

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON DESHAWN JOHNSON,

Defendant-Appellant.

UNPUBLISHED

December 27, 2007

No. 273693

Eaton Circuit Court

LC No. 05-020559-FC

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

MEMORANDUM.

Defendant appeals as of right from the trial court judgment convicting him of felony murder, MCL 750.316(1)(b), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to life in prison for the felony murder conviction and a consecutive two-year term for the felony firearm conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that there was insufficient evidence of felony murder. We review sufficiency of the evidence issues de novo in the light most favorable to the prosecution to determine whether a rational trier of the fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

“The elements of felony murder are: (1) the killing of a human being, (2) with the intent to kill, 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 [i.e. malice], (3) while committing, attempting to commit, or assisting in the commission of any of the felonies enumerated in [the statute].” [*People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 566; 540 NW2d 728 (1995).]

Defendant argues specifically that there was insufficient evidence that the victim, Antonio Weaver, was murdered during the commission of a larceny. A larceny requires the actual or constructive taking of the property of another. MCL 750.360.

There was testimony from Sharonda Warren, Jim Vlahakis, Alonzo Melvin, Marcus Hill, and even defendant that Weaver had money and/or drugs in his possession the night before

and/or the morning of his murder. There was no money or drugs found at the scene or on Weaver's person. Defendant agreed that whoever killed Weaver must have stolen his drugs and money. Further, Cedric Green testified that defendant told him that he "stuck a guy up for money and ended up shooting him in the head" and that he took money and drugs from the victim's apartment. This testimony, along with the fact that defendant had the murder weapon in his possession and his fingerprint was on the trigger of the weapon, is more than sufficient to establish that defendant took drugs and money from Weaver.

Defendant argues that there was testimony explaining away the theft of money and drugs and that defendant was not found with either money or drugs in his possession the next day. While that evidence may have been persuasive to a jury, this Court must view the evidence in a light most favorable to the prosecution. We therefore conclude that there was more than sufficient evidence that defendant committed felony murder and larceny.

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder