

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN TIMOTHY BRIGGS,

Defendant-Appellant.

UNPUBLISHED

September 11, 2003

No. 241568

Kent Circuit Court

LC No. 01-011090-FC

Before: Meter, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of second-degree murder, MCL 750.317, for the strangulation death of his wife, Ann Marie Briggs. The trial court sentenced defendant to seventeen to sixty years' imprisonment. We affirm.

Thirty-year old Ann Marie was found lying dead on the living room floor of the house she shared with her husband and two children. Defendant informed the authorities that he and his wife had engaged in sexual strangulation during which he restricted Ann Marie's airflow. An autopsy performed by Dr. Stephen Cohle showed the cause of death was asphyxia by strangulation and the manner of death was homicide. At trial, Cohle testified that he found ruptures of the small blood vessels, called petechiae, on Ann Marie's eyes and face. The existence of petechiae to the face and eyes is indicative of asphyxia by strangulation from the exertion of great pressure around the neck of a victim for a period of many seconds up to several minutes. Cohle also discovered petechiae on Ann Marie's upper chest and shoulders. According to Cohle, such petechiae are not commonly found in cases of strangulation by the neck. Rather, they are caused in cases of traumatic asphyxia, where a heavy weight falls onto a person, such as where a person is pinned beneath a car in an accident, or when a victim is pinned down and is struggling against the attacker. Further, Cohle found bruises on Ann Marie's upper arms consistent with pressure from someone grabbing her arms as well as abrasions on the back of her left elbow, consistent with scrapping her arm against the carpet prior to death.

Defendant's sole issue on appeal is that the trial court committed clear error requiring reversal because the trial court erroneously found that the petechiae on Ann Marie's arms and chest were caused by powerful pressure to her throat for two to three minutes, contrary to Cohle's testimony. Defendant asserts that this error was not harmless because it was the basis for his conviction. In essence, defendant argues that there was insufficient evidence to support the conviction.

Due process requires the prosecution to prove a defendant's guilt beyond a reasonable doubt. *Victor v Nebraska*, 511 US 1, 5; 114 S Ct 1239; 127 L Ed 2d 583 (1994). A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). When reviewing a challenge of the sufficiency of the evidence in a bench trial, this Court must view the evidence in the light most favorable to the prosecution to determine whether there is sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Also, a trial court's findings of fact in a bench trial are reviewed for clear error, giving regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). A factual finding is clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that an error occurred. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). Further, the presumption is that a judge in a bench trial knows the applicable law. See *People v Casal*, 412 Mich 680, 686-687; 316 NW2d 705 (1982).

Second-degree murder is a general intent, not a specific intent, crime. *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). To prove a defendant guilty of second-degree murder, the prosecution must show "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *Id.* at 463-464. On appeal, defendant challenges the third element, i.e. malice. Malice is defined as "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. Malice may be inferred from evidence that the defendant "intentionally set in motion a force likely to cause death or great bodily harm." *People v Aldrich*, 246 Mich App 101, 123; 631 NW2d 67 (2001) (citation omitted).

At the conclusion of the nine-day bench trial, the trial court made the following findings of fact:

Were the only evidence in this case the hemorrhaging that Dr. Cohle found in the throat of Miss Briggs, the facial petechiae, and the facial congestion, this Court would have to find the defendant not guilty because of the realistic possibility, no more than that, but nonetheless the realistic possibility of this erotic strangulation.

According to Dr. Cohle, those injuries could have all occurred within fifteen to thirty seconds of pressure on the throat, long before anybody would have gone unconscious, and would have been completely consistent with the conduct described by the defendant.

* * *

But there is in fact more evidence in this case. There were petechiae on Miss Brigg's chest and in her shoulders, and according to expert testimony, which I find to be persuasive and credible, there are only two possible sources of those petechiae: Either a several-hundred-pound weight being suddenly dropped on

her, which is one thing we all know for certain didn't happen here, *or two or three minutes of force applied to her by an adult exerting all of his or her energy.*

* * *

That finding leads to certain other conclusions. *If pressure had to be applied, as it did, for two to three minutes in order to create the petechiae on the chest and shoulders of Miss Briggs, that pressure had to also be applied for one to two minutes or perhaps more after she had become unconscious from the application of force to her throat, and as the result of being unconscious, limp and non-responsive.*

Therefore, continuing to apply that much pressure for that long, under those circumstances, plainly establishes an intent to kill. Manual strangulation does not prove, as I said before, premeditation [for first-degree murder], but it does prove an intent to kill. There simply is no other conclusion one can draw about the mental state of an individual who applies with his hands all of the force that he can bring to bear on the throat of an individual, whom at that point is necessarily unconscious and not responsive. [Emphasis added.]

Defendant correctly asserts that Cohle did not testify that the petechiae on Ann Marie's chest and shoulders were caused by two to three minutes of full force against her throat. The record shows that such exertion for a period between "many seconds" up to "several minutes" would cause the facial petechiae. Cohle did not testify that the chest petechiae were caused by an exertion of pressure to the throat nor did he testify to the period required to cause the chest petechiae. Rather, he testified that such petechiae are caused when the victim was being forcibly pinned down by the chest and arms and fighting against the attacker.

However, we are not left with a definite and firm conviction that the court erred when it found that the cause of the petechiae on the arms and chest was strangulation for two to three minutes to the throat. Circumstantial evidence and the reasonable inferences drawn from that evidence may be sufficient to prove the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). The court properly inferred from the evidence that a similar time frame and similar exertion would be required for the petechiae to appear on a victim's chest and arms. Cohle testified that the amount of time generally required to cause death by strangulation was three to four minutes. The victim would be conscious and would be struggling to relieve the pressure around the neck during the first one to one-and-a-half minutes, after which the victim loses consciousness and ceases to struggle. With continued pressure to the neck, irreversible brain damage occurs at the third minute and shortly afterward, the victim dies. Cohle testified that generally, in sexual strangulation, the victim does not struggle against the pressure but that the amount of force necessary to cause the hemorrhages in Ann Marie's neck would be painful and accordingly, the injuries were more consistent with an assaultive rather than a consensual act. The evidence was sufficient to show beyond a reasonable doubt that the bruising on Ann Marie's arms and abrasions to the back of her elbow indicate that she was being held down and was struggling against the strangulation. The manual strangulation and the traumatic asphyxia were exerted with enough pressure and enough time to cause irreversible brain damage and death beyond the time when Ann Marie lost consciousness and ceased struggling. Viewing this evidence in a light most favorable to the prosecution, sufficient

evidence was presented from which a rationale trier of fact could conclude that the prosecution had proven beyond a reasonable doubt all the essential elements of second-degree murder, including the challenged element, i.e., the element of malice. Accordingly, the trial court did not clearly err in so finding.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Stephen L. Borrello