

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY STURM,

Defendant-Appellant.

UNPUBLISHED

April 18, 2006

No. 256570

Macomb Circuit Court

LC No. 2003-002544-FC

Before: White, P.J., Whiteck, C.J., and Davis, J.

PER CURIAM.

Defendant was convicted of first-degree felony murder, MCL 750.316(1)(b), and armed robbery, MCL 750.529. He was sentenced to life in prison for his first-degree felony murder conviction and 25 to 50 years in prison for his armed robbery conviction. He appeals as of right. We affirm defendant's first-degree felony murder conviction and sentence, and we vacate his armed robbery conviction and sentence.

Defendant first argues that there was insufficient evidence to support his convictions. We disagree.

When reviewing sufficiency of the evidence, we view it in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the charged crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). We defer to the jury's special opportunity and ability to determine the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992).

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 the felony murder statute, including armed robbery. *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999). The intent to commit murder cannot be found solely from the intent to commit an underlying felony. *People v Aaron*, 409 Mich 672, 730; 299 NW2d 304 (1980). The elements of armed robbery are: (1) an assault, and (2) a felonious taking of

property from the victim's presence or person, (3) while the defendant is armed with a specified weapon or any article used or fashioned in a manner to lead the person assaulted to reasonably believe it to be a dangerous weapon. *People v Ford*, 262 Mich App 443, 458; 687 NW2d 119 (2004); MCL 750.529.

This is clearly a circumstantial case. The victim died as a result of blood loss caused by numerous stab wounds inflicted by another person. Ronald Kowalski, an acquaintance of defendant, testified that defendant stated that he had gotten away with the perfect crime because the police had botched up some evidence. Defendant told Kowalski that he got the victim drunk, returned with the victim to the victim's residence, and stabbed the victim. Kowalski testified that defendant later threatened him by saying, "I killed once, I'll kill again." Defendant's wife took some jewelry to Sergeant John Riley and stated that defendant had given it to her. The victim's mother and a family friend identified some of this jewelry as the victim's. Randall Mullins, who spent time in jail with defendant, testified that defendant stated that he took a cross necklace from the victim after the victim had been stabbed. Mullins and Kowalski's respective testimony was impeached to a certain extent. However, when the evidence is viewed in a light most favorable to the prosecution and with proper deference to the jury's opportunity to determine witnesses' credibility, we conclude that a rational trier of fact could have found that the essential elements of armed robbery and felony murder were proven beyond a reasonable doubt.

Alternatively, anyone who intentionally assists someone else in committing a crime is as guilty as the person who directly commits it and can be convicted of those crimes as an aider and abettor. *People v Coomer*, 245 Mich App 206, 223; 627 NW2d 612 (2001). To prove aiding and abetting of a crime, a prosecutor must show: (1) that the crime charged was committed by the defendant or some other person; (2) that the defendant performed acts or gave encouragement which assisted in the commission of the crime; and (3) that the defendant intended the commission of the crime or had knowledge of the other's intent at the time he gave the aid or encouragement. *People v Moore*, 470 Mich 56, 67; 679 NW2d 41 (2004). "An aider and abettor must have the same requisite intent as that required of a principal." *People v Akins*, 259 Mich App 545, 555; 675 NW2d 863 (2003).

There was some evidence presented that defendant did not perform the actual killing, but rather worked with Yvonne Harris, the mother of the victim's children, who wanted to get the victim drunk and kill him. Mullins testified that defendant told him that defendant and Harris got the victim drunk with "Five o'clock" vodka, whereupon Harris stabbed the victim, and defendant and Harris then stole some of the victim's things. Kowalski testified that defendant told him that Yvonne asked defendant to help her get the victim drunk and kill him. A bottle of "Five o'Clock" vodka was found next to the victim's body, and the victim's body contained a high level of alcohol. Sergeant Riley testified that defendant told him that defendant knew that Yvonne wanted the victim dead. Viewing the evidence presented in a light most favorable to the prosecution, a rational trier of fact could minimally have found the essential elements of aiding and abetting an armed robbery and felony murder proven beyond a reasonable doubt. Thus, alternative grounds also exist to support defendant's convictions.

Defendant next argues that his armed robbery conviction must be vacated as violative of his constitutional protections against double jeopardy. We agree. Convictions and sentences "for both first-degree felony-murder and the underlying felony violates [sic] the state

constitutional prohibition against double jeopardy, as the evidence needed to prove first-degree felony-murder requires proof of the underlying lesser included felony.” *People v Wilder*, 411 Mich 328, 342; 308 NW2d 112 (1981). Furthermore, the Legislature did not intend to impose punishments for both felony murder based on the predicate crime of armed robbery, and the predicate crime of armed robbery itself. *People v Harding*, 443 Mich 693, 712; 506 NW2d 482 (1993). Defendant’s conviction and sentence for armed robbery, in addition to his conviction and sentence for first-degree felony murder, violates his constitutional protections against double jeopardy.

We affirm defendant’s first-degree felony murder conviction and sentence, and we vacate defendant’s armed robbery conviction and sentence.

/s/ Helene N. White
/s/ William C. Whitbeck
/s/ Alton T. Davis