

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE CALICUT, JR.,

Defendant-Appellant.

UNPUBLISHED
December 7, 2001

No. 224817
Wayne Circuit Court
Criminal Division
LC No. 99-003147

Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony murder, MCL 750.316, and was sentenced to life imprisonment. He appeals as of right. We affirm.

Defendant's conviction arises from the strangling and stabbing death of a woman who was a friend of defendant's family. The incident occurred at the home of the decedent. The police traced defendant through his use of a cellular telephone that belonged to the decedent and had been reported missing by her husband after the decedent was killed. Defendant admitted to the police that he had the telephone and gave a statement confessing to the crime.

Defendant argues that the evidence adduced at trial was insufficient to support his conviction because there was no evidence that he killed the decedent in connection with a larceny. In reviewing whether the prosecution presented sufficient evidence to support a conviction, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the offense were proved beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). The elements of felony murder are: (1) the killing of a human being, (2) with malice, (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in MCL 750.316(1)(b), of which larceny is one. *People v Watkins*, 247 Mich App 14, 32; 634 NW2d 370 (2001); 750.316(1)(b). "The facts and circumstances of the killing may give rise to an inference of malice." *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999).

Although he later denied the killing, in his statement to police defendant confessed to becoming angry when the decedent said that she had no money to lend him. Defendant admitted that he was high because he had been smoking crack cocaine. Defendant confessed to choking and stabbing the decedent, and confessed to subsequently taking \$5.00 and a cellular telephone.

He also told the police where he left the bloody knife. The contents of the decedent's purse had been dumped onto the floor, the knife was in the kitchen sink where defendant said he left it, and the phone was in defendant's possession. Viewing the evidence and reasonable inferences arising therefrom in the light most favorable to the prosecution, a rational trier of fact could find that defendant killed the decedent and that he had the intent to commit a larceny at the time he killed her. *People v Brannon*, 194 Mich App 121, 125; 486 NW2d 83 (1992).

Defendant also argues that he was denied a fair trial because his statement to police was not electronically recorded. This issue was considered by this Court in *People v Fike*, 228 Mich App 178, 183-186; 577 NW2d 903 (1998), which declined to extend Michigan's constitutional due process guarantees by requiring electronic recordings of all custodial confessions. Thus, we find no plain error necessitating reversal. *Carines*, *supra* at 763-764.

Finally, defendant contends that he was denied his right to the effective assistance of counsel. Defendant maintains that his counsel should have moved to suppress defendant's statement to police and evidence seized as a result of a consent search on the ground that both were products of an unlawful arrest. Defendant also argues that his counsel should have moved to suppress his statement on the basis that it was not voluntarily given. Because defendant did not request a *Ginther*¹ hearing below, our review is limited to errors apparent from the record. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001).

"To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance was deficient and that there is a reasonable probability that, but for the deficiency, the factfinder would not have convicted the defendant." *People v Snider*, 239 Mich App 393, 423-424; 608 NW2d 502 (2000), citing *People v Pickens*, 446 Mich 298, 312; 521 NW2d 797 (1994). "The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy." *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Defense counsel is not required to make frivolous or meritless motions. *People v Darden*, 230 Mich App 597, 605; 585 NW2d 27 (1998). This Court will not substitute its judgment for that of trial counsel in matters of trial strategy, *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999), or assess counsel's competence with the benefit of hindsight. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

The police arrested defendant after learning that he had made a telephone call with the cellular telephone which was missing, and suspected stolen, from the decedent's home. Also, the police found no sign of forced entry into the decedent's house. We find no support in the record for defendant's claim that his arrest was not supported by probable cause. Nor is there any support for defendant's claim that his confession was not voluntarily made. The police officer who took defendant's statement first advised defendant of his *Miranda*² rights and defendant signed a written waiver. Based on the record before us, we do not find any error by counsel that

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

prejudiced the defense and deprived defendant of a fair trial, nor are we persuaded of the need to remand this matter to the trial court for an evidentiary hearing.

Affirmed.

/s/ Brian K. Zahra

/s/ Michael R. Smolenski

/s/ Michael J. Talbot