

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEJUAN “POOKIE” LUMPKINS,

Defendant-Appellant.

UNPUBLISHED

December 13, 1996

No. 188606

LC No. 94-002911

Before: Doctoroff, C.J., and Corrigan and Danhof,* JJ.

PER CURIAM.

Defendant appeals by right his bench trial conviction of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), and possession of a firearm during the commission of a felony, MCL 750.277b; MSA 28.424(2). For the first-degree felony murder conviction, defendant was sentenced to imprisonment for his natural life, and for the felony-firearm conviction, he was sentenced to two years’ imprisonment. The first-degree felony murder sentence was imposed consecutively to the felony-firearm sentence. We affirm.

In this case, defendant admits to an attempted robbery of the deceased while the deceased was in his parked cab. The deceased gave defendant no money and attempted to drive away, but was fatally shot by defendant. The testimony at trial conflicted as to whether the deceased had already begun to drive away when he was shot, but the two events were in close proximity. Defendant first argues that the trial court erred in finding that defendant shot the decedent during the commission of an attempted robbery. Specifically, defendant claims that this finding was inconsistent with the evidence presented at trial, and was therefore clearly erroneous. We disagree.

Defendant argues that the cab the decedent was driving had begun moving at the time of the shooting, and thus the attempted robbery was completed at the time of the shooting. Defendant contends, therefore, that the felony (attempted robbery) was a separate offense from the shooting, and thus he could not be convicted of first degree murder under the felony murder statute, MCL 750.316(1)(b); MSA 28.548(1)(b). This analysis is unsupported by the case law. This Court has

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

held that “robbery is a continuous offense that is not complete until the perpetrator reaches a place of temporary safety.” *People v Newcomb*, 190 Mich App 424, 430-431; 476 NW2d 749 (1991); *People v Velasquez*, 189 Mich App 14, 17; 472 NW2d 289 (1991). In the present case, the trial court found that defendant approached the decedent with the intent to rob him. The trial court further found that defendant committed an assault on the decedent in furtherance of his intent to rob, thus intentionally creating a high risk of death or great bodily harm. These findings were sufficient to support a conviction for first-degree felony murder. In making these findings, the trial court implicitly rejected defendant’s claim that the attempted robbery was completed at the time defendant fired the shot. Thus, the issue of whether the cab was moving was irrelevant to the determination of the issues in the case.

Upon review of the record, it is clear that the trial court’s findings were supported by the evidence presented at trial. According to the testimony of the decedent’s passenger, the cab was in park at the time the shot was fired, and it was not until after the shooting that the decedent attempted to drive away. She also testified that after the shot rang out, the driver’s window shattered, the decedent remarked that he had been hit, and the decedent then attempted to pull away. Although the testimony of another witness, Willie Williams, presented a slightly different account of what happened, it nonetheless supports the trial court’s finding that the shooting occurred during the commission of the attempted robbery. Although Williams testified that he saw the cab begin to pull away before the shot was fired, the testimony taken in its entirety supports a finding that the robbery was ongoing at the time of the shooting. Williams testified that he saw a gun flame between the cab and the place where defendant was standing, and that defendant was standing near the driver’s side door at the time. He also testified that the entire series of events happened very quickly. Based on this evidence, a reasonable trier of fact could have found that the shooting took place during the commission of the attempted robbery. Therefore, we hold that the trial court’s finding on this issue was not clearly erroneous.

Defendant next argues on appeal that the trial court erred in finding that defendant possessed the requisite malice for felony murder purposes. Defendant asserts that the trial court improperly inferred malice solely from the intent to commit the armed robbery. We disagree.

The elements of first-degree 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; (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in MCL 750.316; MSA 28.548. *People v Bush*, 187 Mich App 316, 327; 466 NW2d 736 (1991), *aff’d* in part and *rev’d* in part on other grounds, *People v Harding*, 443 Mich 693; 506 NW2d 482 (1993). While it is true that malice may not be inferred solely from the intent to commit the underlying felony, “it may be inferred from the facts and circumstances surrounding the commission of that felony.” *People v Spearman*, 195 Mich App 434, 438; 491 NW2d 606 (1992); *People v Wofford*, 196 Mich App 275, 278; 492 NW2d 747 (1992). Additionally, malice may be inferred by the trier of fact from “evidence that a defendant intentionally set in motion a force likely to cause death or great bodily harm.” *People v Lewis*, 168 Mich App 255, 270; 435 NW2d 637 (1988); *People v Reeves*, 202 Mich App 706, 712; 510 NW2d 198 (1993), *aff’d* 448 Mich 1; 528 NW2d 160 (1995).

In making its finding that defendant possessed the requisite malice for first-degree felony murder, the trial court relied mainly on the testimony of Doris Harris. Harris testified that she saw defendant loading a gun earlier in the day while wearing rubber gloves. The trial court found that this fact indicated that defendant was: (1) planning to either rob someone or kill someone, or at least use the amount of force necessary to carry out the robbery; and (2) that he was taking measures to avoid being caught. The trial court also found that defendant's conduct demonstrated that he knowingly created a very high risk of death or great bodily harm, with the knowledge that death or great bodily harm would be the probable result.

Upon review of the record, we find that the trial court's inference of malice was supported by the evidence. Defendant admitted in his statement to the police that he intended to rob the decedent. He also admitted firing a shot at the cab. This evidence, together with the testimony of Harris, was sufficient to allow a reasonable trier of fact to find that defendant intentionally set in motion a force likely to cause death or great bodily harm. From this evidence, the trial court was justified in inferring malice. Accordingly, the trial court's finding on this issue was not clearly erroneous.

Defendant next argues that the trial court erred in finding that he possessed the requisite intent to commit the underlying felony of attempted armed robbery. Specifically, defendant claims that the evidence presented at trial indicated that he was intoxicated at the time, and therefore could not have possessed the necessary intent to rob. We disagree.

The elements of armed robbery are: (1) an assault; (2) a felonious taking of property from the victim's person or presence; (3) while the defendant is armed with a weapon. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Armed robbery is a specific intent crime. *Id.* Voluntary intoxication will only negate this specific intent if "the degree of intoxication is so great as to render the accused incapable of entertaining the intent." *Id.* To prove an attempt, the prosecution must show that the defendant performed an overt act toward committing the crime that goes beyond mere preparation. *People v Jones*, 193 Mich App 551, 552; 484 NW2d 688 (1992), rev'd on other grounds 443 Mich 88; 504 NW2d 158 (1993).

The trial court in this case did not specifically address the evidence relating to defendant's intoxication. However, in finding that defendant possessed the specific intent to commit the attempted armed robbery, the trial court implicitly rejected any claim that defendant was intoxicated or that his alleged intoxication rendered defendant incapable of forming the intent to rob. Upon review of the record, we find that the trial court's determination of the issue of defendant's specific intent to rob was supported by the evidence. Doris Harris testified that defendant was home drinking most of the day, she saw defendant with a big bottle of gin that was almost empty, and defendant had taken two Tylenol 3's and two muscle relaxants. Harris also testified that when defendant woke her up after the shooting she could smell alcohol on his breath and his words were slurred. On the other hand, Willie Williams testified that he had not seen defendant drinking, defendant did not appear to be "falling-down drunk," and Williams noticed no alcohol in the car. This evidence was sufficient to support the trial court's implicit finding that defendant's ability to form specific intent was not negated by his alleged intoxication.

Defendant also makes a general allegation that the trial court's findings were not specific enough to support its critical determinations. This argument is without merit. It is well recognized that the trial court must make its findings with the degree of sufficiency and specificity required by MCR 2.517(A)(1). *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991); *People v Porter*, 169 Mich App 190, 193; 425 NW2d 514 (1988). The rule is satisfied where it appears that the trial court was aware of the relevant issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). The trial court does not have to make specific findings regarding each element of the crime. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). The trial court's findings must be reviewed "in the context of the specific legal and factual issues raised by the parties and the evidence." *People v Fair*, 165 Mich App 294, 297; 418 NW2d 438 (1987).

Here, the trial court began its findings by briefly recounting the testimony of the witnesses. After stating the law regarding attempted armed robbery, the court found that defendant committed an assault on the decedent with the specific intent to rob, and that he was armed at the time. The trial court then set forth the requirements for first-degree felony murder, and found that defendant caused the death of Ronald McGee. The court further found that defendant knowingly created a very high risk of death or great bodily harm knowing that death or bodily harm would likely result from his conduct, and that this killing occurred during the commission of the attempted armed robbery. Although the trial court did not specifically address defendant's argument regarding the location of the cab at the time of the shooting, or his claimed intoxication, we find that the trial court was aware of the relevant issues and correctly applied the law in making its findings.

Defendant's last claim on appeal appears to be that the prosecution failed to present sufficient evidence to support defendant's conviction. We disagree. The prosecution presented the following evidence to support its case: In his statement to the police, defendant admitted that he intended to rob the decedent when he approached the cab, and that he was armed with a gun at the time. Some time before the shooting, defendant was seen loading the gun while wearing rubber gloves. The circumstances surrounding the attempted armed robbery and shooting show that defendant intentionally created a very high risk of death or great bodily harm and that he knew that death or great bodily harm would be a probable result. There is no dispute that defendant's conduct resulted in the death of the decedent. The trial court could reasonably infer from the evidence that the decedent saw the gun, thus establishing an assault, and that the only thing that prevented defendant from completing the robbery was the decedent's attempt to escape. It is clear that this evidence, when viewed in a light most favorable to the prosecution, was sufficient to convict defendant of first-degree felony murder.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Maura D. Corrigan

/s/ Robert J. Danhof