

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEROY WILLIAMSON, JR.,

Defendant-Appellant.

UNPUBLISHED

March 27, 1998

No. 199583

Oakland Circuit Court

LC No. 96-143579

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

PER CURIAM.

Defendant appeals his jury convictions of first-degree felony murder, MCL 750.316; MSA 28.548, and felonious assault, MCL 750.82; MSA 28.277. The trial court sentenced defendant to life imprisonment without the possibility of parole for his felony murder conviction. In addition, defendant was sentenced to two to four years' imprisonment for felonious assault. Defendant now appeals his convictions as of right. We affirm.

On appeal, defendant claims that he was denied a fair trial as the result of prosecutorial misconduct that occurred during the prosecutor's opening and closing arguments. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). Prosecutorial misconduct issues are decided on a case-by-case basis, and the reviewing court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context. *Id.*

First, defendant claims that he was denied a fair trial when the prosecutor misstated the law regarding the elements of felony murder during his opening argument. We disagree that defendant was denied a fair trial. Reading the remarks in context, the prosecutor simply wished to give the jurors a basic understanding of felony murder. The prosecutor specifically stated that the trial court would give them a complete explanation of the elements of the crime and that what the trial judge would tell them would be the law. Furthermore, during defense counsel's opening statement, he told the jury that felony murder required more than a killing during the commission of a larceny, and that "[t]here must be an intent to kill or an intent to do great bodily harm, or an intent to create -- knowingly create a high risk

that death or bodily harm will result.” Also, in their closing arguments, both the prosecutor and defense counsel explained the elements of felony murder, including the requisite intent element. Thereafter, the trial court properly instructed the jurors on each element of felony murder.

We also reject defendant’s argument that the trial court’s instructions failed to cure the prosecutor’s omission because the court later erroneously stated that “the crime of First Degree Felony Murder requires proof of a specific intent,” and, thus, confused the jurors. Felony murder does not require a specific intent to kill, *In re Robinson*, 180 Mich App 454, 462; 447 NW2d 765 (1989); however, larceny is a specific intent crime, *People v Ainsworth*, 197 Mich App 321, 324; 495 NW2d 177 (1992). Reading the court’s statement in context, it is obvious that the court was explaining that defendant had to have a specific intent to commit the larceny, with the commission of larceny being one of the elements of felony murder. Although felony murder is a complex crime, the trial court’s instructions did not mislead the jury regarding its elements. Even if the jury believed that defendant had to have specifically intended to kill Corinne Levitsky, that would have *increased* the prosecutor’s burden of proof.

Defendant did not object to any of the three remaining instances of prosecutorial misconduct claimed on appeal; therefore, appellate review is precluded absent a miscarriage of justice. *People v Rivera*, 216 Mich App 648, 651-652; 550 NW2d 593 (1996). This Court has reviewed the trial record and does not believe that a miscarriage of justice would result if this Court declines review of those claims.

We affirm.

/s/ Jane E. Markey

/s/ Richard A. Bandstra

/s/ Stephen J. Markman