

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONNELL LEVON LOWE,

Defendant-Appellant.

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UNPUBLISHED

April 15, 2003

No. 237813

Macomb Circuit Court

LC No. 01-000097-FC

Before: Jansen, P.J. and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of felony-murder, MCL 750.316, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with felony-murder in connection with the death of Kelly Hollingsworth (hereinafter “decendent”). The information alleged that defendant murdered decendent while committing or attempting to commit first-degree home invasion, MCL 750.110a(2), or larceny, MCL 750.110.

Defendant moved to suppress his statement. At a *Walker*<sup>1</sup> hearing Detective Beemer testified that defendant was interviewed after he was taken into custody on an unrelated offense. Defendant was advised of his *Miranda*<sup>2</sup> rights. He waived his rights and agreed to make a statement. He did not ask to speak with an attorney. He was alert and did not appear to be under the influence of alcohol or drugs. Defendant maintained that he was under the influence of alcohol and marijuana when he made the statement, and that he did not fully understand his rights. He contended that his request to speak to an attorney was denied. Defendant stated that the detectives told him that they were investigating a stolen car, that he revealed the location of the car, and that he answered the questions because the police told him that he was not in trouble. He acknowledged that he had had previous contact with the police, and that he understood that he was not required to answer questions.

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<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

<sup>2</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

The trial court denied defendant's motion to suppress his statement. The trial court noted that defendant was twenty-four years old, appeared to be of at least average intelligence, and acknowledged that he knew that he was not required to answer questions. Defendant was advised of his rights, and no evidence showed that he was deprived of food, sleep, or medical attention. The trial court found Beemer's testimony regarding defendant's condition more persuasive than that given by defendant, and concluded that under the totality of the circumstances defendant's statement was voluntarily given.

At trial the evidence showed that during the early morning hours of November 19, 2000 decedent was stabbed to death in her home. The previous evening defendant and decedent patronized the same bar, and decedent rejected defendant's advances. Decedent left the bar at approximately 2:30 a.m. on November 19, 2000. Defendant left almost immediately thereafter. At some time after 6:00 a.m. a neighbor of decedent saw a man exit her home carrying an object or objects in his arms. He approached the open trunk of a gray car. The car appeared to have a reddish license plate. Decedent's home showed no obvious signs of forced entry; however, a piece of molding or a stick was found under a window in a room referred to as a Florida room. This was the only window in the room that was not secured. A curtain on the window was askew, and the door from the Florida room to the living room was ajar. Defendant's fingerprints were found on the inside frame of the unsecured window in the Florida room and on other objects in the home. The DNA from hair and bodily fluids found in the home and on objects connected to the home matched defendant's DNA. Objects from decedent's home, including photographs of her children, her jewelry case, two knives, a bloody washcloth, and a used condom carrying DNA from decedent and defendant were found in a dumpster behind a restaurant. Decedent's identification card and the cable television box from her home were found in a gray car to which defendant had access. The car had a red-tinted cover over the license plate.

Defendant requested that the trial court modify CJI2d 4.15 by inserting the phrase "and DNA" into the instruction immediately after the word "fingerprints." He maintained that the modified instruction would better enable the jury to evaluate the DNA evidence. The court denied the request, noting that the DNA evidence was explained in expert testimony.

Defendant moved for a directed verdict, contending that the evidence did not establish that he committed the underlying offense of home invasion. The trial court denied the motion, noting that the evidence showed that defendant's fingerprints and DNA were found in the home, and that objects from decedent's home were found in areas to which defendant had access.

The jury found defendant guilty of felony-murder. The trial court sentenced defendant to the mandatory term of life in prison without parole.

A statement made by an accused during a custodial interrogation is inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. The prosecution may not use a custodial statement unless it demonstrates that prior to questioning, the accused was informed of his rights. *Miranda, supra*, 444. *Miranda* warnings are not required unless the accused is subject to a custodial interrogation. A custodial interrogation is questioning initiated by law enforcement officers after the accused has been taken into custody or deprived of his freedom in a significant way. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). To determine whether the person was in custody at the time of interrogation,

the court must look at the totality of the circumstances to ascertain whether the defendant reasonably believed that he was not free to leave.

The ultimate question of whether a person was in custody and thus entitled to *Miranda* warnings before interrogation is a mixed question of law and fact which must be answered independently by the reviewing court after a de novo review of the record. Absent clear error, we will defer to the trial court's historical findings of fact. *People v Mendez*, 225 Mich App 381, 382-383; 571 NW2d 528 (1997). Compliance with *Miranda*, *supra*, does not dispose of the issue of the voluntariness of a confession. *People v Godbaldo*, 158 Mich App 603, 605-606; 405 NW2d 114 (1986). In determining voluntariness, the court should consider the totality of the circumstances, including the duration of detention and questioning, the defendant's age, intelligence, and experience, the defendant's physical and mental state, and whether the defendant was threatened or promised leniency. *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997). No single factor is determinative. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

Defendant argues that the trial court erred by denying his motion to suppress his statement. We disagree. Defendant does not contend that he was not advised of his *Miranda* rights. However, his version of the circumstances surrounding his agreement to make a statement, including his description of his physical condition, differed dramatically from that given by Beemer. The trial court found that Beemer's testimony was more credible than that given by defendant, and simply did not believe defendant's assertions regarding his physical condition and the other circumstances surrounding the questioning. We give great deference to the trial court's assessment of the credibility of the witnesses. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). We cannot conclude that the trial court's findings of fact were clearly erroneous. *Mendez*, *supra*. The totality of the circumstances demonstrated that defendant understood his rights, and that he knowingly and voluntarily waived his rights and made a statement. *Givans*, *supra*; *Fike*, *supra*.

We review jury instructions in their entirety to determine whether the trial court committed error requiring reversal. Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them. Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights. Error does not result from the omission of an instruction if the charge as a whole covers the substance of the omitted instruction. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

Defendant argues that the trial court erred by failing to modify CJI2d 4.15 to include the phrase "and DNA" after the word "fingerprints." We disagree. Defendant cites no authority that requires that a jury be specifically instructed regarding the evaluation of DNA evidence, or that DNA evidence is to be evaluated in the same manner as fingerprint evidence. The DNA evidence was presented via expert testimony. The trial court instructed the jury regarding the evaluation of evidence in general and the evaluation of expert testimony in particular. We conclude that the trial court's charge, viewed in its entirety, fairly presented the issues to be tried and sufficiently protected defendant's rights. *Canales*, *supra*.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

When reviewing a trial court's decision on a motion for a directed verdict, we review the record de novo to determine whether the evidence presented by the prosecution, viewed in a light most favorable to the prosecution, could have persuaded a rational trier of fact that the essential elements of the charged offense were proved beyond a reasonable doubt. *People v Sexton*, 250 Mich App 211, 222; 646 NW2d 875 (2002).

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 Nowack*, 462 Mich 392, 401; 614 NW2d 78 (2000). First-degree home invasion and larceny are among the enumerated felonies.

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault, is guilty of home invasion in the first degree if, at any time while the person is entering, present in, or exiting the dwelling, either the person is armed with a dangerous weapon or another person is lawfully present in the dwelling. MCL 750.110a(2). The offense of home invasion includes but is not limited to conduct prohibited as the former offense of breaking and entering a dwelling with intent to commit a felony or a larceny. *People v Warren*, 228 Mich App 336, 348; 578 NW2d 692 (1998), modified 462 Mich 415; 615 NW2d 691 (2000). The offense of first-degree home invasion is a specific intent crime. Specific intent may be express, or it may be inferred from the facts and circumstances. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). The circumstantial evidence needed to establish an intent to commit a larceny is minimal. *People v Noel*, 123 Mich App 478, 484; 332 NW2d 578 (1983).

The elements of larceny are: (1) the actual or constructive taking of goods or property; (2) a carrying away or asportation; (3) the carrying away must be with felonious intent; (4) the subject matter must be the goods or personal property of another; and (5) the taking must be without the consent of and against the will of the owner of the goods. *People v Ainsworth*, 197 Mich App 321, 324; 495 NW2d 177 (1992).

Defendant argues that his conviction of felony-murder must be reversed because insufficient evidence was presented to establish that he committed the underlying offense of first-degree home invasion. In the alternative, he argues that the trial court erred by denying his

motion for a directed verdict. We disagree. Any amount of force used to open a window or door to enter a dwelling is sufficient to constitute a breaking. *People v Wise*, 134 Mich App 82, 88; 351 NW2d 255 (1984). Circumstantial evidence supported a finding that defendant broke and entered decedent's home. One window in the Florida room of decedent's home was shut but unsecured. Defendant's fingerprints were found on the inside of the frame of that window. This evidence supported an inference that defendant opened the window to gain entrance to decedent's home. *Vaughn, supra*.

Furthermore, the evidence, both direct and circumstantial, established that defendant had the requisite intent to commit a larceny when he was exiting decedent's home. A man was seen carrying items toward a gray car parked at decedent's home on the morning she was killed. Defendant had access to a car that matched the description of the car seen at decedent's home. Various items from decedent's home were found in a dumpster along with a used condom that carried DNA from both defendant and decedent. Decedent's identification card and cable television box were found in the car to which defendant had access. This evidence supported both a finding that defendant carried items belonging to decedent from decedent's home and that at a minimum defendant had the requisite intent to commit a larceny as he left decedent's home. *Beaudin, supra; Noel, supra*. The evidence, viewed in a light most favorable to the prosecution, supported a finding that defendant killed decedent while committing first-degree home invasion, and thus supported his conviction of felony-murder. MCL 750.316(1)(b); *Wolfe, supra*.

Affirmed.

/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood