

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES SUTTON,

Defendant-Appellant.

UNPUBLISHED

September 16, 1997

No. 188449

Recorder's Court

LC No. 94-011249-FC

Before: Wahls, P.J., and Taylor and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of second-degree murder, MCL 750.317; MSA 28.549. He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to thirty to fifty years' imprisonment. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to support his conviction. We disagree.

When reviewing a claim of insufficient evidence following a bench trial, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). To support a conviction of second-degree murder, the prosecution must prove the following elements: "(1) a death, (2) caused by an act of the defendant, (3) absent circumstances of justification, excuse, or mitigation, (4) done with an intent to kill, an intent to inflict great bodily harm, or an intent to create a very high risk of death with the knowledge that the act probably will cause death or great bodily harm." *People v Dykhouse*, 418 Mich 488, 508-509; 345 NW2d 150 (1984) (fns omitted). It is well established in this jurisdiction that circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *Hutner*, *supra* at 282; *People v Drayton*, 168 Mich App 174, 176; 423 NW2d 606 (1988). As Defendant correctly points out, inferences may not be based upon an assumption or evidence that is uncertain or speculative or that

raises merely a conjecture or possibility. *People v Petrella*, 424 Mich 221, 275; 380 NW2d 11 (1985); *People v Fisher*, 193 Mich App 284, 289; 483 NW2d 452 (1992).

In this case, the victim's death was caused by multiple injuries, including eighteen stab wounds to the back, chest, and head, and blunt trauma to the head. Based on the number and severity of the victim's wounds and injuries, it can be reasonably inferred that the perpetrator intended to kill, inflict great bodily harm, or create a very high risk of death with the knowledge that the act would probably cause death or great bodily harm.

The discovery of a bloodied knife in a bag of dog food and the lack of signs of forceful entry are indicative of the perpetrator's familiarity with the house and the victim. As defendant was familiar with the house and the victim, he fits the profile of such a perpetrator. Defendant was also placed at the scene of the crime in the company of the victim shortly before her death. There was also evidence in the form of defendant's own statements that he and the victim engaged in a physical fight. There was evidence of a trail of blood beginning in a hallway and continuing throughout the house which was consistent with defendant's statement as to the scope of the fight and point of origination. Finally, there was evidence that a police officer confiscated defendant's gym shoes after he noticed some blood on them.

Despite defendant's failure to recall whether he had hurt the victim, he stated that he had telephoned the victim after the fight because he had a sensation that she was hurt. There was also evidence that defendant's behavior did not fit the statutory definition of insanity. We hold that this evidence, when viewed in the light most favorable to the prosecution, was sufficient to convict defendant of second-degree murder.

Defendant next claims that his statement to the police was the fruit of an illegal arrest. He argues that the police lacked probable cause for a warrantless arrest. We disagree.

This Court reviews a trial court's decision regarding a motion to suppress evidence under the clearly erroneous standard. *People v Massey*, 215 Mich App 639, 641; 546 NW2d 711, remanded on other grounds 453 Mich 872 (1996). "Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.* (quoting *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993)).

By statute, a police officer may make a warrantless arrest if the officer has reasonable or probable cause to believe that a felony has been committed and that the suspect committed it. MCL 764.15; MSA 28.874; *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991). "Probable cause to arrest exists if the facts available to the officer at the moment of arrest would justify a fair-minded person of average intelligence to believe that the suspected person has committed a felony." *Id.*

In this case, the police were informed that a telephone conversation had placed defendant in the victim's company a few hours before her body was discovered. The witness also relayed to the police that, during that conversation, she had overheard cursing between defendant and the victim. This

conversation took place between the time that the witness left in the morning and the time that the body was found. Moreover, the police were informed that defendant had been the victim's boyfriend and a former patient at a psychiatric institute. We believe that the information presented to the police would justify a fair-minded person of average intelligence in believing that defendant had committed the crime. Thus, defendant's statement was not the fruit of an illegal arrest, and the trial court's decision to deny defendant's motion to suppress was not clearly erroneous.

Affirmed.

/s/ Myron H. Wahls
/s/ Clifford W. Taylor
/s/ Joel P. Hoekstra