

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES A. RICHMOND,

Defendant-Appellant.

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UNPUBLISHED

July 25, 2000

No. 208004

Oakland Circuit Court

LC No. 95-142139-FC

Before: Owens, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony-murder, MCL 750.316; MSA 28.548, and sentenced to life imprisonment without parole. This case arises from the death, from violent physical abuse, of a less than one-month-old baby girl. Defendant appeals as of right. We affirm.

Defendant contends that the prosecutor failed to present sufficient evidence to sustain the verdict. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of felony murder are (1) the killing of a person, (2) with the intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with the knowledge that death or great bodily harm is the probable result, (3) done while committing, attempting to commit, or assisting in the commission of any of the enumerated felonies, of which first-degree child abuse is one. *People v Hutner*, 209 Mich App 280, 282-283; 530 NW2d 174 (1995); MCL 750.316(1)(b); MSA 28.548(1)(b). “The facts and circumstances of the killing may give rise to an inference of malice. A

jury may infer malice from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm.” *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999) (citation omitted). However, a defendant’s malicious intent cannot be inferred solely from the commission of the underlying offense unless “the facts and circumstances of the intent to commit the underlying crime warrant the inference.” *People v Dumas*, 454 Mich 390, 408; 563 NW2d 31 (1997).

The evidence showed that defendant’s daughter was fine when her mother left the house. Nearly five hours later, she was almost dead from the effects of multiple, serious injuries. Those injuries certainly constituted “serious physical harm” as defined in the child abuse statute, i.e., an injury that “constitutes substantial bodily disfigurement, or seriously impairs the function of a body organ or limb.” MCL 750.136b(1)(e); MSA 28.331(2)(1)(e). Because the evidence showed that defendant was alone with the baby, it was reasonable to infer that he caused those injuries. While he claimed to have accidentally dropped her and then to have tossed her onto the couch and into her bassinet, the evidence showed that the injuries, which were the result of multiple blows, could not have resulted by accident; they were of such magnitude that they could only have been inflicted by a tremendous amount of force, either by physically striking the baby or by throwing her very forcefully to the floor or against a wall. Viewed most favorably to the prosecution, such evidence was sufficient to permit a rational trier of fact to conclude not only that defendant acted intentionally, but that, if he did not actually intend to kill the baby, he intended to commit great bodily harm or to create a very high risk of death or great bodily harm with the knowledge that death or great bodily harm was likely to result from his actions. *Hutner, supra*. Therefore, the evidence was sufficient to sustain the conviction.

Defendant next contends that some of the prosecutor’s questions during voir dire constituted improper argument and that the prosecutor’s opening statement contained improper argument. We find nothing improper in the prosecutor’s questions during voir dire because they were relevant to a determination of the prospective jurors’ impartiality. *People v Dunham*, 220 Mich App 268, 270; 559 NW2d 360 (1996) (prosecutor’s remarks during voir dire were intended to discover any “jurors who might find sexually abusing a child to be conduct so abhorrent as to be inconceivable”); *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995) (prosecutor’s “questioning was necessary to determine whether a prospective juror should be excused”). We decline to consider defendant’s claim that the prosecutor’s opening statement was improper because defendant has failed to cite any authority in support of his position, *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995), because any impropriety could have been cured by a timely objection, *People v Cooper*, 236 Mich App 643, 650; 601 NW2d 409 (1999), and because the trial court’s instruction that the lawyers’ statements and arguments were not evidence was sufficient to dispel any prejudice. *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995).

We next conclude that the trial court did not abuse its discretion in admitting two autopsy photographs. The photographs were relevant to the issue of intent and to illustrate the medical examiner’s testimony. *People v Mills*, 450 Mich 61, 71, 76; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). We likewise find no error in the testimony regarding defendant’s flight, to which defendant did not object at trial. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995) (evidence of a defendant’s flight is admissible because it may indicate consciousness of guilt).

We next reject defendant's claim that a police officer was improperly asked to comment on defendant's credibility. See *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985). The record clearly shows that the officer testified regarding defendant's assessment of his own credibility, which was admissible. MRE 801(d)(2)(A). We also reject defendant's claim that the court improperly excluded certain testimony from his mother. Evidence of defendant's general parental fitness was irrelevant and, therefore, inadmissible, MRE 401, 402, because defendant did not deny inflicting the injuries that killed his daughter.

Defendant's claim that the trial court erred in failing to instruct the jury on negligent homicide is without merit. Not only did defendant not request such an instruction, there was no evidence that his daughter's death resulted from injuries inflicted by the negligent operation of an automobile. MCL 750.324; MSA 28.556; *People v Corbiere*, 220 Mich App 260, 262-263; 559 NW2d 666 (1996).

Defendant has failed to establish that error occurred warranting reversal on the basis of any of the foregoing issues; we therefore find that he was not deprived of the effective assistance of counsel based on the foregoing issues. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

Affirmed.

/s/ Donald S. Owens

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald