

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUBY WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

May 19, 1998

No. 197253

Recorder's Court

LC No. 95-004794

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right from her bench trial conviction of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), for which she was sentenced to life imprisonment without the possibility of parole. We affirm.

On appeal, defendant first challenges the sufficiency of the evidence to support her conviction. When reviewing a claim of insufficient evidence, this Court must view the evidence of record in the light most favorable to the prosecution and determine whether it could have convinced a rational trier of fact that each element of the crime was proved beyond a reasonable doubt. *People v Kozyra*, 219 Mich App 422, 428; 556 NW2d 512 (1996). Defendant argues that the prosecution failed to present legally sufficient evidence that defendant inflicted the injuries from which the victim died, or that she did so with intent to cause serious physical harm.

First-degree felony murder includes “[m]urder committed in the perpetration of, or attempt to perpetrate . . . child abuse in the first degree.” MCL 750.316(1)(b); MSA 28.548(1)(b). To establish the malice element of felony murder, the prosecution must prove that in the course of committing the underlying felony the defendant caused the victim’s death while acting with the intent to kill or cause great bodily harm, or with a wanton and wilful disregard of the likelihood that the natural tendency of the defendant’s behavior was to cause death or great bodily harm. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

Regarding the underlying felony, “A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child.” MCL

750.136b(2); MSA 28.331(2)(2). This felony requires proof of the defendant's specific intent to cause serious physical or mental harm. See *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997).

The evidence of record, viewed in a light most favorable to the prosecution, adequately supports the trial court's finding that defendant caused the victim's death, and acted with a frame of mind that satisfies the intent requirements of felony murder and first-degree child abuse.

The victim, the four-year-old daughter of defendant's stepdaughter, was pronounced dead at St. John's Hospital at 1:06 p.m. on April 4, 1995. Defendant and her husband, who pleaded guilty to second-degree child abuse, had custody of the victim as temporary guardians since September 1994, this arrangement stemming from the victim's mother's own pattern of abusing and neglecting the child. According to trial testimony, the victim's mother had not visited with the victim for approximately four months before the victim died. The examination of the victim's body brought to light indications of severe physical abuse and malnutrition.

Defendant's nine-year-old daughter testified that she had witnessed defendant striking the victim in the past in ways that, according to expert testimony, were consistent with the blows that caused the victim's death. According to defendant's daughter, defendant's history of violence against the victim included striking the child on the back, arms, and head with a belt, a shoe, or an open hand.

The medical examiner testified that the victim had several fresh injuries, mainly bruises and contusions, adding that those bruises could have been caused by a hand, fist, belt, or flat edge of a shoe. The examiner identified three different areas of the victim's head where she had received blows. The examiner concluded that the cause of death was craniocerebral injuries occurring within twenty-four hours of the victim's death, and that to inflict such injuries as the victim suffered, an adult would have had to deliver the blows with substantial force. Further, defendant testified that she was at home alone with the victim from 8:00 a.m. the day she died until defendant called 911 that afternoon. "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466 (1993). Additionally, defendant, who shared guardianship of the victim for the several months before the death, shares in responsibility for the victim's state of malnutrition, which the trial court reasonably regarded as a factor contributing to the victim's death. This evidence could lead a reasonable trier of fact to conclude beyond a reasonable doubt that defendant caused the victim's death.

Defendant argues that her assertion that the victim had fallen in the bath comports with the coroner's finding of the cause of death, and that the evidence also indicates that the victim suffered physical abuse at the hands of other family members. However, the prosecution need prove only its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defense may produce. It is not necessary for the prosecution to disprove every reasonable theory of innocence. *People v Johnson*, 137 Mich App 295, 303; 357 NW2d 675 (1984).

The evidence is likewise sufficient to support the trial court's conclusion that defendant intended to cause the victim serious physical or mental harm, as required for first-degree child abuse, and that

defendant intended to cause great bodily harm, or acted with a reckless disregard for the probability that such harm would result from her actions, as required for felony murder. The latter may be inferred from the facts and circumstances of the underlying felony. *People v Aaron*, 409 Mich 672, 728-729; 299 NW2d 304 (1980); *Gould, supra* at 87. The nature of the injuries from which the victim died, plus the evidence of defendant's pattern of administering harsh physical abuse to the victim, considered along with the victim's state of severe malnutrition, which could only have aggravated the effects of physical violence, and for which defendant cannot escape responsibility as one of the victim's guardians for the previous several months, well support the conclusion that defendant acted with the specific intent to cause the victim serious physical or mental harm, and with at least a reckless disregard for the likelihood that the victim would suffer great bodily harm.

Defendant's other argument on appeal is that her conviction is improper because the underlying felony of first-degree child abuse is not a felony independent of the homicide, the former being committed with the same assaultive intent as the latter.

This Court rejected this argument in *People v Jones*, 209 Mich App 212; 530 NW2d 128 (1995). In jurisdictions where felony-murder covers negligent or accidental killings committed during the perpetration of a felony, the doctrine of merger folds the underlying felony into the homicide in order to ameliorate potentially harsh consequences where the underlying felony was committed with the same assaultive intent as the homicide. *Id.* at 214. However, Michigan's felony-murder law requires proof of malice as required for murder and is not meant to deter negligent or accidental killings. *Id.* 215; *Aaron, supra* at 719. This distinction renders the doctrine of merger inapplicable to this state's felony-murder law. *Jones, supra* at 215. "On its face, the statute [MCL 750.316; MSA 28.548] clearly allows all murder committed in the perpetration or attempted perpetration of the enumerated felonies to be treated as first-degree murder. Furthermore, the statute makes no distinctions for the commission of enumerated felonies with assaultive intent against the murder victim." *Id.* Accordingly, defendant's conviction of felony murder with first-degree child abuse as the underlying felony was proper.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert P. Young, Jr.