

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEANDER K. FOSTER,

Defendant-Appellant.

UNPUBLISHED

July 22, 1997

No. 184162

Recorder's Court

LC No. 94-006481

Before: Markey, P.J., and Jansen and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a), felony-murder, MCL 750.316(1)(b); MSA 28.548(1)(b) armed robbery, MCL 750.529; MCL 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to two nonparolable life terms for the murder convictions, life imprisonment for the robbery conviction and two years' consecutive imprisonment for the felony-firearm conviction. He appeals as of right. We vacate the felony-murder conviction and sentence, but affirm the rest of defendant's convictions and sentences.

First, we agree with defendant that his convictions and sentences for both first-degree premeditated murder and felony-murder arising from the death of one person constitutes a double jeopardy violation. *People v Passeno*, 195 Mich App 91, 95; 489 NW2d 152 (1992). We therefore vacate the felony-murder conviction and sentence. *Id.* at 95-96.

We reject defendant's contention that his confession was inadmissible as the fruit of an illegal arrest. No warrant for defendant's arrest was required because there was probable cause to arrest him. See *People v Richardson*, 204 Mich App 71, 78-79; 514 NW2d 503 (1994). Police knew that defendant had called authorities and given the location of the victim's body. Although defendant informed them that he had not been inside of the location where the body was found, he gave a detailed description of the body, the wounds and the dothing worn by the deceased. All of this evidence provided probable cause to arrest defendant.

The trial court did not abuse its discretion in refusing to grant separate trials for the three codefendants. Defendant has not shown that there was prejudice to his substantial rights because of the multiple-jury procedure. *People v Hana*, 447 Mich 325, 331; 524 NW2d 682 (1994). There is no indication that this procedure restricted defendant in presenting his defense. Further, no evidence was admitted that could not have been admitted in a separate trial. Specifically, Cole's criminal record would have been admissible on the issue of motive even in a separate trial. The fact that his two codefendants testified against him does not warrant a conclusion that severance was mandated. *Id.* at 361.

Next, there was no abuse of discretion in admitting evidence that concerned codefendant Annie Cole, namely her criminal record and other evidence that implicated her in the murder. The evidence defendant claims was inadmissible was relevant and not unduly prejudicial. MRE 402 and MRE 403.

Next, the trial court did not err in refusing to instruct the jury on voluntary manslaughter because there was insufficient evidence to establish this crime. The evidence showed that there was a reasonable time for defendant to "cool off" before acting and that there was no adequate provocation for killing the victim. *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993).

Finally, we reject defendant's challenges to his sentence. The sentence of life imprisonment without parole is not cruel or unusual simply because defendant was a juvenile at the time of the offense. *People v Launsbury*, 217 Mich App 358, 363-365; 551 NW2d 460 (1996). Even combined with the other arguably mitigating circumstances, a contrary result is not warranted. Further, there was no abuse of discretion in sentencing defendant as an adult, rather than as a juvenile, in light of ample evidence that the juvenile system was not appropriate for defendant, that it provided too lenient of a sentence and that there was a risk that defendant would not be rehabilitated by the time he was released.

Defendant's conviction and sentence for felony-murder are vacated, but his other convictions and sentences are affirmed. Affirmed in part and reversed in part.

/s/ Jane E. Markey

/s/ Kathleen Jansen

/s/ Helene N. White