

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LETITIA ANN JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

January 25, 2007

No. 264611

Oakland Circuit Court

LC No. 05-200748-FC

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder under both premeditation and felony-murder theories, MCL 750.316(1)(a); MCL 750.316(1)(b). Defendant was sentenced to life imprisonment without parole. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erred when it failed to instruct the jury that first-degree child abuse is a specific intent crime. Generally, this Court reviews claims of instructional error de novo. *People v Martin*, 271 Mich App 280, 337; 721 NW2d 815 (2006). However, this Court reviews defendant's unpreserved claim of instructional error for plain error affecting her substantial rights. *People v Carines*, 460 Mich 750, 762-763; 597 NW2d 130 (1999). To avoid forfeiture under the plain error rule, defendant must establish that: (1) an error occurred; (2) the error was plain; (3) and the plain error affected defendant's substantial rights, i.e., it affected the outcome of the lower court proceedings. *People v Barber*, 255 Mich App 288, 296; 659 NW2d 674 (2003), citing *Carines*, *supra* at 763.

Defendant was charged with first-degree murder under both a premeditation theory, MCL 750.316(1)(a), and a felony-murder theory, MCL 750.316(1)(b). The jury instruction at issue involves the felony-murder charge, with first-degree child abuse as the predicate felony. 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. *People v Nowack*, 462 Mich 392, 401; 614 NW2d 78 (2000). First-degree child abuse is an enumerated felony. MCL 750.316(1)(b). To commit first-degree child abuse, a person must knowingly or intentionally cause serious physical or mental harm to a child. The intent necessary is the intent to cause the harm and not merely to do the act which causes the harm. *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004).

In reviewing a claim of instructional error, this Court “examines the instructions as a whole, and, even if there are some imperfections, there is no basis for reversal if the instructions adequately protected the defendant’s rights by fairly presenting to the jury the issues to be tried.” *Martin, supra* at 337-338. The challenged jury instruction is as follows:

And count two, ladies and gentleman, Ms. Johnson is charged with first[-] degree felony murder. To prove this charge, the prosecutor must prove each of these elements beyond a reasonable doubt. First, that Ms. Johnson caused the death of Jasmine. That is, Jasmine died as a result of dehydration due to scalding burns. Second, that Ms. Johnson had one of these three states of mind. She intended to kill, or she intended to do great bodily harm to Jasmine, or she knowingly put in force – put in motion a force likely to cause death or great bodily injury. Third, that when she did the act that caused the death of Jasmine, Ms. Johnson was committing the crime of first[-]degree child abuse.

*For the crime of first[-]degree – first[-]degree child abuse, the prosecutor must prove these three elements beyond a reasonable doubt. First, that Ms. Johnson had care or custody of, or authority over Jasmine when the abuse happened. Second, that Ms. Johnson either knowingly or intentionally caused physical harm to Jasmine. By physical harm, I mean any physical injury to a child that seriously impairs the child’s health or physical well-being including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.*

Third, that Jasmine was at the time under the age of 18; and fourth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime. [Emphasis added.]

The trial judge clearly instructed the jury that to find defendant guilty of first-degree child abuse, it had to find, among other things, that defendant “either knowingly or intentionally caused physical harm to [the victim].” Not only did the instruction fairly present to the jury the issues to be tried, it is difficult to conceive of an instruction more explicit or on point than the instruction given. Defendant argued that the instruction should have included the phrase “specific intent,” like the specific intent instruction found in CJI 2d 3.9. However, case law makes clear that it is unnecessary for the jury to be given further instruction on “specific intent.” *Maynor, supra* at 296. The need to draw the common law distinction between “specific” and “general” intent is not required as long as the jury is instructed that it must find that defendant either knowingly or intentionally caused the harm. *Maynor, supra* at 296. Given that the trial judge in the instant case instructed the jury that defendant must have “either knowingly or intentionally caused harm,” and fairly presented to the jury the issues to be tried, there was no plain error. Furthermore, because defendant was also convicted of first-degree premeditated murder, an error with regard to the jury instruction on the felony-murder charge would be harmless.

Second, defendant argues that her conviction for first-degree murder under a premeditation theory should be reversed given that there was insufficient evidence of premeditation. When reviewing a claim of insufficient evidence, this Court reviews the record

de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

To obtain a conviction for first-degree murder, the prosecutor must prove, beyond a reasonable doubt, that the killing was intentional, deliberate, and premeditated. Premeditation and deliberation require sufficient time for the defendant to take a second look. These elements may be inferred from the surrounding circumstances, including the prior relationship of the parties, the defendant's actions prior to the killing, the circumstances surrounding the killing, and the defendant's conduct after the killing. *People v Buck*, 197 Mich App 404, 409-410; 496 NW2d 321 (1992), rev'd in part on other grounds *People v Holcomb*, 444 Mich 853; 508 NW2d 502 (1993).

The record reveals that the prior relationship of the parties was stormy. Defendant's boyfriend and the father of her children, Louie Phillips, cheated on defendant with Jamilla Lawrence, a coworker, and together they had a child, Jasmine. Louie testified that defendant did not like Jamilla and that it was "pretty obvious" that defendant was jealous of Jamilla and/or Jasmine. Defendant would call Jamilla ugly, a "bitch," and question Louie regarding why he was ever with Jamilla. Jamilla testified that she was adamant against leaving Jasmine alone with defendant, stating, "I knew [defendant] didn't like me. And I figured that since she didn't like me, she wouldn't be good to my daughter. She wouldn't like my daughter." Jamilla recounted two incidents that caused her concern regarding Jasmine being left alone with defendant. One involved defendant braiding Jasmine's hair so tight that some of Jasmine's hair fell out. Another involved Jasmine coming home with a bad diaper rash after being in the care of defendant. While defendant was in prison, she admitted to a fellow inmate, Delanya Tucker, that she did not like Jamilla, and was sick of taking care of Jasmine with defendant's money. Defendant expressed that she did not like Jamilla because Jamilla would call Louie all the time and ask him to do things for Jasmine. According to Tucker's testimony, defendant admitted to intentionally putting Jasmine in hot water and holding her there as Jasmine screamed and cried, fighting to get out. Defendant admitted to wanting Jasmine "out of the picture" so defendant and Louie would no longer argue. Additionally, it was stipulated by the parties that the handwriting on the documents purporting to be defendant's confessions matches defendant's handwriting.

With regard to the medical testimony concerning Jasmine's cause of death, Dr. Marc Cullen believed that emersion scalding caused Jasmine's injuries. The doctor opined that "the child was placed into a standing body of water that was very hot." He characterized Jasmine's burns as "very deep," "almost all third[-]degree burn," and "very profound." When asked whether he believes the burns could have been the result of an accident, Cullen opined that they were not, that Jasmine was placed into hot water "by intent." He indicated, "there is not evidence of burns of the upper torso which is your chest, back, the hands and arms and face that would be consistent with the child either falling over the tub into the water, or standing in the water, or any of the other scenarios." The absence of splash marks further corroborated the emersion theory. Cullen concluded, "the pattern of [Jasmine's] injury is consistent with her being placed and in my belief held in the tub for some period of time." The medical examiner ruled the death a homicide.

Circumstantial evidence and reasonable inferences drawn from the evidence may constitute satisfactory proof of the elements of the crime of first-degree, premeditated murder. *People v Marsack*, 231 Mich App 364, 371; 586 NW2d 234 (1998). The medical testimony that Jasmine's injuries were not consistent with an accident, defendant's admissions to Tucker that she intended to and did submerge Jasmine in hot water to get her out of the picture, and the testimony of the acrimonious relationship between defendant and Jamilla all contribute to a finding that the submersion of Jasmine into hot water was intentional, deliberate and premeditated. Therefore, there was sufficient evidence for a rational jury to find defendant guilty of first-degree murder under a theory of premeditation. Additionally, even if there was insufficient evidence of premeditation, defendant's felony-murder conviction stands, as she did not assert an insufficiency of the evidence argument with respect to that conviction.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Deborah A. Servitto