

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM MICHAEL SCOTT,	§
	§
Defendant Below,	§
Appellant,	§ No. 232, 1999
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STATE OF DELAWARE,	§ for Kent County
	§ Cr.A. Nos. IK98-05-0510,
Plaintiff Below,	§ 0511, IK98-07-0092 and 0096
Appellee.	§

Submitted: March 20, 2001

Decided: March 28, 2001

Before WALSH, BERGER, and STEELE, Justices.

O R D E R

This 28th day of March 2001, upon consideration of the briefs of the parties and oral argument, it appears to the Court as follows:

(1) The appellant, William Michael Scott (“Scott”), was convicted in the Superior Court following a jury trial on charges of first degree murder and related robbery and burglary offenses. Scott had been indicted jointly with a co-defendant, Justine L. Burrell. Burrell was tried separately and also convicted. Burrell’s conviction was affirmed on appeal. *See Burrell v. State*, Del. Supr., 766 A.2d 19 (2000).

(2) As noted in *Burrell*, Scott was charged with planning the murder of Dolly Fenwick that occurred when Burrell robbed the Fenwick mobile home in Pinewood Acres in an effort to secure a quantity of cash and drugs that had been stored in the Fenwick home. The theory of the State's case was that Scott planned the robbery and provided the gun and directions to Burrell.

(3) In this appeal, Scott asserts four grounds of error: (i) that his post-arrest statement to the police was taken in violation of his *Miranda* rights; (ii) the Superior Court improperly admitted hearsay statements made by police officers in connection with Scott's tape recorded statements; (iii) the trial court permitted evidence of prior crimes involving Scott's marijuana possession; (iv) the trial court erred in permitting the State to amend the indictment after presentation of its evidence to change the felony murder count from one involving intentional conduct to reckless conduct. We conclude that the Superior Court did not err in its various rulings and that the conviction should be affirmed.

(4) With respect to Scott's *Miranda* claim, we conclude that the Superior Court correctly denied Scott's motion to suppress his post-arrest statements to the police. The court's analysis of applicable law is set forth in

the trial court's decision of March 12, 1999. *See State v. Burrell and Scott*, Del. Super., ID Nos. 9805012046, 9805012033, 1999 WL 167770, Carpenter, J. (March 12, 1999) (OPINION). We agree with the Superior Court that Scott, not the interrogating officers, reinitiated conversation about the alleged crimes after Scott had indicated his desire to speak to an attorney. We further conclude that, under the circumstances, the police were not required to re-Mirandize Scott and the Superior Court correctly applied the pertinent factors set forth in *DeJesus v. State*, Del. Supr., 655 A.2d 1180, 1195 (1995).

(5) We find no merit to the claim that the Superior Court improperly admitted hearsay evidence contained in the questions used by the interrogating police officers. The use of such hearsay evidence is an appropriate investigative technique and the statements were not admitted for their truth as the Superior Court so instructed the jury. We also note that certain of the hearsay statements attributed to other witnesses were in fact testified to by those witnesses at trial.

(6) Scott's third claim of error must also be rejected. The evidence of Scott's possession of a gun and marijuana were clearly relevant to the

question of his motivation in planning the robbery which led to Fenwick's murder. The Superior Court properly applied the *Getz* analysis and the trial court offered to give a cautionary instruction. *See Getz v. State*, Del. Supr., 538 A.2d 726, 734 (1988). The record reflects that Scott's trial counsel did not take advantage of the court's offer and thus any alleged incompleteness of the *Getz* format cannot now be asserted as error. *See Roberts v. State*, Del. Supr., No. 327, 1997, Hartnett, J. (May 1, 1998) (ORDER).

(7) Finally, we find no merit to the claim that the court improperly permitted an amendment to the indictment after presentation of the evidence. As the Superior Court noted, a charge of felony murder does not require an intentional state of mind and, indeed, the felony murder statute does not include intentional conduct as the necessary state of mind. *See 11 Del. C. § 636(a)(2)*. Either reckless or criminal negligence is sufficient to sustain a charge of felony murder and the amended indictment alleged recklessness as the state of mind. There is no indication that the defendant was in any way prejudiced by the change in the original indictment nor was he misled by the facts presented at trial. The Superior Court correctly permitted the State to correct what was essentially a drafting error.

In sum, we conclude that there is no merit to any of the claims of error asserted in this case and the conviction should be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice