

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY MICHAEL FLINT,

Defendant-Appellant.

UNPUBLISHED
November 8, 1996

No. 185201
LC No. 94-000892

Before: Markman, P.J., and Smolenski and G. S. Buth,* JJ.

PER CURIAM.

Defendant appeals by right from his jury trial convictions of first-degree felony murder, MCL 750.316; MSA 28.548; armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 570.227b; MSA 28.424(2). We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence of intent to convict him of felony murder beyond a reasonable doubt. The intent required for a conviction of felony murder is the same as that required for second-degree murder: 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 will probably result. *People v Passeno*, 195 Mich App 91, 100; 489 NW2d 152 (1992). Premeditation and deliberation need not be shown to support a conviction of felony murder. *Id.* at 99-100. The evidence presented at trial showed that while co-defendant was paying for an order at the drive-through window at a fast-food restaurant, defendant appeared, put his head and arms into the window, reached for the till and pointed a gun at the cashier, telling her it was “a stickup.” Defendant then fired two shots at the cashier, one of which just missed her head, and then he pointed the gun at the victim, the store’s manager, and fired twice. One of those shots struck the victim, causing her death. This evidence was sufficient to establish beyond a reasonable doubt that defendant had either the necessary intent to kill his victim, or created a high risk of death, by pointing the gun at her.

Defendant also argues that the trial court’s jury instruction on felony murder was erroneous. Following the standard jury instruction, CJI 2d 16.04, the trial court informed the jury that the

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

prosecution was required to prove one of three states of mind: the intent to kill, the intent to do great bodily harm, or that defendant knowingly created a very high risk of death or great bodily harm knowing that death or great bodily harm was the likely result of his actions. Defendant contends that the third possible state of mind should have been defined as the wanton and willful disregard of the likelihood that the natural tendency of defendant's behavior was to cause great bodily harm, pursuant to *People v Aaron*, 409 Mich 672, 728; 299 NW2d 304 (1980). This Court uses the two definitions interchangeably. Compare, *Passeno, supra* at 91 with *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994). The instruction that the trial court gave adequately defined the offense of felony murder and informed the jury what states of mind the prosecution was required to prove. Accordingly, its instruction was not in error.

Affirmed.

/s/ Stephen J. Markman
/s/ Michael R. Smolenski
/s/ George S. Buth