

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT JERMINE OLIVER,

Defendant-Appellant.

UNPUBLISHED

August 12, 2008

No. 276824

Ingham Circuit Court

LC No. 06-000720-FC

Before: Markey, P.J., and Whitbeck and Gleicher, JJ.

PER CURIAM.

Defendant Robert Oliver appeals as of right his jury trial conviction of second-degree murder¹ for which the trial court sentenced him as a third-offense habitual offender² to 270 to 420 months imprisonment. On appeal, Oliver contends that the prosecution failed to present sufficient evidence that he acted with the requisite malice, that his conviction was against the great weight of the evidence, and that the trial court improperly instructed the jury. Because we conclude that there were no errors warranting relief, we affirm.

I. Basic Facts And Procedural History

Oliver's conviction arose out of an apparent attempt to collect a debt. Oliver brought the victim to his home in order to obtain payment. But when the victim failed to produce the money, Oliver called his girlfriend's sister and instructed her to assault the victim. The sister began slapping the victim's face but Oliver, dissatisfied with her efforts, took over the beating. Oliver punched and kicked or stomped the victim's head, rendering her unconscious. Oliver and an associate then drove the victim to a vacant apartment and left her outside on the porch late in the evening. The following day, the victim was found frozen in the snow. A forensic pathologist ruled that her death was a homicide resulting from multiple blunt force head trauma.

¹ MCL 750.317.

² MCL 769.11.

II. Sufficiency Of The Evidence

A. Standard Of Review

Oliver argues that the evidence was insufficient to sustain his conviction. We review this challenge de novo³ to determine whether a reasonable juror could have found that the prosecutor proved the elements of the charged crime.⁴

B. Legal Standards

The elements of second-degree murder are: “(1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death.”⁵ Here, Oliver claims that the prosecutor failed to present evidence sufficient to establish that he acted with malice. The Michigan Supreme Court has defined malice in the context of second-degree murder as “the intent to kill, the intent to cause 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.”⁶

C. Applying The Standards

The record contains ample evidence from which a reasonable juror could find that Oliver acted with intent to cause great bodily harm or with wanton and wilful disregard of the likelihood that the victim would die or sustain great bodily harm. Oliver instructed another person to assault the victim. Unsatisfied, Oliver then assaulted the victim with his fist and his feet. While the victim was unconscious, Oliver left her outside at night in freezing temperatures. From this evidence, a reasonable jury could conclude that defendant acted with the requisite intent for second-degree murder.⁷

Oliver maintains, however, that the evidence indicated he attempted to assist the victim by taking her to what he believed to be the apartment of a member of her family. Even if Oliver believed the victim could obtain aid at the apartment, the fact remains that he placed an unconscious woman outside in freezing temperatures without determining that she would either regain consciousness or that she would receive assistance from someone in the apartment. We conclude that this fact alone was sufficient to allow the jury to find that Oliver acted in wilful and wanton disregard for the “likelihood that the natural tendency of such behavior is to cause death or great bodily harm.”⁸

³ *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005).

⁴ *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

⁵ *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007), citing *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998).

⁶ *Goecke*, *supra* at 464.

⁷ *Nowack*, *supra* at 399-400.

⁸ *Goecke*, *supra* at 464.

III. Great Weight Of The Evidence

A. Standard Of Review

Oliver argues that the verdict was against the great weight of the evidence, claiming that the testimony of the witnesses against him was inherently incredible. We review for an abuse of discretion the trial court's denial of his motion for a new trial.⁹

B. Legal Standards

Generally, "when reviewing a trial court's decision regarding a motion for a new trial based on the great weight of the evidence, this Court will not attempt to resolve credibility issues anew."¹⁰ Rather, the Court defers to the jury's credibility assessments.¹¹

C. Applying The Standards

Oliver presented his credibility arguments to the jury, pointing out that several of the witnesses were drug abusers and that some of them had obtained plea agreements with regard to the incident at issue. The jury apparently found the witnesses credible and we find nothing in the record to warrant the unusual step of overriding the jury's credibility determinations. We conclude that there is nothing in the record to suggest that witness testimony supporting the verdict either contradicts indisputable physical facts or law or is patently incredible.¹²

IV. Jury Instructions

A. Standard Of Review

Oliver argues that the trial court erred in refusing to instruct the jury in accordance with CJI2d 7.1 and 7.2. Because Oliver's argument presents a question of law, we review the trial court's ruling de novo.¹³

B. Legal Standards

To prevail, Oliver must demonstrate not only that the trial court erred in refusing the proffered instructions, but also that the lack of those instructions "undermined the reliability of the verdict."¹⁴

⁹ *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

¹⁰ *Id.* at 17, citing *In re Robinson*, 180 Mich App 454, 463-464; 447 NW2d 765 (1989).

¹¹ *Id.*

¹² *People v Lemmon*, 456 Mich 625, 645-646; 576 NW2d 129 (1998).

¹³ *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007).

¹⁴ *People v Hawthorne*, 474 Mich 174, 185; 713 NW2d 724 (2006).

C. Applying The Standards

We conclude that the CJI2d 7.1 was inapplicable to this case in that there was no involuntary act by Oliver related to the victim's death. As for CJI2d 7.2, the evidence at trial rendered implausible any assertion that Oliver could have failed to realize multiple beatings and exposure to freezing temperatures could cause great bodily harm. In any event, the instruction defining the requisite intent for a conviction was sufficient to apprise the jury that if they accepted Oliver's theory of the case, they must find him not guilty.

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Elizabeth Gleicher