

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE I. BRADSHAW,

Defendant-Appellant.

UNPUBLISHED

December 28, 1999

No. 207935

Recorder's Court

LC No. 97-000984

Before: Cavanagh, P.J., and Holbrook, Jr. and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of felony murder, MCL 750.316; MSA 28.548, two counts of assault with intent to rob while armed, MCL 750.89; MSA 28.284, three counts of armed robbery, MCL 750.520; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to natural life without parole for the felony murder conviction, twenty to forty years' imprisonment for the first count of assault with intent to rob while armed, eight to twenty years' imprisonment for the second count of assault with intent to rob while armed, eight to twenty years' imprisonment for each of the armed robbery convictions, and two years' imprisonment for the felony-firearm conviction. We affirm.

I

Defendant argues that there was insufficient evidence to support his convictions of felony murder and assault with intent to rob while armed.¹ When ascertaining whether sufficient evidence was presented at trial to support a conviction, a court must view the evidence in a 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. Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

The elements of felony murder are (1) the killing of a human being; (2) with the intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result; (3) while committing, attempting to commit, or assisting in

the commission of any of the felonies specifically enumerated in the statute. *Id.* at 759. Robbery is one of the felonies enumerated in MCL 750.316; MSA 28.548. MCL 750.316; MSA 28.548. The elements of assault with intent to rob while armed are (1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed. *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991).

In the instant case, defendant gave a statement to the police indicating that he and his companions, Sean [Ekford] and Richal [Loggins], were driving around in his father's car when they "decided to rob some people to get some money." Richal had a gun. After robbing first two females, then two males, the three men approached an "old man," and Sean pointed the gun at him. After the man was instructed not to move, he turned around and fired a gun at the trio. Sean dropped the gun, and it went off.²

Other evidence presented at trial corroborated defendant's statement. Lougenia Green, Gordon Wilson, and Maurice Hudson all identified defendant as being involved in the respective robberies. Eyewitness Bernard Tyler testified that the decedent was attacked by three black men who were robbing him.³ Adam Berry testified that he inventoried defendant's property at the hospital; among the articles were items later identified as having been taken from Chantel Taylor.

Another witness, Brandon Whitfield, testified that he heard five to six shots, then witnessed three or four people running toward an Intrepid. A few hours after the decedent was shot, Loggins was arrested in an Intrepid that was registered to defendant's father.

Viewing the above evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could find that the essential elements of felony murder and assault with intent to rob while armed were proven beyond a reasonable doubt. See *Carines, supra*. Accordingly, defendant is not entitled to reversal of his convictions.

II

Defendant next contends that the trial court abused its discretion in denying his motions for separate trials on the various counts and severance of his trial from the trials of his codefendants. We disagree.

MCR 6.120(B) provides that the court must sever unrelated offenses for separate trials. Two offenses are related if they are based on (1) the same conduct or (2) a series of connected acts or acts constituting part of a single scheme or plan. We find no abuse of discretion in the trial court's refusal to sever the various counts. The three robberies occurred within a short period of time and were clearly part of a single scheme or plan to, as defendant put it, "rob some people to get some money."

Pursuant to MCL 768.5; MSA 28.1028, and MCR 6.121(D), the decision to sever or join defendants lies within the discretion of the trial court. Severance is mandated only when a defendant clearly, affirmatively, and fully demonstrates that his substantial rights will be prejudiced and that severance is the necessary means of rectifying the potential prejudice. *People v Hana*, 447 Mich 325,

346; 524 NW2d 682 (1994). Severance is required where the defenses are mutually exclusive or irreconcilable. *Id.* at 349.

Defendant asserts he should have had separate trials because antagonistic, mutually exclusive, and irreconcilable defense theories were presented before his jury. We disagree. Defendant requested a separate trial below because he and codefendant Loggins would be implicating each other. Ultimately, the trial court determined that Loggins would be tried separately due to the small size of the courtroom. Defendant and codefendant Ekford were tried together, but before separate juries; accordingly, the risk of prejudice was significantly diminished. See *id.* at 360. Although defendant asserts on appeal that “[t]here was evidence throughout this trial that was applicable to one defendant while not to the other,” he does not specify what this evidence was. Under the circumstances, we find that the trial court did not abuse its discretion in denying defendant’s motion for severance.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

¹ Defendant also argues that his felony murder conviction was against the great weight of the evidence. However, defendant failed to preserve this claim by moving timely for a new trial below. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997).

² On appeal, defendant discounts his statement to the police because it was merely initialed and not signed. However, whether defendant’s confession was genuine was an issue to be determined by the trier of fact.

³ In his brief on appeal, defendant misrepresents Tyler’s testimony. Contrary to defendant’s assertion, no one testified at trial that Tyler identified Hudson and Wilson as two of the youths who attacked the decedent. In fact, Tyler specifically testified that Hudson and Wilson were not among the trio that robbed the decedent. Moreover, Tyler essentially stated that he did not get a good look at two of the perpetrators because they “never looked to the window” from which he was watching. Consequently, the fact that Tyler could not identify defendant as one of the participants does not definitively establish that defendant was not involved.