STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 6, 2002
v	No. 218640 Saginaw Circuit Court
BILLY RAY MARTIN, Defendant-Appellant.	LC No. 98-015546-FC ON REMAND

Before: Holbrook, Jr., P.J., and Hood and Saad, JJ.

PER CURIAM.

This case returns to us on remand from our Supreme Court. Defendant was convicted by a jury of armed robbery, MCL 750.529, first-degree home invasion, MCL 750.110a(2), assault with intent to do great bodily harm less than murder, MCL 750.84, unlawfully driving away an automobile, MCL 750.413, and possession of a firearm during the commission of a felony (hereinafter felony-firearm), MCL 750.227b. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to four concurrent terms of life imprisonment for his convictions of armed robbery, first-degree home invasion, assault with intent to do great bodily harm less than murder, and unlawfully driving away an automobile. Defendant also received a consecutive two-year term of imprisonment for the felony-firearm conviction.

Defendant's sole issue on appeal is that the trial court erred in refusing to give a requested instruction on receiving or concealing stolen property, MCL 75.535, as a lesser included offense of first-degree home invasion. In our prior opinion, we held that the trial court had erred and remanded for a new trial. Plaintiff's delayed application for leave to appeal was held in abeyance by our Supreme Court pending the decisions in *People v Reese*, 466 Mich 440; 647 NW2d 498 (2002), *People v Silver*, 466 Mich 386; 646 NW2d 150 (2002), and *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002). Once these opinions had been issued, the Supreme Court again considered plaintiff's application. In lieu of granting leave to appeal, the Supreme Court vacated the judgment of this Court and remanded the case for reconsideration in light of *Reese, supra, Silver, supra,* and *Cornell, supra.* We affirm.

The trial court concluded that it was not required to give the requested instruction because receiving and concealing stolen property is not a cognate lesser included offense of first-degree home invasion. On this point, the trial court erred; receiving and concealing stolen property is a cognate lesser included offense of first-degree home invasion. *People v Kamin*, 405 Mich 482, 496; 275 NW2d 277 (1979), overruled in part on other grounds by *People v Beach*,

429 Mich 450; 418 NW2d 861 (1988), as recognized in *People v Hendricks*, 446 Mich 435, 448, n 18; 521 NW2d 546 (1994). However, the trial court did not err in refusing to instruct on the offense of receiving and concealing stolen property. The *Cornell* Court concluded that MCL 768.32 only permits a trial court to instruct on necessarily included offense, not cognate offenses. *Cornell*, *supra* at 354-355. "[W]e will not reverse the trial court's decision where it reached the right result for a wrong reason." *People v Mayhew*, 236 Mich App 112, 118, n 2; 600 NW2d 370 (1999).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Harold Hood

I concur in result only.

/s/ Henry William Saad