S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES ROBERT TAYLOR,

Defendant-Appellant.

UNPUBLISHED
August 19, 2014

No. 315809
Wayne Circuit Court
LC No. 12-007031-FC

Before: RIORDAN, P.J., and DONOFRIO and, BOONSTRA JJ.

PER CURIAM.

Defendant Charles Robert Taylor was charged with first-degree premeditated murder, MCL 750.316, for the stabbing death of Josephine Carter. Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317. He was sentenced as a fourth-time habitual offender, MCL 769.12, to 50 to 75 years' imprisonment. Defendant now appeals as of right, and because there was sufficient evidence to identify defendant as the perpetrator, we affirm.

On June 30, 2004, Carter's body was discovered in an alley between 17380 Hull Street and 17381 Greely Street in the city of Detroit. The body was wrapped in a blue blanket and some kind of sheet or comforter that was stained with blood. Sergeant David Babcock of the Detroit Police Department's Crime Scene Services, who was one of the officers investigating the crime scene, testified that he did not observe any drag marks. Babcock could not determine where the body had come from, nor could he determine how long the body had been there. He examined the general area, including a near-by vacant home, but did not find any other evidence.

At the time the victim's body was discovered, defendant resided at 17381 Greely with a friend, Jimmy Littlejohn. At defendant's trial, Leah Wisniewski testified that she was living with defendant at the Greely residence in June 2004 and that Littlejohn had a sexual relationship with the victim. Wisniewski also recalled seeing the victim at the Greely residence twice. Wisniewski further testified that she went away for a weekend in June 2004 and that, upon her return, defendant and Littlejohn told her that a body was found in the alley. Wisniewski moved out of the Greely residence in July 2004.

Dr. Carl Schmidt, a forensic pathologist and the chief medical examiner for the Wayne County Medical Examiner's Office, reviewed the autopsy report. Dr. Schmidt described the victim as a 46-year-old black female who was 5'7" tall and who weighed 137 pounds. In relevant part, Dr. Schmidt testified that the victim had an incised wound that went across her

neck and was deep enough to penetrate the jugular vein and the larynx all the way to the esophagus, and that this injury was the cause of her death. The victim also had "multiple superficial incised wounds" to the fingers of the right hand, which he opined were defensive wounds that were inflicted when the victim attempted to defend herself against the attack. The victim additionally had an incised, defensive wound on the outside of her right forearm.

Retired Detroit Police Officer Thomas Smith testified that, on June 30, 2004, he went to the morgue and collected trace samples of possible DNA from the victim's body. His partner, Officer William Niarhos (who had also since retired), took fingernail clippings and used a serrated cotton swab to collect material from underneath each of the victim's fingernails. Jennifer Morgan, a biologist at the Michigan State Police Northville Laboratory who was qualified as an expert in DNA analysis, found a mixture of DNA material from the victim and an unidentified male on the swabs from the victim's left hand. Because Morgan did not initially have a known sample with which to compare the male's DNA, the male sample was entered into the law enforcement Combined DNA Index System (CODIS) database.[1] One match or association was reported, which was defendant. A buccal swab was subsequently taken from defendant for further DNA testing in June 2012. After receiving the buccal swab obtained from defendant, Morgan concluded that defendant could not be excluded as the individual who had contributed the unknown male's DNA. Glen Hall, the Forensic Laboratory Manager for the Michigan State Police Northville Laboratory, performed YSTR testing on the DNA sample, which is a test that specifically targets only male DNA. Hall also concluded that defendant could not be excluded as the contributor of the DNA.

Defendant's sole claim on appeal is that the evidence at trial was insufficient to establish his identity as the person who murdered the victim. "[I]dentity is an element of every offense." *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008); see also *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967) (stating that "the prosecutor must identify the accused as the person who committed the alleged offense" as an essential part of the prosecution's case). This Court reviews a claim of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When reviewing a challenge to the sufficiency of the evidence in a jury trial, this Court determines "whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000), citing *People v Hampton*, 407 Mich 354; 285 NW2d 284 (1979) and *Jackson v Virginia*, 443 US 307; 99 S Ct 2781; 61 L Ed 2d 560 (1979). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *Nowack*, 462 Mich at 400.

The evidence presented by the prosecutor was entirely circumstantial. Nevertheless, "[t]he scope of review is the same whether the evidence is direct or circumstantial." *Id.* at 400. "Circumstantial evidence and reasonable inferences arising from that evidence can constitute

[1] Hall testified that the Michigan database contained between 300,000 and 400,000 samples, and the national database contained about 11,000,000 samples.

satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). In fact, this Court has observed that "[t]here is no real distinction between circumstantial and direct evidence; sometimes circumstantial evidence can be more compelling than direct evidence." *People v Cutchall*, 200 Mich App 396, 401; 504 NW2d 666 (1993).

The evidence showed that defendant knew the victim; she had a sexual relationship with his friend Jimmy Littlejohn and had occasionally come to the house where defendant and Littlejohn were living. The victim's body was found in the alley behind that house. There were no drag marks to indicate the body had been dragged to that location. The body was found wrapped in a sheet and a blue padded blanket. A sheet and a blue padded blanket had been in the house defendant occupied and Wisniewski testified that those items were missing when she returned to the house from her weekend trip. Wisniewski also testified that when she returned, the basement had the overpowering smell of bleach; it was so bad that her eyes, nose, and throat burned from the smell and she had to use a bandana over her face to enter the basement. It was a reasonable inference from this evidence to surmise that the victim was killed in the basement of the house defendant occupied; that she was wrapped in the sheet and blanket that were missing; the body was dumped into the alley behind the house, and that the basement was cleaned with bleach to eliminate any residue of blood or bodily fluids. The absence of any drag marks also supported the conclusion that the victim was killed nearby because it was unlikely a dead weight of 137 pounds had been carried any great distance; it was more likely the victim was killed nearby, carried a short distance to the alley, and then dumped there.[2]

As defendant argues, those facts do not establish that defendant, as opposed to Littlejohn or someone else, murdered the victim. However, trace DNA material was found underneath the victim's fingernails on her left hand and this DNA material was consistent with defendant's DNA. Given the time of year, the temperature and humidity conditions, and the time the body was exposed to the elements before being found, the testing could not determine that defendant was the only person who could have contributed the DNA material. However, there was no showing that there was any other person with consistent DNA who lived in the house or the general area and had access to the victim. Given these facts, it was entirely reasonable for the jury to believe that instead of some unknown assailant with matching DNA murdering the victim and dumping her body behind the house where defendant was living, it was defendant who had murdered her.

Although defendant suggested below and on appeal that the victim could have picked up this DNA from touching something defendant had touched, this possibility was considered "kind of a stretch" by one of the DNA experts, who opined that it was far more likely to have been transmitted by a skin-to-skin touching. This was not DNA material that was merely found on the

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[2] Although much less significant, the fact that defendant and Littlejohn extensively cleaned the backyard after the body was found, that defendant refused to speak with the victim's family, and that defendant's behavior changed significantly after the body was discovered, were all factors that could be considered supportive of the jury's determination that defendant was the murderer.

victim's skin or clothing; it was DNA that was recovered from beneath her fingernails. It was far more reasonable for the jury to conclude that the DNA had come to be under the victim's fingernails because she had scratched defendant in a defensive posture, as he assaulted her. Moreover, there was circumstantial evidence to support that conclusion beyond the simple placement of the DNA: Wisniewski testified that she observed scratches on defendant's arms and head. Although Wisniewski testified that defendant told her that the scratches came from his attempts to fix barbed wire at the tow yard where he was employed, the jury was entitled to reject this explanation.

Defendant also claims that the DNA results "establish the perpetrator more likely was Hispanic, rather than African American, as was Mr. Taylor." Defendant claims that Morgan testified that her tests resulted in a rate of inclusion of 1 out of 170 people in the Hispanic population and 1 out of 450 for the African-American population. First, defendant's recitation of the evidence is not accurate. Morgan testified that the combined probability of inclusion was 1 out of 870—not 170—for the Hispanic population. Second, these statistics do not stand for the proposition that defendant asserts. Just because one race has a higher "probability of inclusion" does not mean that it is more probable that a person of that race *actually* left the DNA. It simply is a measure of the *significance*, i.e., the weight, of defendant's inclusion. In other words, the fact that defendant cannot be excluded as the person who contributed the DNA may not be significant if a large amount of the population also cannot be excluded. In this regard, Morgan explained that she calculated various percentages of "selecting an individual at random from the general population" and having that person's DNA also match. She found that for the African-American population it was 1 out of 450, for the Caucasian population it was 1 out of 715, and as previously noted, for the Hispanic population it was 1 out of 870. Therefore, from a percentage standpoint, her testimony was that it was *less* likely that a DNA match would occur in the Caucasian or Hispanic populations than in the African-American population. Regardless, even if the evidence did establish that another race's population had a higher rate of inclusion, such a fact merely goes to the weight of the evidence, which the jury is free to consider. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). It is important to note that, as previously discussed, the jury was not dealing with a suspect who had no connection, other than DNA, to the crime.

Finally, defendant suggests on appeal that defendant's increased verbal aggressiveness after the victim's body was found "was due to Ms. Wisniewski's crack cocaine problem," instead of a reaction to killing Carter. However, it was up to the jury to draw the inferences from the evidence, and the prosecutor was not required to negate every theory of innocence. *Hardiman*, 466 Mich at 428; *Nowack*, 462 Mich at 400.

Therefore, when considered in a light most favorable to the prosecutor, there was

sufficient evidence from which a reasonable jury could have determined that defendant's identity as the person who murdered Josephine Carter was proven beyond a reasonable doubt.

Affirmed.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra