STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN GLENN FINLEY,

Defendant-Appellant.

UNPUBLISHED
September 27, 1996

No. 180402
LC No. 94-000756

Before: MacKenzie, P.J., and Markey and J.M. Batzer*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316; MSA 28.548, and breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305. Defendant was sentenced to life imprisonment for the murder conviction and five to fifteen years' imprisonment for the breaking and entering conviction. Defendant appeals as of right. We affirm defendant's murder conviction, but vacate his breaking and entering conviction.

Defendant first argues that there was insufficient evidence to support his conviction of felony murder. We disagree. In reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Turner*, 213 Mich App 558, 565; 540 NW2d 728 (1995). Felony murder is a second-degree murder committed during the course of one of several enumerated felonies. *People v Hughey*, 186 Mich App 585, 591; 464 NW2d 914 (1990). Breaking and entering is an enumerated felony. MCL 750.316; MSA 28.548; *People v Jones*, 209 Mich App 212, 213-214; 530 NW2d 128 (1995).

Taken in a light most favorable to the prosecution, the evidence in this case established that defendant and a codefendant broke into the victim's home and stole a microwave, a television set, a sword, some coins, and a set of golf clubs. Thus, the elements of breaking and entering an occupied

* Circuit judge, sitting on the Court of Appeals by assignment.

dwelling were met. *People v Ferguson*, 208 Mich App 508, 510-511; 528 NW2d 825 (1995). Additionally, the evidence revealed that defendant had the intent to kill, the intent to inflict great bodily harm, or acted with a wanton and willful disregard of the likelihood that the natural tendency of his behavior was to cause death or great bodily harm. *Hughey, supra*, p 591. The victim had nine blunt force injuries to the back of the head and neck, the upper back, the face, and the left arm. These injuries were consistent with being hit with a cane. In his statement to the police, defendant admitted that he hit the victim in the head with a cane "a couple of times." The medical examiner stated that the injuries to the head and neck were significant enough to cause the victim's skin to tear and his brain to swell, and that the blows to the head could have contributed to the victim's death. Hence, there was sufficient evidence to support defendant's conviction of felony murder. *Turner, supra*, p 566; *Hughey, supra; P v Ng*, 156 Mich App 779, 785; 402 NW2d 500 (1986).

Defendant next asserts that the trial court failed to properly instruct the jury that, in order for it to find defendant guilty of aiding and abetting a felony murder, it must find that defendant possessed an intent to kill. Defendant did not object to the jury instructions in the trial court, and this issue is waived absent manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). We find no manifest injustice. We first note that the jury instruction cited by defendant on appeal was part of the jury instruction for second-degree murder. In any event, the felony murder instruction in this case was similar to the instructions given in *People v Kelly*, 423 Mich 261, 266-269; 378 NW2d 365 (1985), where the Supreme Court held that the jury instructions, as a whole, adequately informed the jury of the charged offense.

Defendant also contends that the district court judge abused her discretion in binding him over for trial on charges of felony murder, and that the trial court erred in denying his motion to quash the bindover. We reject defendant's argument. The testimony at the preliminary examination indicated that victim had nine blunt force injuries to the back of his head and neck, the upper back, the face, and the left arm. Defendant's statement revealed that he and a codefendant broke into the victim's home, and when confronted by the victim, defendant hit him in the head with a cane. Hence, the evidence established that there was probable cause to believe that defendant committed the crime of felony murder and, therefore, there was no error. *People v Selwa*, 214 Mich App 451, 456; 543 NW2d 321 (1995).

We also reject defendant's argument that he was unfairly prejudiced when the prosecution elicited the fact that defendant received his education in a detention center. We agree with the trial court that the police officer's single reference to defendant's stay in a "detention center" was not inherently prejudicial or intentionally injected into the proceedings. *People v Von Everett*, 156 Mich App 615, 622; 402 NW2d 773 (1986). Defendant received a fair and impartial trial. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996).

Finally, although not raised by defendant, we note that his convictions of both felony murder and the predicate felony of breaking and entering violate his right against double jeopardy under the Michigan Constitution. See *People v Passeno*, 195 Mich App 91, 96; 489 NW2d 152 (1992);

People v Harding, 443 Mich 693, 714; 506 NW2d 482 (1993); *People v Minor*, 213 Mich App 682, 690; 541 NW2d 576 (1995). We therefore affirm defendant's felony murder conviction and sentence and vacate his conviction and sentence for breaking and entering. *Harding, supra; Passeno, supra*.

Affirmed in part and vacated in part.

/s/ Barbara B. MacKenzie
/s/ Jane E. Markey
/s/ James M. Batzer