

Court of Appeals, State of Michigan

ORDER

People of MI v Janard Dante Hackworth

Docket No. 286988

LC No. 07-020622-FC

Donald S. Owens
Presiding Judge

Peter D. O'Connell

Michael J. Talbot
Judges

The Court orders that the June 8, 2010 opinion is hereby VACATED, and a new opinion is attached. Our prior opinion vacated the defendant's armed robbery conviction on the basis that it served as the predicate felony for the first-degree felony murder conviction and, therefore, violated the Double Jeopardy Clause. This legal proposition was overruled by our Supreme Court in *People v Ream*, 481 Mich 223 (2008) and therefore on our own motion we are compelled to issue a corrected opinion.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 17 2010
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JANARD DANTE HACKWORTH,

Defendant-Appellant.

UNPUBLISHED

June 17, 2010

No. 286988

Genesee Circuit Court

LC No. 07-020622-FC

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of two counts of first-degree felony murder, MCL 750.316(1)(b), one count of armed robbery, MCL 750.529, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was found not guilty of two counts of first-degree premeditated murder, MCL 750.316(1)(a). The trial court sentenced defendant to serve concurrent life sentences for each murder conviction, a concurrent 225 months to 500 months' imprisonment for armed robbery, and a consecutive two years for felony-firearm. We affirm.

Defendant argues that his felony murder convictions are not supported by sufficient evidence. We review sufficiency claims de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), taking all of the evidence presented at trial, resolving all questions of weight and credibility in favor of the prosecution, and "determin[ing] whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, 751 (1992); see also *Jackson v Virginia*, 443 US 307, 319; 99 S Ct 2781, 2789 (1979) ("Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution.") (emphasis in original).

Defendant's sufficiency challenge is focused primarily on the testimony of another man convicted for his participation in the murders. Defendant asserts that the witness, who pleaded guilty, had a motivation to lie. This raises a question as to the credibility of the accomplice's testimony. Appellate courts must defer to a jury's superior ability to assess the credibility of the witnesses who appear before it. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

Defendant's accomplice testified that defendant planned to rob one of the victims and that defendant was armed with a gun. He described in detail how defendant shot both victims in the head, and how defendant stole money from one victim's pocket before fleeing the scene.¹ Together with medical testimony that one victim died from a gunshot wound to the head and that the other victim died of gunshot wounds to his neck and face, all of the elements of felony murder were established. MCL 750.356(1)(a); MCL 750.530(1).²

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot

¹ Marijuana brought to the encounter by the victims was also taken.

² Some of defendant's arguments focus on evidence that the prosecution did *not* present at trial, e.g., fingerprints, DNA, and a confession. This Court is not charged with determining what evidence might have been presented, but with considering if the evidence actually adduced, when viewed in the appropriate light, was sufficient to uphold the challenged convictions.