

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LEE MILLER, JR.,

Defendant-Appellant.

UNPUBLISHED

January 24, 2008

No. 274616

Wayne Circuit Court

LC No. 06-007797-01

Before: Whitbeck, P.J., Owens and Schuette, JJ.

PER CURIAM.

Following a bench trial, defendant Charles Lee Miller, Jr., was convicted of felony murder, MCL 750.316(1)(b), and sentenced to life imprisonment. He appeals as of right. We affirm.

I. Facts

The victim in this case, Della Dudley, was a 92-year-old Detroit resident at the time of her death. Defendant is her grandson. The victim received Social Security benefits and owned rental properties in the area. However, she did not have a checking account, preferring to receive her rent payments and pay her bills with cash or money orders. Her family members were aware that she kept cash in her house and often wore a money belt, even to bed.

The victim was very security-conscious. She had installed security doors on the entrances to her house and had several locks on her front door. Because she was hard of hearing, she would not let others, including relatives, in the house at night. Besides the victim, only her son and daughter had keys to her house. The victim also locked several interior doors at night, including the door to her bedroom. Further, at the victim's insistence, her son had installed iron security bars on the inside frames of her windows. However, the victim's daughter was concerned that if a fire started in the victim's kitchen and she was in the back of the house, she would be unable to escape. Accordingly, the victim apparently permitted the modification of the security bars on one window in the back bedroom—the screws attaching the security bars to the window frame were removed to permit the victim to easily remove the bars and exit the window in case of a fire.

On November 4, 2004, defendant arrived in Detroit on a bus from Toledo, Ohio, to stay with the victim. Apparently, defendant had a history of substance abuse and had tested positive

for controlled substances during a recent urine screen. On Saturday, November 6, 2004, defendant did some work for a friend of his aunt, who owned a used furniture store. He worked at the store until about 6:00 p.m. and was paid \$25 in return. Defendant did not have a car, so another worker drove him to the victim's house shortly after 6:00 p.m. When defendant arrived, Christine Johnson, the victim's cousin, was visiting the victim. According to Johnson, the victim had to unlock her door to let defendant inside. Johnson left the victim's home around 8:00 p.m. When she left, defendant was still at the house and nobody else had come over.

In the early afternoon of Sunday, November 7, 2004, Charles Miller, Sr., defendant's father and the victim's son, went to the victim's house. When he arrived, he rang the doorbell but received no answer. He pulled on the front door and discovered it was unlocked. He found the victim lying next to her bed with her rifle lying on top of her. Her nightgown was bunched around the middle of her body, which was cold to the touch. He moved the rifle from her body and called 911.¹

After discovering his mother's body and calling emergency personnel, Charles, Sr., called his sister and informed her that the victim was dead and defendant was not at the house. When waiting for the ambulance and police to arrive, he discovered a broken safe in the living room and papers scattered about. According to Charles, Sr., the victim had recently received rent payments of \$300 in cash and \$600 in money orders and would have had this money in the house at the time of her murder. She also kept personal property belonging to defendant's incarcerated brother, including his wallet and keys, in a safe in her bedroom.

Investigators at the scene noted that the victim's room had been ransacked and found an empty United States Treasury envelope lying near her body. The victim's money belt was not located. The safe had pry marks on it and a pair of hedge clippers was found nearby. The safe only contained a carbon copy of a money order, a rubber band, a pair of earrings, and other miscellaneous papers. No cash was found either in the safe or near the victim, nor was the property belonging to defendant's incarcerated brother located. Investigators also found the victim's blood throughout the home, including on a kitchen knife.

Notably, investigators identified the victim's blood on a pair of pajama pants and a sock found in the back bedroom of the house, where defendant had apparently been sleeping. Defendant identified these articles of clothing as his, and DNA tests confirmed that he had worn this clothing. Further, the window in this bedroom that had earlier been adjusted to permit escape in case of fire was open, although not broken, and both the screen and the iron security bars had been removed. However, investigators did not find pry marks on the outside of the window or damage to the sill, indicating that the window was opened and the security bars removed from inside the house. Investigators did not find any other signs of forced entry into the home.

¹ An assistant medical examiner at the Wayne County Medical Examiner's Office, determined that the victim had died after receiving several cuts to her head and neck, which severed her larynx and jugular vein. He also identified defensive wounds on the victim's hands.

Monica Robertson, the victim's neighbor, testified that she was outside with her dog around 4:00 a.m. and saw a person near the victim's home get into a car and drive off. She knew that defendant had been staying with his grandmother and assumed that he was the individual entering the car.

Conversely, defendant claimed that he had left the victim's house shortly after 8:00 p.m. on November 6, met a girl, and spent the night driving around town with her as she visited her friends. Defendant did not recall the name of the girl, alternately referring to her as Landra, Laura, Lauren, or Paula. According to defendant, he and the girl eventually spent the night at a house in Lincoln Park, Michigan, belonging to one of her friends. They left the house around 1:00 p.m. the following day and parted ways around 2:30 p.m. Defendant claimed that he decided to walk back to Detroit, but did not know how to get there and eventually walked to Brownstown Township. On November 9, at 12:30 a.m., Officer Jonathan Smith of the Brownstown Police Department saw defendant walking in front of the Road Commission Building in Brownstown. When Smith questioned him, defendant said that he was walking from his car, which had broken down in Lincoln Park. Smith asked defendant if he could search his pockets and defendant consented. Smith discovered a small bag of marijuana in defendant's pants pocket, which defendant claimed that he had found on the side of the road. Smith then placed defendant under arrest and, when running a lien check, discovered that he had a number of outstanding warrants in Ohio. He was unable to post the \$100 bond for his misdemeanor marijuana charge.

II. Sufficiency of the Evidence

Defendant contends that the prosecution presented insufficient evidence at trial to support his felony murder conviction. We disagree. "Generally, we review a challenge to the sufficiency of the evidence in a bench trial *de novo* and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), *aff'd* 466 Mich 39 (2002). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted).

An individual is guilty of first-degree murder under MCL 750.316(1)(b) when he commits a murder "in the perpetration of, or attempt to perpetrate, . . . larceny of any kind" Our Supreme Court noted,

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 probable result [i.e., malice], (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in [MCL 750.316(1)(b), here larceny]. [*People v Carines*, 460 Mich 750, 758-759; 597 NW2d 130 (1999) (citation and internal quotations omitted).]

In this case, the alleged underlying felony is larceny. “Larceny is the taking and carrying away of the property of another, done with felonious intent and without the owner’s consent.” *People v Gimotty*, 216 Mich App 254, 257-258; 549 NW2d 39 (1996).

Viewing the evidence in the light most favorable to the prosecution, we conclude that the trial court properly found that the essential elements of felony-murder were proven beyond a reasonable doubt. First, the prosecution presented sufficient evidence to establish that a larceny occurred. There is no evidence that the individual who killed the victim was not also the individual who took or attempted to take her property. The victim typically kept money in her house, but at the time her body was discovered, no money was in the house and her safe had been pried open. Although her son claimed that she had at least \$300 in cash and \$600 in money orders in her house at the time of her death, neither this money nor the money belt that she typically wore to bed were located. Her nightgown was bunched around her waist, where she would have worn her money belt, indicating that the perpetrator attempted to take the money belt from her. Further, the victim had defensive wounds on her hands, indicating that she attempted to stop the perpetrator from attacking her and taking her property. When viewing this evidence in the light most favorable to the prosecution, a rational factfinder could conclude that the perpetrator took the victim’s property without her consent and with the intent to permanently deprive her of it.

Further, the prosecutor presented sufficient evidence to establish malice. The perpetrator killed the victim by stabbing her 12 times in the head and neck, severing her larynx and jugular vein. Based on the nature of the homicide, by stabbing the victim 12 times, the perpetrator intended to kill or cause great bodily harm to the victim.

Finally, the prosecution presented sufficient evidence to establish that defendant killed the victim. Defendant was the last known individual in the victim’s house and, considering the extreme precautions the victim took to secure her home, it would have been difficult for someone to break into her home. Further, investigators found no sign of forced entry into the home. Although a window in defendant’s bedroom had been opened and the screen and security bars removed, the intact nature of the window and sill indicated that the window was opened and the security bars and screen were removed from inside the house. Also, the victim’s blood was found on defendant’s pajama pants and sock in his bedroom.

In addition, evidence presented at trial indicated that defendant knew that the victim kept money in her house.² The victim’s family members knew that she kept money in a money belt that she typically wore and other valuables in a safe in her bedroom. Again, when the victim was discovered, her nightgown was bunched around her waist, indicating that the perpetrator knew that she wore a money belt and, apparently, took it (or at least attempted to steal it) during or after the attack. Further, the perpetrator also broke open the victim’s safe, apparently in an attempt to locate additional valuables. This evidence that the perpetrator attempted to locate the victim’s money in the two places where her family members knew she stored her valuables is

² Defendant also had a motive to steal her money—he had a substance abuse problem and no discernable source of income to maintain it.

additional evidence indicating that defendant committed this attack. Although defendant did not have enough cash on him to post a \$100 bond and was not wearing bloody clothes when he was arrested approximately two days after the murder, it is not unreasonable to assume that he would have spent the money he took from the victim on drugs (including on the small bag of marijuana found on him at the time of his arrest) and that he would have had time to discard any clothes and shoes that he was wearing when he left the victim's house if they were bloody.

Accordingly, viewing the evidence in the light most favorable to the prosecution, we conclude that the trial court did not err when it found that the essential elements of felony-murder were established beyond a reasonable doubt and found defendant guilty of that offense.

III. Admissibility of Evidence

Next, defendant argues that the trial court erred when it admitted evidence that a small bag of marijuana was found on him when he was arrested and that he had numerous outstanding warrants in Ohio. We disagree. Because defendant did not challenge the admissibility of this evidence at trial, it is not preserved for our review. See *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001) (“To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal.”). We review unpreserved evidentiary issues for plain error affecting defendant's substantial rights. *Carines, supra* at 763-764.

Smith testified at trial that defendant was found in possession of a small bag of marijuana and had outstanding warrants in Ohio. Pursuant to MRE 401, evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” If evidence is not relevant, it is not admissible. MRE 402. Even if evidence is relevant, it is not admissible “if its probative value is substantially outweighed by the danger of unfair prejudice.” MRE 403.

At trial, the prosecution argued that defendant had a motive to rob and kill the victim because he had a drug problem that his assets did not sufficiently support. Furthermore, defendant implied during trial that if he had robbed the victim, he would have been found in possession of a large amount of cash at the time of his arrest. The prosecutor countered the defense theory by arguing that defendant likely spent all the stolen money on his drug habit before his arrest. Therefore, defendant's possession of marijuana was probative of his motive to commit the charged offense and of the prosecution's inability to account for the cash stolen from the victim. Defendant has failed to show that the probative value of this evidence was outweighed by its prejudicial effect. Further, because this was a bench trial, “it is unlikely that the trier of fact considered the evidence for anything other than the purpose for which it was offered.” *People v Bailey*, 175 Mich App 743, 746; 438 NW2d 344 (1989).

Defendant also asserts that the trial court improperly admitted testimony regarding defendant's outstanding warrants. Sergeant Timothy Firchau of the Detroit Police Department testified that he interviewed defendant in a jail in Toledo. The evidence that defendant had outstanding warrants in Ohio and was sent to that state after his arrest for marijuana possession in November 2004 simply helped explain his whereabouts after the victim's murder and contributed to the court's understanding of the subsequent homicide investigation. Consequently, the evidence was relevant.

Again, because this was a bench trial, we presume that the trial court did not consider this evidence for an improper purpose. See *id.* Regardless, the trial court did not indicate in its findings that it used this evidence for an improper purpose, such as to establish defendant's bad character. In the trial court's findings, it emphasized the DNA evidence and that no evidence of forcible entry into the home existed. Although the court mentioned that defendant needed money, it did not state that the need was caused by defendant's drug habit. Furthermore, the court did not mention defendant's outstanding warrants in Ohio. Nothing in the record supports defendant's assertion that the trial court considered the evidence for an improper purpose.

Finally, because this evidence was properly admitted, defendant's contention that his trial counsel was ineffective for not challenging the admission of this evidence fails, because "[d]efense counsel is not required to raise a meritless objection." *People v Kulpinski*, 243 Mich App 8, 27; 602 NW2d 537 (2000).

Affirmed.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Bill Schuette