STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LUCO WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
April 25, 1997

No. 189651
Recorder's Court
LC No. 95-001847-FC

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of armed robbery, MCL 750.529; MSA 28.797, and one count of assault with intent to murder, MCL 750.83; MSA 28.278. Defendant was sentenced to fifteen to twenty-five years' imprisonment for armed robbery conviction and eighteen to thirty years' imprisonment for the assault with intent to murder conviction. Defendant appeals as of right, and we affirm.

Defendant first argues that there was insufficient evidence to support his assault with intent to murder conviction. We disagree. In reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992).

Defendant argues that the prosecution failed to prove that defendant had the specific intent to kill Officer Niarhos. We disagree. The intent to kill may be proven by inference from any facts in evidence. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). In this case, Niarhos testified that after pursuing defendant in his squad car, he chased defendant on foot. While being chased, defendant stopped about seventy-five feet away from Niarhos, turned around, and shot at him three times with a handgun. Niarhos testified that he had no doubt that defendant was the man who had shot at him.

In light of Niarhos' testimony that defendant fired a weapon at him three times during a police chase, we conclude that sufficient evidence existed to infer defendant's specific intent to kill. Indeed,

the evidence of defendant's using a dangerous weapon, along with the fact that defendant was fleeing a crime scene, is sufficient to convince a reasonable trier of fact that defendant had the requisite intent. Accord *People v Hollis*, 140 Mich App 589, 592-593; 366 NW2d 29 (1985); *People v Harris*, 110 Mich App 636, 644-645; 313 NW2d 354 (1981).

Next, defendant argues that the trial court's decision to admit into evidence a statement by a nontestifying codefendant, Tod McNeely, denied defendant his right to due process and a fair trial.[1] We disagree. Neither defendant nor McNeely testified at trial although both men's statements were read into evidence. McNeely's statement was admitted "as to Mr. McNeely only," however. In his statement, McNeely said that a man named "William" or "Dunk" had robbed two women with a gun. In his statement, defendant admitted that he was present during the robbery of two women but denied ever shooting at a police officer. At the close of trial, the trial judge instructed the jury that, "You should consider each Defendant separately. Each is entitled to have his case decided on the evidence and the law that applies to him. If any evidence was limited to one Defendant, you should not consider it as to any other Defendant."

We begin our analysis by noting that the right of confrontation insures that a witness testify under oath at trial, forces the witness to submit to cross-examination, and permits the jury to observe a witness's demeanor when making his statement. *California v Green*, 399 US 149, 158; 90 S Ct 1930; 26 L Ed 2d 489 (1970). Addressing use of a codefendant's unedited statement at a joint trial, the United States Supreme Court held in *Bruton v United States*, 391 US 123, 135-136; 88 S Ct 1620; 20 L Ed 2d 476 (1968), that it was error to allow the powerfully incriminating unredacted statement made by a nontestifying codefendant. Despite the cautionary instruction given by the trial judge that the statement should only be considered in evaluating the codefendant's guilt, the Supreme Court held that the jury's hearing of the facially incriminating statement violated the defendant's right to confront the witness. *Id.*

In this case, we hold that the admission of McNeely's statement was not error under *Bruton*, *supra*, 391 US 135-136. First, we note that defendant was never explicitly mentioned in McNeely's statement. McNeely referred to one of the perpetrators as "Dunk," whom he also knew as "William." However defendant's name is not William, but rather Charles Luco Williams. There was no evidence presented at trial to show that defendant is this "William"/"Dunk" individual. While an inference could be made that because defendant's last name is Williams, he was the "William" person to whom McNeely was referring, an inference could also be made that McNeely was referring to another person altogether. On the whole, because McNeely's statement never directly inculpates defendant, we conclude that McNeely's statement does not impermissibly violate the Confrontation Clause under *Bruton*, *supra*, 391 US 135-136.

Even assuming that the admission of McNeely's statement violated the rule set forth in *Bruton*, we note that a violation of *Bruton* does not automatically require reversal of a defendant's conviction. *People v Banks*, 438 Mich 408, 427; 475 NW2d 769 (1991). If the evidence properly admitted against the defendant is strong and the prejudicial effect of the codefendant's admission is insignificant in comparison, the admission is harmless beyond a reasonable doubt. *Id.* See also *People v Etheridge*,

196 Mich App 43, 51-52; 492 NW2d 490 (1992). Here, even had McNeely's statement not been admitted into evidence, sufficient evidence existed to justify defendant's conviction. Niarhos testified that defendant fled from the vehicle that contained the purported robbers. While Niarhos pursued defendant on foot, defendant repeatedly shot at Niarhos. Niarhos testified that he had no doubt that defendant was the man who had shot at him. Moreover, the items stolen from the victims were recovered in the car from which defendant fled. Overall, in light of the strong evidence supporting defendant's guilt, any error in the admission in McNeely's statement was harmless in nature. Accord *People v Harris*, 201 Mich App 147, 150; 505 NW2d 889 (1993); *People v Meyers*, 124 Mich App 148, 157-159; 335 NW2d 189 (1983).

Finally, defendant argues that his trial counsel was ineffective because he failed to object to the admission of McNeely's statement. Defendant also claims that his trial counsel was ineffective because he failed to request that McNeely's statement be redacted. We disagree. Claims of ineffective assistance of counsel based on defense counsel's failure to object or argue motions that could not have affected defendant's chances for acquittal are without merit. *People v Lyles*, 148 Mich App 583, 596; 385 NW2d 676 (1986). The admission of McNeely's statement did not violate *Bruton* and, in any event, defendant was not prejudiced by the admission of McNeely's statement. Accordingly, trial counsel's failure to object or request a redaction at trial did not impinge upon defendant's chances of acquittal. As such, counsel's inaction did not constitute ineffective assistance of counsel. *Id.*; *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991).

Affirmed.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra

[1] McNeely was tried with defendant in a joint trial. McNeely was charged with one count of armed robbery and convicted of the lesser included offense of unarmed robbery.