

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 24, 2013

v

DARRELL JAVOR WILSON,

Defendant-Appellant.

No. 306673
Wayne Circuit Court
LC No. 11-000462-FC

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree felony murder, MCL 750.316(1)(b), armed robbery, MCL 750.529, and false report of a felony, MCL 750.411a(1)(b). Defendant was sentenced to life imprisonment without the possibility of parole for his felony-murder conviction, 20 to 50 years' imprisonment for his armed robbery conviction, and one to four years' imprisonment for his false report of a felony conviction. Because we conclude that the prosecution introduced sufficient evidence to support defendant's felony-murder conviction beyond a reasonable doubt, we affirm.

Defendant's convictions stem from an incident at a Sunoco gas station at West Eight Mile Road and Sorrento Street in Detroit on October 22, 2010. The testimony at defendant's trial indicated that at approximately 2:00 p.m., Zolton Cannon, John Calhoun, and Mario Williams drove past several men, including defendant and a man who uses the nickname "Bink," on their way to pawn Cannon's diamond-studded Cartier glasses. Cannon, Calhoun, and Williams were in a red Dodge Charger driven by Cannon. Williams testified that he and the other men in the Charger recognized defendant and Bink as men who lived in their neighborhood.

After pawning the glasses, the men drove to the Sunoco station at West Eight Mile Road and Sorrento Street. Williams and Calhoun remained in the vehicle while Cannon pumped gas. Williams noticed Bink was at the gas station, and alerted Calhoun and Cannon that Bink previously robbed his friend. Calhoun shouted for Cannon to get into the vehicle, and Williams saw Bink approach the Charger with a gun in his hand. As Cannon climbed into the driver's seat of the Charger and started the car, Bink ran up to the driver's side window and pointed his gun at Cannon. Bink ordered Cannon to "step out of the car" and to give him "everything." Cannon attempted to drive away, and Bink fired several shots toward Cannon.

Calhoun, who was in the front passenger seat, managed to put the Charger in gear and depress the accelerator pedal with his hand in order to move the Charger away from the gas station. Bink followed, and continued to fire his gun at the Charger. The Charger stopped when it struck a fire hydrant on Sorrento Street. Calhoun and Williams testified that they “play[ed] dead” while a “white and purple” van that Calhoun identified as belonging to defendant drove past the Charger. Another witness, who lived near the gas station, testified that she saw Bink climb into the van, which she observed back up to the gas station and then pull away. Defendant reported the van stolen later that evening. Cannon eventually died from his wounds. Calhoun was shot in the neck, stomach, back, hip and leg, and sustained nerve damage that causes him to shake uncontrollably.

Defendant was arrested on November 19, 2010, and signed a waiver after being informed of his rights under *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). Defendant made a statement admitting his involvement in the robbery; the statement was admitted at trial.

On appeal, defendant argues that the prosecution failed to present legally sufficient evidence on all of the essential elements of felony murder. In criminal cases, due process requires that the evidence must have shown the defendant’s guilt beyond a reasonable doubt. *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). We review challenges to the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to the prosecution, to determine whether a rational trier of fact could have found that the evidence proved each element of the crime beyond a reasonable doubt. *Id.* The weight of evidence, the credibility of witnesses, and what inferences can be fairly drawn from the evidence are to be decided by the jury. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012); *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011).

Defendant was convicted of first-degree felony murder on an aiding and abetting theory. The elements of felony murder are (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in MCL 750.316(1)(b). *People v Smith*, 478 Mich 292, 318-319; 733 NW2d 351 (2007). The aiding and abetting statute, MCL 767.39, provides that “[e]very person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried, and on conviction shall be punished as if he had directly committed such offense.” To prove felony murder under an aiding and abetting theory, the prosecution must show that the defendant (1) performed acts or gave encouragement that assisted the commission of the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of the predicate felony. *People v Riley*, 468 Mich 135, 140; 659 NW2d 611 (2003). To satisfy the malice standard found in the second element, the aider and abettor must have intended to kill or cause great bodily harm, or “wantonly and willfully disregarded the likelihood that the natural tendency of his behavior was to cause death or great bodily harm.” *Id.* at 140-141.

Defendant does not specifically dispute the first and third elements necessary to prove first-degree felony murder under an aiding and abetting theory. Rather, defendant primarily argues that there was insufficient evidence to prove that he acted with intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result. We disagree, and find that defendant's own statements demonstrate that he possessed the intent required for a conviction of first-degree felony murder based on an aiding and abetting theory

In this case, defendant waived his *Miranda* rights and agreed to be interviewed by police. During his interview, defendant admitted that he told Bink about Cannon's glasses and suggested that Bink would be able to "get" the glasses. Defendant admitted to intending to rob Cannon, and admitted that he drove Bink to the gas station where the robbery and shooting occurred. Defendant further admitted that the plan was for him to drop Bink off so Bink could rob Cannon, and that after the robbery defendant would pick Bink up and drive away. Defendant denied seeing Bink with a gun before the robbery; however, he specifically admitted that he knew Bink "always" has a gun, and that he called Bink about the robbery because Bink always has a gun. After the shooting, defendant dropped Bink off, changed his cellular telephone number, and filed a false police report that he had been carjacked to impede law enforcement officers' investigation into Bink's murder and robbery of Cannon.

We conclude that this evidence, when viewed in the light most favorable to the prosecution, is sufficient to prove the elements of first-degree felony murder on an aiding and abetting theory beyond a reasonable doubt. The fact that defendant sought Bink out for the commission of the robbery is sufficient to demonstrate that defendant possessed the necessary intent because defendant "wantonly and willfully disregarded the likelihood that the natural tendency of his behavior was to cause death or great bodily harm" when he involved Bink, a man he knew always carried a gun, in the robbery. *Id.* Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Defendant's admissions and conduct before and after the robbery and shooting in this case are sufficient to support the jury's conclusion that defendant possessed the required intent for aiding and abetting first-degree felony murder.

Further, we find defendant's reliance on *People v Burrel*, 253 Mich 321; 235 NW 170 (1931), unavailing. Defendant cites *Burrel* in support of the proposition that "[m]ere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to make a person an aider and abettor," and argues that like the defendant in *Burrel*, he was merely present at the scene of the crime. *Id.* at 323. We find defendant's circumstances distinguishable from those in *Burrel*. The defendant in *Burrel* was convicted of aiding and abetting statutory rape, he had driven a friend and an underage girl, at his friend's direction, to a dark road and stopped the car while his friend and the girl had sex. The Supreme Court reversed, because there was "nothing in the record to show directly or by reasonable inference that defendant knew when taking [his friend] and the girl into the car and while driving that [his friend] intended statutory rape, if he did so intend, nor can such knowledge be inferred on this record." *Id.* at 322. The conviction would have been justified, the Court continued, "[i]f defendant had knowingly provided and driven his car for [his friend] to commit statutory rape." *Id.* at 323. In this case, unlike in *Burrel*, defendant's videotaped and written statements indicate that defendant drove Bink to the gas station, aware that a robbery would ensue. Contrary to

Burrel, defendant admitted his intent to assist the principal in his commission of a felony, i.e., a robbery.

Therefore, we conclude that when the evidence in this case is viewed in the light most favorable to the prosecution, there was sufficient evidence for a rational jury to find defendant guilty of felony murder on an aiding and abetting theory beyond a reasonable doubt.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering