

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD LEE BONNEY,

Defendant-Appellant.

UNPUBLISHED

August 28, 2001

No. 224531

Oakland Circuit Court

LC No. 99-166086-FC

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of armed robbery, MCL 750.529, for which he was sentenced to twelve to thirty years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court erred in admitting coconspirator's statements absent independent evidence that he was involved in the conspiracy. We review the trial court's ruling regarding the admission of evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). Although the claim of error has been preserved, any error "is not a ground for reversal unless 'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

A statement is not hearsay if it is offered against a party and is a statement by a coconspirator of a party during the course and in the furtherance of the conspiracy on independent proof of the conspiracy. MRE 801(d)(2)(E). The existence of the conspiracy must be proved by a preponderance of the evidence by other evidence independent of the statement. *People v Vega*, 413 Mich 773, 780, 782; 321 NW2d 675 (1982). That evidence must show that the defendant was involved in the conspiracy. *Id.* at 781-782; *People v Champion*, 97 Mich App 25, 29; 293 NW2d 715 (1980), rev'd on other grounds 411 Mich 468 (1981).

Although the trial court erred in ruling that evidence of the conspiracy alone was sufficient to admit the coconspirator's statements and defendant's involvement need not be shown, the error was harmless. The order in which proofs are presented is unimportant and thus the trial court may admit a coconspirator's statements contingent upon later production of the independent evidence required under MRE 801(d)(2)(E). *People v Till*, 115 Mich App 788, 794;

323 NW2d 14 (1982), lv den 417 Mich 929 (1983); *People v Hall*, 102 Mich App 483, 490; 301 NW2d 903 (1980). Independent of defendant Salter's testimony as to statements made by defendants Irving and/or Rush, the evidence showed that defendant participated in discussions in which the robbery was planned and said he could not carry out the robbery himself because the victim was likely to recognize him. Further, defendant warned Salter against accompanying the victim to his truck, and then stood and watched Irving and Rush attack the victim and did nothing until they had taken the victim's property. Such evidence established an independent basis for the conspiracy and defendant's involvement therein and thus any evidence regarding Irving's and/or Rush's statements was properly admitted. *Till, supra* at 795. This Court will not reverse where the trial court reaches the right result for the wrong reason. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin