STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RITA ANN WALKER,

Defendant-Appellant.

UNPUBLISHED
May 12, 2000

No. 215416
Berrien Circuit Court
LC No. 98-401640 FC

Before: Gage, P.J., and Meter and Owens, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), for initiating a house fire that claimed the life of a thirteen year-old boy. The trial court sentenced defendant to a mandatory term of life imprisonment without parole. Defendant appeals as of right, and we affirm.

Defendant first contends that she was deprived of the effective assistance of counsel when defense counsel failed to object to improperly admitted hearsay statements by defendant's former boyfriend, Terrell Crump, to the effect that defendant would take whatever measures necessary to win back Crump. These statements by Crump did not constitute hearsay, however, because they were statements made by defendant herself. MRE 801(d)(2)(A); *People v Kowalak (On Remand)*, 215 Mich App 554, 556-557; 546 NW2d 681 (1996). Because Crump's testimony was properly admitted, we conclude that defense counsel was not ineffective in failing to object to Crump's testimony. *People v Torress (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997) (Defense counsel need not raise a meritless objection.).[1]

Defendant also challenges the sufficiency of the evidence supporting her conviction, arguing that insufficient evidence produced at trial established that she set the fire or possessed the malice required to sustain a conviction of first-degree felony murder. When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998). To establish the crime of felony murder, the prosecutor must present proofs from

which the jury could rationally find that while committing the underlying offense the defendant acted with the intent to kill, with the intent to do great bodily harm, or with wanton and willful 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). Circumstantial evidence and the reasonable inferences arising therefrom may be sufficient to establish the elements of the crime. *People v Turner*, 213 Mich App 558, 566; 540 NW2d 728 (1995); *McKenzie*, *supra*.

In the instant case, the required malice element reasonably could be inferred from the trial testimony regarding the circumstances surrounding the crime. According to Crump, during the month prior to the instant crime, defendant threatened that Crump should make time for her, and that defendant would not be responsible for anything that might occur. Also during this time period, defendant told Crump to "tell [his] bitch to watch her back" because defendant knew where she lived. When asked by Crump to refrain from harassing his girlfriend, Debra Scott, at her home because Scott's children lived there, defendant responded that the children were not her concern. Crump recalled that during an argument with defendant outside his workplace shortly before the fire began, defendant angrily told him that if he did not come to see her later, something bad would happen.

Ronald Hill, who was with defendant at the time the fire was set, testified that after this angry confrontation between defendant and Crump, defendant stated that she "was going to get" Crump, or that she would "get something or someone close to" Crump. After defendant and Hill had returned to defendant's home, defendant obtained an empty forty-ounce Budweiser bottle and inquired of Hill whether he knew how to make a bomb. Defendant shredded a sweatshirt to use as a wick inside the bottle. Defendant then drove she and Hill past Scott's house twice before stopping to fill the bottle with gasoline. According to Scott's mother, who was babysitting Scott's children inside Scott's home at the time, both the kitchen and bathroom lights were on and a car was parked in the driveway alongside the house. Hill recalled that after the bottle was filled with gasoline, defendant drove to an alley behind Scott's house, exited her car, urged Hill to throw the bottle, and, when Hill refused, lit the sweatshirt on fire and threw the bottle through a rear window of Scott's home.

We conclude that this testimony amply supports the jury's rational determination beyond any reasonable doubt that defendant set Scott's home ablaze while either intending to kill or cause great bodily harm, or knowingly and recklessly disregarding the substantial likelihood that her actions would result in death or great bodily harm. *Turner*, *supra* ("A jury can properly infer malice from evidence that a defendant intentionally set in motion a force likely to cause death or great bodily harm."). Defendant's statement regarding Scott's children and defendant's conduct, setting fire to a house where children resided and would likely be present and asleep during the early morning hours when defendant ignited and tossed the gasoline filled bottle into the house, demonstrate defendant's knowing and contemptible indifference for the safety of Scott's children.

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Donald S. Owens

[1] Defendant mentions under this first issue on appeal that the testimony of Ronald Hill, an accomplice in the crime who at the time of trial had been convicted of second-degree murder, implicating defendant "cannot be corroborated. It was more prejudicial than probative and should not have been admitted." Defendant has waived our consideration of this contention, however, by failing to provide any authority supporting it. *People v Griffin*, 235 Mich App 27, 45; 597 NW2d 176 (1999) ("A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim.").