

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ORANGE AMIR TAYLOR, III,

Defendant-Appellant.

UNPUBLISHED

April 27, 2010

No. 285958

Washtenaw Circuit Court

LC No. 07-000364-FC

Before: SAAD, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316(1)(b), assault with intent to commit sexual penetration, MCL 750.520g, first-degree home invasion, MCL 750.110a(2), and larceny in a building, MCL 750.360. The trial court sentenced defendant to concurrent terms of life imprisonment without parole for the felony-murder conviction, 6 to 10 years for the assault with intent to commit sexual penetration conviction, 11 to 20 years for the first-degree home invasion conviction, and 30 months to 4 years for the larceny in a building conviction. Defendant appeals as of right. Because defendant was not denied effective assistance of counsel and his conviction for felony murder is supported by sufficient evidence, we affirm.

I. BASIC FACTS

In the early afternoon of December 15, 2006, employees of facility services at Eastern Michigan University (EMU) received a report of a putrid smell coming from a dormitory room in Hill Hall. One worker identified room 518 as the source and let herself inside. Upon entering, she saw the body of the deceased victim. She was lying on top of a blue blanket on the floor next to her bed wearing only a white tank top. She was naked from the waist down. A pillow partially covered her face and a soiled tampon lay near her body. Officers from EMU and the Michigan State Police and investigators from the Michigan State Police Northville Crime Laboratory soon arrived and processed the scene for evidence. They collected fingerprints, biological fluids, and bed dressings and pillows. They also tape-lifted fibers from the victim's body and her clothing. Officer Michael Arntz, of the EMU Police Department, obtained and viewed surveillance footage of Hill Hall. The footage showed defendant entering Hill Hall at approximately 4:23 a.m. on December 13, 2006, wearing a black sweatshirt and hood over his head. The footage later showed defendant walking down a stairwell in Hill Hall at approximately 5:56 a.m. and carrying a white bag under his sweatshirt. Officers subsequently

executed a search warrant at the home of defendant's parents and obtained a black sweatshirt, which they provided to the crime laboratory.

The crime lab investigators determined that one of the biological fluids collected from the inside of the victim's inner thigh was semen, and the DNA of the semen matched defendant's DNA. They further concluded that some of the fibers found on the victim's body and tank top matched the black acrylic fibers from defendant's sweatshirt. They found the same black fibers on the pillow that had partially covered the victim's face. They also tape-lifted defendant's sweatshirt and found fibers that matched those from the blue blanket in the victim's room.

Officers interviewed defendant on January 25, 2007. Defendant admitted to breaking into at least one room in Hill Hall before Christmas and stealing a bag. However, he stated that he did not know whose room he had broken into, and denied seeing or touching anyone inside. He denied killing or sexually assaulting the victim. On December 18, 2006, Dr. Bader Cassin, Chief Medical Examiner for Washtenaw County, performed an autopsy on the victim. He concluded that the victim died as a result of asphyxiation, caused by strangulation or smothering.

Defendant was arrested and subsequently tried by a jury in October of 2007. That trial resulted in a hung jury. In a retrial in May of 2008, a jury convicted defendant of the charged crimes.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues on appeal that his trial counsel failed to adequately cross-examine Cassin with his prior inconsistent statements. He contends that because Cassin testified to the victim's cause of death, a successful cross-examination could have resulted in another hung jury. We disagree. Because no evidentiary hearing has been held, our review of defendant's claim is limited to the facts on the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000).

"Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise." *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). A "defendant must show that his attorney's conduct fell below an objective standard of reasonableness and that the representation so prejudiced defendant that he was deprived of a fair trial." *People v Gonzalez*, 468 Mich 636, 644; 664 NW2d 159 (2003). To prove the latter, the defendant must show there is a reasonable probability that the result of the proceeding would have been different but for defense counsel's error. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

The record indicates that Cassin's testimony did not differ significantly from the first trial to the second. He testified at both trials that he did not see evidence of bleeding in the victim's neck during the autopsy, but he later identified bleeding when he observed her skin under a microscope. He also testified consistently regarding the levels of gamma-Hydroxybutyric (GHB) produced after death.¹ He stated that the level of GHB in the body increases after death,

¹ GHB occurs naturally in the body. However, it can also be taken therapeutically, and if abused
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but that he did not know when or how quickly it decreased. He also testified at both trials that the manner of death was homicide, and that the cause of death was asphyxiation, caused by either strangulation or smothering. As Cassin testified consistently in each of these instances, we cannot fault defense counsel for not making further attempts to impeach Cassin on these points during the second trial. In this regard, counsel's conduct clearly did not fall below the objective standard of reasonableness. *Gonzalez*, 468 Mich at 644.

The remaining instances of alleged ineffective cross-examination are also without merit. In each instance, defendant contends that defense counsel had the opportunity to cross-examine Cassin with minor discrepancies in his testimony. Defendant fails to explain the significance of each allegedly lost opportunity. He merely posits that counsel could have asked some questions differently, or asked a few different questions altogether. We note, however, that “[d]ecisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy.” *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). Decisions regarding cross-examination of a witness, including how to impeach a witness with prior inconsistent statements, are also matters of trial strategy. *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999); *People v McFadden*, 159 Mich App 796, 800; 407 NW2d 78 (1987). “This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel’s competence with the benefit of hindsight.” *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001). Accordingly, we find that defendant has not met his heavy burden of proving the ineffectiveness of his trial counsel in these instances. *Solmonson*, 261 Mich App at 663.

III. SUFFICIENCY OF THE EVIDENCE

Defendant also argues that his conviction for felony murder is not supported by sufficient evidence. Specifically, he maintains that, because Cassin “could not testify, with any medical certainty, exactly *how* [the victim] died,” there was insufficient evidence for the jury to find beyond a reasonable doubt that he caused the victim’s death. We disagree. In reviewing the sufficiency of the evidence to sustain a conviction, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the prosecution proved all elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Cassin testified that he concluded to a reasonable degree of medical certainty that the manner of death was a homicide, and that the cause of death was asphyxiation. Dr. Alan Woelfel, a cardiologist with West Michigan Heart in Grand Rapids, and an expert in the field of cardiology and a specialist in cardiac rhythm disturbances, testified that in April of 2005 he diagnosed the victim with a mixture of normal rhythm and non-sustained atrial tachycardia. He indicated that the condition was normal and benign and that it would not harm the victim. He further stated that he had never seen or heard of a woman who was the victim’s age die from a myocardial infarction, and that it would be extremely rare for a healthy young woman to die of a cardiac condition. Further, when the victim’s body was found, her underwear had been removed and her body was positioned in the opposite direction from her bed. Officers at the scene found

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can cause a person to become drowsy and even lose consciousness.

a pillow partially over her face and a soiled tampon near her body. The investigators at the crime lab found fibers matching those from defendant's black sweatshirt on the victim's body, her white tank top, and the pillow. They also found fibers that matched those from the victim's blue blanket on defendant's sweatshirt. In addition, the DNA in the semen found on the victim's inner thigh matched defendant's DNA.

Viewing all of these facts in the light most favorable to the prosecution, we conclude that a reasonable jury, which determines what inferences may be drawn from the evidence and decides the weight to be given to those inferences, *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002), could have concluded beyond a reasonable doubt that the victim's death was the result of a homicide. We further conclude that a reasonable jury could have considered these facts and concluded beyond a reasonable doubt that defendant had physical contact with the victim on the morning of December 13, 2006, and that he ultimately caused her death by asphyxiation. *Wolfe*, 440 Mich at 515.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray