

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
July 19, 2016

v

CANDICE FUNDUNBURKS,
Defendant-Appellant.

No. 327479
Ingham Circuit Court
LC No. 14-000682-FC

Before: OWENS, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

Defendant, Candice Fundunburks, was convicted by a jury of second-degree murder, MCL 750.317, and sentenced as a third-offense habitual offender, MCL 769.11, to 300 to 480 months in prison. She appeals as of right her April 22, 2015 judgment of sentence. We affirm.

On the evening of June 14, 2015, defendant and her eight-year boyfriend, Jeremy Marshall, visited a club. While at the club, Marshall apparently interacted with other women, and these interactions led to an argument between the two. When the two returned home later that evening, according to defendant, she and Marshall engaged in a lengthy physical altercation during which Marshall assaulted and attempted to rape defendant.¹ Two neighbors corroborated defendant's account of the altercation.² Marshall's brother, who was sleeping on a couch in the home, testified that the couple argued at the club and in the car but said that, once they returned home, "[e]verything cooled down." Consistent with Marshall's brother's recollection of the events that evening, there were also no physical markings on defendant to support her or the

¹ This is consistent with how defendant described the events that took place during the early morning hours of June 15, 2015, at trial and how she describes them on appeal. As will be discussed, however, it is not how she described those events to police officers that arrived at her home that morning.

² It should be noted that defendant admitted asking her 19-year-old daughter to speak with the neighbors "to get them on [her] side."

neighbors' testimony that a physical altercation occurred.³ At some point during the early morning hours of June 15, 2015, defendant used a kitchen knife to stab Marshall to death.⁴ Marshall's cellphone was recovered during the investigation, and it reflected text messages to and from a woman, but not defendant, that were "flirtatious, probably sexual" in nature, that "described sexual positions they favor or like," and that involved plans to meet. Defendant was originally charged with open murder, MCL 750.316, but, concluding that the prosecution failed to present sufficient evidence to support that charge, the trial court instructed the jury only on the elements of second-degree murder and voluntary manslaughter. The jury found defendant guilty of second-degree murder, and she was sentenced as described above. This appeal followed.

On appeal, defendant's sole argument is that she was deprived of her constitutional right to due process because there was insufficient evidence presented to support her second-degree murder conviction. Specifically, defendant argues that because she killed Marshall during "a heat of passion," she lacked the requisite intent to be convicted of second-degree murder and should have been convicted of voluntary manslaughter.

A defendant's challenge to the sufficiency of the evidence is reviewed de novo. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). Due process requires that evidence of every element of a crime be proved beyond a reasonable doubt in order to sustain a criminal conviction. *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979). In reviewing a defendant's sufficiency-of-the-evidence claim, we are required to draw all reasonable inferences and make all credibility determinations in support of the jury's verdict. *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003), citing *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Similarly, evidence, both direct and circumstantial, must be viewed in a light most favorable to the prosecution in ascertaining whether a rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010), citing *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

In order to convict a defendant of second-degree murder, the prosecution must prove the following beyond a reasonable doubt: "(1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death." *People v Randy Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007), citing *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). A defendant acts with malice when he or she acts with "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *People v Henderson*, 306 Mich App 1, 9-10; 854 NW2d 234 (2014) (citations and internal quotation marks omitted). "[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of

³ Similarly, defendant did not mention the alleged assault or attempted rape to police officers who arrived at the home later that morning.

⁴ Defendant stabbed Marshall in "his upper left side of his chest," and he was pronounced dead at 5:23 a.m. that morning.

mind, which can be inferred from all the evidence presented.” *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). “Minimal circumstantial evidence is sufficient to show an intent to kill, and that evidence can include a motive to kill, along with flight and lying, which may reflect a consciousness of guilt.” *Henderson*, 306 Mich App at 11.

Applying the rules set forth above, we conclude that the prosecution presented sufficient evidence to support the jury’s verdict. Defendant’s argument on appeal relies entirely on her own version of the events that occurred in the early morning hours of June 15, 2015, which, as stated above, is improper. *Tennyson*, 487 Mich at 735; *Hardiman*, 466 Mich at 421. Nevertheless, we think it is important to briefly describe how her own version of events has evolved since she stabbed her boyfriend to death that morning. When officers first arrived at the scene, she informed an officer that Marshall had arrived at home completely naked with a stab wound in his chest that morning. Later, however, she stated that Marshall had arrived home clothed but still with a stab wound in his chest. It does not appear that she ever clarified how his clothing was removed in this version, and no blood was found on the shirt that he was wearing earlier that morning. Throughout the entire morning, defendant denied knowing how Marshall was stabbed. At trial, defendant’s version was quite a bit different. She testified that defendant was “pushing,” “chasing,” “throwing,” “punching,” “grabbing,” “beating,” and “choking” her because she refused to have sex with him. Then, defendant testified, she stabbed Marshall once in the chest with a kitchen knife in self-defense. She denied experiencing any jealousy regarding Marshall’s relationships with other women. Now, for the first time on appeal, she claims that she stabbed Marshall during a “heat of passion,” not in self-defense. Thus, she concludes, she is guilty of voluntary manslaughter, not second-degree murder. We disagree.

The prosecution presented sufficient evidence to support the jury’s verdict of second-degree murder. Viewing the evidence in a light most favorable to the prosecution, *Tennyson*, 487 Mich at 735; *Hardiman*, 466 Mich at 421, the jury was presented with evidence that defendant killed her boyfriend out of jealousy over his relationships with other women. Evidence admitted at trial demonstrated that Marshall’s and defendant’s fingerprints were on Marshall’s cellphone, and the jury could infer from this, especially in light of their argument regarding other women several hours before Marshall was murdered, that defendant was angry with Marshall and jealous of his relationships with other women. Additionally, the fact that defendant stabbed Marshall with a five-inch knife in the chest, i.e., the area where the heart is located, also supports defendant’s intent at the time of the stabbing. See *Henderson*, 306 Mich App at 11; see also *People v Stiller*, 242 Mich App 38, 43; 617 NW2d 697 (2000). Finally, the fact that she asked her grown daughter “to get [the neighbors] on [her] side” could also be considered by the jury as evidence of defendant’s guilt. Accordingly, viewing the evidence in a light most favorable to the prosecution and drawing all reasonable inferences and credibility determinations in support of the verdict, *Gonzalez*, 468 Mich at 640-641; *Nowack*, 462 Mich at 399-400, we conclude that there was sufficient evidence to support the jury’s verdict.

We disagree with defendant that the evidence as presented compelled a voluntary-manslaughter conviction. A defendant is guilty of voluntary manslaughter, rather than second-degree murder, when (1) he or she kills during a heat of passion, (2) the heat of passion was caused by adequate provocation, and (3) there was not a sufficient lapse of time during which a reasonable person could control his or her passions. *People v Mendoza*, 468 Mich 527, 535-536; 664 NW2d 685 (2003); *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991). The jury

heard defendant's and several defense witnesses' testimony, and all of those witnesses testified that defendant was involved in a severe altercation with Marshall prior to his death. Defendant specifically testified that Marshall assaulted and tried to anally, orally, and vaginally rape her just moments before she stabbed him in self-defense. From this testimony, the jury was certainly permitted to conclude that defendant acted in a heat of passion (or in self-defense). But, it did not, and we will not interfere with the jury's assessment of the weight and credibility of the witnesses' testimony or evidence presented at trial. *People v Dunigan*, 299 Mich App 579, 582; 831 NW2d 243 (2013); *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). It is apparent that the jury did not find defendant's version of events at trial credible, and that lack of credibility was supported by several witnesses' testimony and other evidence. Specifically, defendant never mentioned the alleged assault and attempted rape to any police officer, and all officers testified that defendant did not have any physical injuries when they arrived at the scene. Accordingly, we conclude that the jury's verdict was supported by sufficient evidence.

Affirmed.

/s/ Donald S. Owens
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien