

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY ERIC GREEN,

Defendant-Appellant.

UNPUBLISHED

October 1, 2009

No. 284301

Washtenaw Circuit Court

LC No. 07-000941-FH

Before: Owens, P.J., and Talbot and Gleicher, JJ.

PER CURIAM.

After a bench trial, the trial court convicted defendant of first-degree criminal sexual conduct (CSC I), MCL 750.520b, and first-degree felony murder, MCL 750.316(1)(b). The court sentenced defendant to concurrent terms of life imprisonment without parole for the felony-murder conviction and 40 to 60 years' imprisonment for the CSC I conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arise from the May 1983 murder of Laura Jean McBride, a 26-year-old Eastern Michigan University student. While fishing on May 24, 1983, two men discovered the victim's body in a wooded area of Ypsilanti, near the Huron River. Police noted that a lot of blood covered the victim's upper body, and that her pants had been pulled down. An autopsy of the victim documented that she had endured "[m]ultiple stab wounds to anterior neck, chest, abdomen, head, left buttock and right hand," one of which had severed her left jugular vein and also cut her left carotid artery. The police obtained oral, rectal and vaginal swabs during the autopsy, and initial testing of the vaginal swabs revealed the presence of spermatozoa. Although the police identified some potential suspects, not including defendant, the police did not locate a murder weapon or any other physical evidence strongly tending to incriminate anyone, and the case remained unresolved for two decades. In 2003, crime laboratory testing of the deoxyribonucleic acid (DNA) on the vaginal sample containing sperm identified a DNA profile that matched defendant's DNA profile, which was stored in an information database.

Defendant now challenges as insufficient the evidence supporting his convictions. Defendant emphasizes the absence of any other physical evidence or eyewitness testimony tending to link him to the victim's murder; defendant also stresses the lack of evidence of trauma to the victim's vagina, and avers that "[t]he presence of Mr. Green's semen in the decedent's vagina proves only that he had sex with her near the date of her death, which he readily admitted." This Court reviews de novo claims of insufficient evidence. *People v McGhee*, 268

Mich App 600, 622; 709 NW2d 595 (2005). Evidence sufficiently supports a conviction when “the evidence, viewed in a light most favorable to the people, would warrant a reasonable [fact finder] in finding guilt beyond a reasonable doubt.” *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the . . . verdict. The scope of review is the same whether the evidence is direct or circumstantial. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. [*Id.* at 400 (internal quotation omitted).]

“[A]n actor may be found guilty [of CSC I] under MCL 750.520b(1)(f) if the actor (1) causes personal injury to the victim, (2) engages in sexual penetration with the victim, and (3) uses force or coercion to accomplish the sexual penetration.” *People v Nickens*, 470 Mich 622, 629; 685 NW2d 657 (2004). Force or coercion includes a circumstance in which the defendant “overcomes the victim through the actual application of physical force or physical violence.” MCL 750.520b(1)(f)(i). To prove first-degree felony murder, the prosecution must establish 1) the defendant’s killing of a human being, 2) while the defendant intended 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, and 3) while the defendant was committing, attempting to commit, or assisting in the commission of any specifically enumerated felonies, including CSC I. *People v Smith*, 478 Mich 292, 318-319; 733 NW2d 351 (2007).

The trial court made the following relevant findings in rendering its verdict:

The evidence at the scene as documented in the photographs of the condition of her body including the positioning of her clothing also establishes to me that she was penetrated and sexually assaulted at the same time in the woods where she was found. That’s a crucial finding for me. The DNA evidence uncovered some twenty years later establishes beyond a reasonable doubt that the Defendant [sic] sperm was in the victim’s vagina. There was no evidence of anyone else’s sperm in the victim or anywhere else at the scene. The testimony of the Defendant, that he had consensual sexual intercourse with the victim at some previous day or weekend is inconsistent with the physical evidence at the scene and with the testimony of other witnesses concerning the character and habits of the victim. That testimony is not credible.

I find beyond a reasonable doubt that the Defendant sexually penetrated [the victim] by force and coercion and while armed with a knife or similar sharp object, and resulting in severe injuries to her. I therefore, find the [Defendant] guilty of Criminal Sexual Conduct in the First Degree as alleged in Count III.

I further find beyond a reasonable doubt that while in the perpetration of that sexual assault, the Defendant did murder [the victim] by repeatedly stabbing her with a knife or other similar object. I therefore find the Defendant guilty of Felony Murder as alleged in Count I.

Our review of the record reveals ample support for the trial court's findings. The evidence that the police discovered the victim lying in the woods on her back, covered in blood and with her pants pulled down around her knees, gives rise to a reasonable inference that someone sexually assaulted the victim at the same time they repeatedly stabbed the victim. The additional evidence of DNA linking the sperm recovered in the victim's vagina with defendant to a very high degree of probability, together with the absence of any suggestion of other potential sperm donors, tended to prove beyond a reasonable doubt defendant's identity as the sexual assailant and murderer of the victim. To the extent that the trial court specifically discredited defendant's explanation that he and the victim had engaged in sexual intercourse at some point well before her death, we will not revisit the court's credibility determination. *Nowack, supra*, 462 Mich 400. In conclusion, the evidence adequately supported beyond a reasonable doubt the trial court's findings that defendant penetrated the victim's vagina by applying force and causing her personal injury, MCL 750.520b(1)(f), and that defendant killed the victim "in the perpetration of . . . criminal sexual conduct in the first . . . degree." MCL 750.316(1)(b); see also *People v Ramsey*, 89 Mich App 260, 266; 280 NW2d 840 (1979) (in a felony murder case, rejecting the defendants' sufficiency challenge to the evidence of rape in light of evidence that "[t]he victim was found lying in an alley with her coat on. Her skirt was pulled up around her waist and her top was open. Her underwear had been pulled off And there was evidence of sexual intercourse.").

Defendant additionally submits that he did not receive a fair trial by an impartial fact finder in light of the trial court's longstanding affiliation with Eastern Michigan University, and the recent "inflammatory circumstances of the unrelated murder of . . . another EMU student" Defendant concedes that he did not object to the trial court's participation in his proceedings, and we thus review his bias and impartiality claims for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

After reviewing the record, we have found no basis to find or even suspect that the trial court in presiding over defendant's trial possessed any actual bias under MCR 2.003(B) or that the court operated under an unconstitutional lack of partiality. With respect to the disqualification grounds enumerated in the Michigan Court Rules, defendant specifically cites only MCR 2.003(B)(5), which envisions judicial disqualification when "[t]he judge knows that he . . . has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than a de minimis interest that could be substantially affected by the proceeding." However, defendant, who untimely raised his claim of bias, MCR 2.003(C)(1), has not made the requisite "showing of actual bias or prejudice." *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001). The facts that the trial court formerly occupied one of Eastern Michigan University's regent positions between 1987 and 1990, more recently applied for the university presidency, attended the university, and has an adjunct teaching position with the university fall far short of substantiating any actual bias. The university certainly does not constitute a party to this action, the trial court has no conceivable interest "in the [criminal] subject matter in controversy," and, viewed most charitably to defendant, the instant victim's identity as a university student does not even reach the level of a de minimis interest of the trial court that "could be substantially affected by" defendant's trial. Defendant plainly has failed to satisfy his burden to "overcome a heavy presumption of judicial impartiality." *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996).

Regarding defendant's invocation of the Due Process Clause as a basis for judicial disqualification, "disqualification for bias or prejudice is only constitutionally required in the most extreme cases." *Cain, supra*, 451 Mich 498. "The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where '*experience teaches us that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable,*'" for example when the judge "has a pecuniary interest in the outcome." *Id.* (emphasis in original). But, once again, the record remains entirely devoid of any evidence that the trial court possessed a direct, or even remote financial interest in the outcome of defendant's trial, notwithstanding the trial court-university connections noted above. Because the university was not a party to this case, the trial court's adjunct professorship does not even rise to a tenuous ground to warrant disqualification. *Olson v Olson*, 256 Mich App 619, 643; 671 NW2d 64 (2003).

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher