STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHARONE WALKER,

Defendant-Appellant.

UNPUBLISHED
December 23, 1997

No. 193582
Kent Circuit Court
LC No. 95-002578 FC

Before: O'Connell, P.J., and MacKenzie and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felony murder, MCL 750.316; MSA 28.548, and was sentenced to life imprisonment without parole. He appeals as of right. We affirm.

This case involves the shooting death of cab driver Dan Jennings during the early morning hours of August 28, 1995. Trial testimony established that defendant and his friend Marquel Smith spent the evening of August 27 and early morning of August 28, 1995 with a number of acquaintances. Several witnesses, including Shanetta Orange and Karla Parker, testified that Smith pulled out a gun at various times that night and shot into the air on one occasion. At Orange's apartment, Smith suggested that he and defendant rob a cab and defendant responded "yeah." Parker eventually called a cab for defendant and Smith. According to Parker, when defendant and Smith learned that they would have to wait their turn for the cab, defendant said "something about that's more money for him," and Smith said that "they was about to get paid." Another witness also testified that Smith said he was going to "go jacking," or stealing.

At approximately 2 a.m., a cab driven by Brian Meeter picked up defendant and Smith. Before the cab arrived, Smith asked defendant if he was "ready to do it," and defendant responded in the affirmative. After entering the cab, defendant put on a pair of dark glasses and Smith pulled the brim on his cap down over his face. Smith asked Meeter to drive to a number of non-existent addresses and asked him how much money he had. Meeter eventually ordered the two men out of the cab and radioed for assistance. Defendant said "you ain't kicking me out," but the two men left after Smith said "come on, the cops are on the way."

Defendant and Smith then walked to a friend's apartment, where defendant called for another cab. Jennings responded to the call. At the end of the ride Smith pulled out his gun. He fired two or three times and struck Jennings in the head and back, passing through his spinal cord, aorta, pulmonary artery, and left lung.

On appeal, defendant contends that there was insufficient evidence to support his felony murder conviction. When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The elements of felony-murder are: (1) the killing of a human being, (2) with malice – 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; MSA 28.548. *People v Turner*, 213 Mich App 558, 566; 540 NW2d 728 (1995). See also *People v Dumas*, 454 Mich 390, 397; 563 NW2d 31 (1997) (In a felony-murder case, "the people must prove one of the three intents that define malice in every murder case."). In *People v Kelly*, 423 Mich 261, 278-279; 378 NW2d 365 (1985), citing *People v Aaron*, 409 Mich 262, 728-729; 299 NW2d 304 (1980), our Supreme Court stated that, when, as here, a defendant in a felony-murder case is tried on an aiding and abetting theory, it must be shown that

> . . .the aider and abettor had the intent to kill, the intent to cause great bodily harm or wantonly and willfully disregarded the likelihood of the natural tendency of his behavior to cause death or great bodily harm. *Aaron*, 409 Mich 733. Further, *if the aider and abettor participates in a crime with knowledge of his principal's intent to kill or to cause great bodily harm, he is acting with "wanton and willful disregard" sufficient to support a finding of malice* under *Aaron*. [Emphasis added.]

See also, *Turner, supra*, p 567, and *People v Flowers*, 191 Mich App 169, 178; 477 NW2d 473 (1991).

In this case, viewing the evidence in a light most favorable to the prosecution, the jury could conclude that defendant participated in the attempted armed robbery of Jennings with knowledge of Smith's intent to kill or cause great bodily harm. Defendant knew that Smith had a gun when the two men set out to rob a cab driver; in fact, defendant was with Smith when Smith fired the gun into the air earlier that night. Smith's intent to kill or do great bodily harm could be inferred from the use of the deadly weapon during the robbery. *Turner, supra*, p 567, citing *People v Martin*, 392 Mich 553, 561; 221 NW2d 336 (1974), overruled in part on other grounds in *People v Woods*, 416 Mich 581; 331 NW2d 707 (1982). As explained in *Turner, supra:*

> Turner's knowledge that Johnson [Turner's principal] was armed during the commission of the armed robbery is enough for a rational trier of fact to find that Turner, as an aider and abettor, participated in the crime with knowledge of Johnson's intent to cause great bodily harm. See *Martin*, 392 Mich 553. Because Turner knew of

> Johnson's intent to at least cause great bodily harm, a rational trier of fact could find that Turner was acting with "wanton and willful disregard" sufficient to support a finding of malice under *Aaron*. [213 Mich 572-573].

The same reasoning applies here. Under *Turner*, defendant's knowledge that Smith was armed when the pair entered Jennings' cab was sufficient for the jury to conclude that, as an aider and abettor, defendant was also aware of Smith's intent to at least cause great bodily harm. "[I]f the aider and abettor participates in a crime with knowledge of his principal's intent to. . .cause great bodily harm, he is acting with 'wanton and willful disregard' sufficient to support a finding of malice under *Aaron*." *Kelly, supra,* pp 278-279. Defendant strenuously argues that *Turner* was wrongly decided. It is, however, binding on this panel under MCR 7.215(H) and we decline the invitation to revisit its analysis and holding. Consistent with *Turner*, the evidence, viewed in a light most favorable to the prosecution, was sufficient to establish the element of malice necessary to support defendant's felony-murder conviction.

Defendant also briefly argues that there was insufficient evidence for the jury to find that he was aiding and abetting Smith in committing an armed robbery when Jennings was shot and killed. The claim is without merit. There was ample evidence that the two set out to rob a cab driver. Smith was armed with a loaded gun, and both men had items to hide their faces. After missing the opportunity to rob Meeter, defendant summoned a second cab. The two men entered Jennings' cab with no money. Under these circumstances, the jury could reasonably conclude that defendant was not merely looking for a ride home, but intended to participate in the armed robbery of Jennings.

Affirmed.

/s/ Peter D. O'Connell
/s/ Barbara B. MacKenzie
/s/ Hilda R. Gage