

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

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
September 24, 2013

v

JOE GUY GALVAN,

Defendant-Appellant.

No. 299814  
St. Clair Circuit Court  
LC No. 10-000598-FC

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

JENNIFER ANN GALVAN,

Defendant-Appellant.

No. 299822  
St. Clair Circuit Court  
LC No. 10-000597-FC

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Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

SHAPIRO, J. (*concurring in part and dissenting in part*).

Joe and Jennifer Galvan, husband and wife, were each convicted of first-degree felony murder, MCL 750.316(1)(b), torture, MCL 750.85, first-degree child abuse, MCL 750.136b(2), and possession of marijuana, MCL 333.7403. Mr. Galvan was also convicted by plea of possession of a firearm by a felon, MCL 750.224f. I concur with the majority in affirming all of Mr. Galvan's convictions. As to Mrs. Galvan, I agree with the majority that she was properly convicted of the torture and child abuse of her three-year-old stepdaughter Prhaze. I dissent, however, as to Mrs. Galvan's conviction of first-degree felony murder given the lack of evidence that she participated, or assisted, in the assault on January 15, 2010, or that any of the incidents of abuse before that date caused Prhaze's death.

There was extensive testimony describing the ongoing mistreatment of Prhaze over the last 15 months of her life. She was seen with bruises on several occasions by family members and friends. There was testimony that she was made to stand in the corner for hours at a time. On at least one, and likely several, occasions, she was bound and gagged with masking tape. She

was made to sleep on the floor and food was regularly withheld from her. She was punished for “sneaking” food and was forced to take cold showers if she wet herself. At least once, she was struck with a large spoon for attempting to get out of a cold shower. She was also emotionally deprived and treated as a pariah within the family.

Had there been medical testimony that those acts of mistreatment caused Prhaze’s death, I would agree that Mrs. Galvan could be properly convicted of first-degree felony murder regardless of the time interval between the mistreatment and death. However, there was no such evidence. Rather, the uncontradicted evidence was that Phraze died on January 15, 2010 due to a subdural hematoma caused by blows to the head intentionally inflicted on that day. The medical examiner, called as a witness by the prosecution, testified that, “the impact that resulted in the fatality was quite close to the time of her death.” He testified that the killing blows were most likely inflicted within minutes of Prhaze’s death, but allowed for the possibility that they may have occurred as much as eight hours earlier.

In its opening statement and closing argument, the prosecution offered three theories to the jury as to why they should convict Mrs. Galvan of felony murder.<sup>1</sup> First, that Mrs. Galvan was the principal actor, i.e., that she, rather than Mr. Galvan, personally inflicted the fatal injuries on January 15, 2010. Second, that she aided and abetted her husband in his commission of that fatal assault. Third, that the 15-month-long mistreatment of Prhaze created an “atmosphere” that was bound to eventually result Prhaze’s serious injury or death and that this was sufficient to make Mrs. Galvan guilty of aiding and abetting the fatal assault. The first two theories fail for lack of evidence. The third fails as a matter of law.

There was not sufficient evidence to prove beyond a reasonable doubt that Mrs. Galvan personally assaulted Prhaze on January 15, 2010. Indeed, the majority does not suggest otherwise. No one testified that they saw Mrs. Galvan assault Prhaze that day. Similarly, no forensic evidence linked her to the fatal assault. Mrs. Galvan testified at trial. She stated that her husband had taken Prhaze into the bathroom to make her take her a shower. Shortly thereafter, she came into the bathroom and discovered Prhaze, unconscious, with Mr. Galvan. Her statements to the police and medical personnel also pointed to Mr. Galvan as the sole possible assailant. Mr. Galvan did not testify and his attorneys conceded that he was alone with Prhaze when she suffered her injury, though they asserted that injury was due to an accidental fall in the shower, not an assault. Thus, the record does not contain sufficient evidence by which Mrs. Galvan could be convicted as the principal defendant.

There is a similar lack of evidence to demonstrate that Mrs. Galvan participated in the January 15, 2010 assault as an aider and abettor. A defendant “who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense.” *People v*

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<sup>1</sup> The district court refused to bind over Mrs. Galvan on first-degree felony murder. However, the circuit court reinstated the charge.

*Izarraras-Placante*, 246 Mich App 490, 495; 633 NW2d 18 (2001). To establish that defendant Mrs. Galvan aided and abetted Mr. Galvan, the prosecution was required to prove that:

“(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement.” [ *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006), quoting *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004), quoting *People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999) (alteration by *Moore*).]

Although Mr. and Mrs. Galvan were charged with numerous crimes, “the crime charged” for purposes of this analysis was a murderous assault on January 15, 2010. In order to be convicted as an aider and abettor on this basis, Mrs. Galvan must have knowingly assisted or encouraged her husband in some portion of the fatal assault. As already noted, there is no evidence that Mrs. Galvan physically assisted in the assault, nor is there any evidence that she suggested to Mr. Galvan that he assault Prhaze on that day. Indeed, no evidence was presented that Mrs. Galvan even knew that such a beating would be inflicted. Her presence somewhere else in the house is not sufficient. “Mere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to show that a person is an aider and abettor.” *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992). While it may be reasonable to infer that Mrs. Galvan knew Mr. Galvan was going to punish Prhaze with a cold shower or even some more injurious abuse after she wet herself, there is no evidence that she knew that this punishment would involve a deadly assault. No evidence was presented that Prhaze had been subject to life-threatening assaults during prior showers or at any other time.<sup>2</sup>

The prosecutor’s third theory of guilt did not require proof that Mrs. Galvan inflicted or even aided or encouraged the assault of January 15, 2010. This theory posited that the 15-month-long mistreatment of Prhaze created an “atmosphere” that was bound to eventually result Prhaze’s serious injury or death and that participation in this ongoing abuse and “atmosphere” was sufficient to make Mrs. Galvan guilty of aiding and abetting Prhaze’s murder by Mr. Galvan.

This argument, that Mrs. Galvan encouraged or condoned a pattern of abuse over months or years such that she should have known would eventually result in serious injury or death, is insufficient as a matter of law to sustain a conviction for first-degree felony murder. The prosecution relies solely on our Supreme Court’s opinion in *Robinson*. 475 Mich at 1. In *Robinson*, the Court affirmed the defendant’s conviction for second-degree felony murder after he instigated and participated in the specific aggravated assault that resulted in the victim’s death. *Id.* at 3-4. The defendant and the principal drove to the victim’s home with the express intent to “f\*\*\* him up.” *Id.* at 4. The evidence demonstrated that the defendant delivered the

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<sup>2</sup> The record does not reveal any evidence that Prhaze had suffered any broken bones, organ damage, loss of consciousness, or any other life-threatening injuries prior to January 15, 2010.

first blow to the victim during the assault and struck several subsequent blows. *Id.* Eventually, the principal began to kick the victim. *Id.* The defendant said “that was enough” and returned to the vehicle. *Id.* The principal then shot and killed the victim. *Id.* This Court reversed on the grounds of insufficient evidence, “because there was no evidence establishing that defendant was aware of or shared [the principal]’s intent to kill the victim.” *Id.* The Supreme Court reversed this Court’s ruling and reinstated the defendant’s conviction. *Id.* at 15-16. The Supreme Court held that an individual may be held liable for aiding and abetting a murder even if the individual abandoned a joint assault he had participated in if “the charged offence was a natural and probable consequence of the commission of the intended offense.” *Id.* at 15. In *Robinson*, the defendant intended a brutal assault on the victim and participated in that assault which seconds later resulted in the victim’s death. *Id.* at 4.

This case is not *Robinson*. There is no evidence that Mrs. Galvan participated in *any* portion of the assault on January 15, 2010. Nothing in *Robinson* stands for the proposition that the intent required to support a felony-murder conviction may be inferred from a defendant’s intent to commit separate and distinct criminal acts on previous occasions. While the evidence demonstrated that Mrs. Galvan committed and abetted acts of child abuse and torture on other dates, there was no medical evidence linking any of those actions to Prhaze’s death. By contrast, if Prhaze had died of starvation, or some other chronic aspect of the abuse, Mrs. Galvan’s conviction would be supported by sufficient evidence even if her actions were remote in time.<sup>3</sup>

We cannot conclude beyond a reasonable doubt that Mrs. Galvan did not assist or encourage the assault in the bathroom that day. It is possible that she did participate in that terrible crime. However, under our system of law, a defendant may not be found guilty of a particular crime because we cannot be certain that she is innocent of it. The issue is not whether we are fully at ease with concluding that defendant is factually innocent of the crime, but whether there is proof beyond a reasonable doubt of defendant’s guilt.

Because the prosecution failed to prove beyond a reasonable doubt that Mrs. Galvan was either the principal actor in Prhaze’s murder, or aided and abetted Mr. Galvan in the assault of January 15, 2010, I would reverse the jury’s verdict and vacate her conviction for first-degree felony murder, MCL 750.316(1)(b).<sup>4</sup> I concur with the majority in affirmance of all other convictions.

/s/ Douglas B. Shapiro

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<sup>3</sup> There was no charge of conspiracy to commit murder, MCL 750.157a.

<sup>4</sup> I would also find that the trial court erred in refusing to allow Mrs. Galvan’s attorney to withdraw in order to testify that Mr. Galvan confessed that he struck and killed Prhaze on January 15, 2010. However, that issue is rendered moot if we vacate the murder conviction.