

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAVANTE JOHNSON,

Defendant-Appellant.

UNPUBLISHED

July 9, 1996

No. 175419

LC No. 93-006838

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Following a consolidated jury trial in which defendant was tried along with codefendants Kymon Butler and Roderick Morris, defendant was convicted of first-degree felony murder, MCL 750.316; MSA 28.548, second-degree murder, MCL 750.317; MSA 28.549, assault with intent to murder, MCL 750.83; MSA 28.278, and armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced to concurrent sentences of natural life without parole for first-degree felony murder and life for each of the remaining counts. We affirm in part and reverse in part.

This case arises from an armed robbery committed by defendant and four accomplices. Defendant's jury reached a verdict on March 8, 1994. At that time, the jury was polled and dispersed. The verdict was not announced, however, until March 10, 1994.

On appeal, defendant raises several issues relative to the polling procedure employed by the trial court. Because defendant did not object to the trial court's method of polling the jury, these issues are waived absent proof of manifest injustice. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). We find that manifest injustice has not been shown.

First, defendant argues that his conviction should be reversed because the jury was polled, in part, by the clerk. We disagree that reversal is warranted. The court rules do not mandate that polling is to be conducted by the trial judge. Where polling is necessary, MCR 6.420 requires that the court "have the jury polled." Regardless, defendant has not demonstrated that he was prejudiced by the fact

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

that the clerk participated in the polling process. A conviction will not be reversed unless the error was prejudicial. MCR 2.613(A); MCL 769.26; MSA 28.1096.

Defendant also contends that it was error for the jury not to have been shown the verdict form prior to being polled. Although the procedure employed by the trial judge did vary from the usual method of polling, we find that it was sufficient to guarantee the accuracy of the verdict and ensure that the jury reached a unanimous decision.

While not raised as an issue on appeal, defendant's convictions of first-degree felony murder and second-degree murder violated double jeopardy, as both convictions were based on the killing of the same individual. *People v Passeno*, 195 Mich App 91, 96; 489 NW2d 152 (1992). Because a double jeopardy claim was asserted by codefendant Butler in his appeal, we give defendant the benefit of the issue and vacate his conviction and sentence for second-degree murder. See *People v Hayden*, 132 Mich App 273, 288-289 n 8; 348 NW2d 672 (1994).

Affirmed in part and reversed in part.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin