

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

RECHO BURNS,

Defendant-Appellant.

UNPUBLISHED

October 25, 2002

No. 231399

Wayne Circuit Court

LC No. 00-001758

Before: Meter, P.J., and Saad and R.B. Burns*, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of felony murder, MCL 750.316(1)(b), for which he was sentenced to life in prison. We affirm.

Defendant first argues that reversal is warranted because the trial court provided erroneous instructions on felony murder to the jury. Defendant failed to object to the instructions given. This Court reviews unpreserved claims of instructional error for plain error affecting the defendant's substantial rights. *People v Carines*, 460 Mich 750, 761; 597 NW2d 130 (1999).

Here, defendant concedes that the court initially gave proper felony murder instructions, but asserts that the court was only addressing the codefendant's jury at that time. He asserts that when the court addressed his jury it gave erroneous instructions in that it instructed that an intent to rob would suffice for the intent necessary to convict defendant of felony murder.

First, we reject defendant's claim that the court was only addressing the codefendant's jury when it gave the proper instructions. Defendant's jury was present when the court read the these instructions and the court informed defendant's jury that all the instructions applied to his case as well. However, we agree that the court later incorrectly stated that an intent to rob would suffice for the intent necessary to convict defendant of felony murder. *People v Aaron*, 409 Mich 672; 299 NW2d 304 (1997). Therefore, the court gave both correct and incorrect instructions. Defendant, relying on *People v Kanar*, 314 Mich 242; 22 NW2d 359 (1946), argues that where the court gives conflicting instructions, one erroneous and one correct, there is a presumption that the jury followed the erroneous instruction. However, *Kanar* also holds that where the error is corrected or otherwise cured by further specific statements by the court, there is no prejudice. *Kanar, supra*, 314 Mich at 253.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

In this case, after the court gave the instructions, the jury retired for deliberations. The jury then requested reinstruction on felony murder. At that time the court gave correct instructions on felony murder. Therefore, the court's error was cured when the court reinstructed the jury. We reject defendant's claim that the court erroneously reinstructed on second-degree murder instead of felony murder. Instead of giving detailed armed robbery instructions, the court merely referenced the fact that it had previously instructed on armed robbery. Since the court had previously read complete armed robbery instructions to both juries, there was no error. Accordingly, we conclude that there was no plain error affecting defendant's substantial rights.

Defendant next argues that the prosecution did not present sufficient evidence to support his conviction. We disagree. In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact's conclusion that a defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In reviewing 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 the essential elements of the crime proven beyond a reasonable doubt. *Id.*

Here, the circumstantial evidence is sufficient to allow rational jurors to find that defendant either committed the robbery and shooting or aided and abetted in the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). The victim, a pizza deliveryman, was working on the night of the shooting. He had not turned in any money that night and had only 1.83 on his person, yet delivery tickets totaling \$174 were found in the car. Moreover, defendant was seen leaving the car where the victim was shot, shortly after the shots were fired. Finally, defendant had threatened to kill the victim. All of this evidence is sufficient to convince rational jurors beyond a reasonable doubt that defendant robbed and killed the victim, or aided and abetted in the crime.

Affirmed.

/s/ Henry William Saad

/s/ Robert B. Burns