 680, 688; 316 NW2d 705 (1982).

preserve this issue for appeal by objecting to the trial court's instructions, he is entitled to relief only if he can demonstrate plain error affecting his substantial rights.¹⁵

B. The Trial Court's Instructions

When the trial court began instructing the jury on the charged offenses, it indicated that some of the offenses it would mention were specific intent crimes. The trial court explained that when a crime has a specific intent element, "the Prosecution must prove not only that the Defendant did certain acts, but he did the acts with the intent to cause a particular result." The trial court then noted that premeditated murder is a specific intent crime. However, when the trial court reached the instructions for felony-murder, it stated, "[I]'m now going to give you an instruction on first degree felony murder, which is not what is known as a specific intent offense."

Contrary to Baynes' contention, first degree felony murder does not require a specific intent to kill, and is therefore not considered a specific intent crime.¹⁶ Rather, the trial court properly instructed the jury on the malice required for felony murder.¹⁷ Moreover, the trial judge properly instructed the jury regarding the intent requirements for second degree murder and first degree home invasion. Because the trial court's instructions were correct, Baynes has failed to establish plain error. Accordingly, his argument is without merit.

Affirmed.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Michael J. Talbot

¹⁵ See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

¹⁶ See *In re Robinson*, 180 Mich App 454, 462; 447 NW2d 765 (1989).

¹⁷ See *id.*, citing *People v Aaron*, 409 Mich 672, 728; 299 NW2d 304 (1980).