STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN ALLEN HANSON,

Defendant-Appellant.

UNPUBLISHED
June 9, 1998

No. 189346
Recorder's Court
LC Nos. 94-001609 FH
94-010332 FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES DEAN FUSON,

Defendant-Appellant.

No. 189365
Recorder's Court
LC Nos. 94-001609 FC
94-010332 FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RETTA RENE HUGGINS,

Defendant-Appellant.

No. 189366
Recorder's Court
LC Nos. 94-001609 FC
94-010332 FC

Before: Holbrook, Jr., P.J. and Gribbs and R.J. Danhof*, JJ.

PER CURIAM.

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

In these consolidated cases, defendants appeal as of right their convictions, by separate juries, arising from the slaying of Wallace and Delores Bach, the grandparents of defendant James Dean Fuson, following a breaking and entering of the Bachs' home. In Docket No. 189346, defendant Steven Allen Hanson was convicted of two counts of voluntary manslaughter, MCL 750.321; MSA 28.553, and one count of breaking and entering. Hanson was sentenced to concurrent terms of ten to fifteen years. In Docket No. 189365, defendant Fuson was convicted of two counts of felony murder, MCL 750.316; MSA 28.548, and one count of breaking and entering. Fuson was sentenced to concurrent life sentences without the possibility of parole and ten to fifteen years. In Docket No. 189366, defendant Retta Rene Huggins was convicted of felony murder, accessory after the fact, MCL 750.505; MSA 28.773; and entering without breaking, MCL 750.111; MSA 28.306. Huggins was sentenced to concurrent terms of life without parole and three to five years. We affirm.

No. 189346

Defendant Hanson argues that there was insufficient evidence to convict him of breaking and entering and voluntary manslaughter. We disagree.

When reviewing a claim of insufficient evidence at a jury trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a 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, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

First, there was sufficient evidence that defendant committed a breaking and entering. While defendant argues that there was no evidence directly establishing that he had the specific intent to commit a larceny at the time of the breaking and entering, *People v Pohl*, 202 Mich App 203, 205-206; 507 NW2d 819 (1993); *People v Frost*, 148 Mich App 773, 776-777; 384 NW2d 790 (1985), his specific intent to commit larceny can be inferred from all the facts and circumstances under an aiding and abetting theory. See *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995).

Here the evidence shows that after codefendant Fuson's phone conversation with Szucs asking him about how evil he was and whether he would help Fuson and defendant in their plan to break into the Bachs' house on Friday night, defendant left the house to meet Fuson. Although defendant and Fuson did not break into the Bachs' house that Friday night, it is reasonable to infer that defendant formed the specific intent to assist Fuson in committing larceny two days before they actually broke into the Bachs' home early the following Monday morning. The fact that defendant and Fuson took far more from the house than Fuson's belongings and acted in concert to take property belonging to the Bachs also constitutes evidence that defendant had the specific intent to commit larceny at the time of the breaking and entering. While there was no testimony that defendant personally took property belonging to the Bachs, he was nonetheless an integral participant in the breaking and entering and the subsequent slayings.

There was also sufficient evidence that defendant committed voluntary manslaughter. A witness testified that defendant told him that after breaking into the Bachs' home, defendant tackled Mrs. Bach

and fought with her while codefendant Fuson had a fist fight with Mr. Bach. According to the witness, defendant stated that Fuson told defendant "to cut the grandmother's throat." Although defendant did not tell the witness whether he cut Mrs. Bach's throat, it can be inferred that defendant was holding a knife to her throat and that he used the knife to slit her throat. Thus, the evidence established that defendant had the intent to either kill or commit serious bodily harm.

Next, defendant claims that the trial court erred in admitting testimony relating to statements made by Fuson, because there was insufficient independent proof of a conspiracy to admit the testimony under MRE 801(d)(2)(E). Because defendant did not object to the testimony, this issue is not preserved for appellate review. MRE 103(a)(1), *People v Grant*, 445 Mich 535, 545, 553; 520 NW2d 123 (1994). Regardless, we conclude that there was sufficient independent proof of a conspiracy to admit the testimony under MRE 801(d)(2)(E). See *People v Hall*, 102 Mich App 483, 490; 301 NW2d 903 (1980).

The trial court also did not err in refusing to instruct on the lesser included offense of accessory after the fact because it was not supported by the evidence. *People v Pouncey*, 437 Mich 382, 387; 471 NW2d 346 (1991); *People v Heflin*, 434 Mich 482, 495; 456 NW2d 10 (1990); *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). There was overwhelming evidence that defendant was an active participant in the slayings, and not merely "one who, with knowledge of the other's guilt, renders assistance to a felon in the effort to hinder his detection, arrest, trial or punishment." *People v Lucas*, 402 Mich 302, 304; 262 NW2d 662 (1978); *People v Cunningham*, 201 Mich App 720, 722-723; 506 NW2d 624 (1993).

Finally, remand for resentencing is not required. The trial court responded adequately to defendant's challenge to information in the presentence report regarding his alleged membership in two gangs, one of which engaged in Satanic worship. *People v Hoyt*, 185 Mich App 531, 533; 462 NW2d 793 (1990); MCL 771.14(5); MSA 28.1144(5); MCR 6.425(D)(3). The contested information was part of defendant's juvenile record and the trial court noted that defendant disputed its accuracy. Further, it is clear from the trial court's statements at sentencing that the challenged information did not affect its sentencing decision.

No. 189365

Because defendant Fuson failed to object to the claimed errors regarding the jury instructions on "state of mind" and larceny, appellate review of these issues is waived because relief is not necessary to avoid manifest injustice. MCL 768.29; MSA 28.1052; *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995).

Defendant argues that double jeopardy precludes his conviction for two counts of first degree premeditated murder, two counts of felony murder and one count of breaking and entering. We note that, although the jury wished to convict defendant of all counts, the Judgment of Sentence reflects that defendant was convicted of two counts of felony murder and one count of breaking and entering. We remand to vacate defendant's breaking and entering conviction and to correct the Judgment of Sentence to reflect that he was convicted of two counts of first degree murder, supported by two theories:

premeditated murder and felony murder. *People v Bigelow*, ___ Mich App ___; ___ NW2d ___ (1998) (#188900, issued 4-10-98).

Regarding the felony-murder theory, there was sufficient evidence to establish that defendant was guilty of breaking and entering because he did not have permission to enter his grandparents' home. *People v Ferguson*, 208 Mich App 508, 511; 528 NW2d 825 (1995); *People v D'Angelo*, 208 Mich App 417, 419; 528 NW2d 771 (1995). Although defendant had lived at his grandparents' home since he was a small child, the evidence showed that he no longer lived with them. Nor did the evidence indicate that defendant had an honest belief that he had a right to enter his grandparents' home, *People v Eggleston*, 186 Mich 510, 515; 152 NW 944 (1915), or that he obtained their permission to enter their home.

There was also sufficient evidence to infer premeditation and deliberation. There was evidence that defendant did not like his grandparents and left their home following a dispute. Testimony indicated that two days before the murders defendant wanted Szucs to go with him and a codefendant to break into the Bachs' home. In his statement to the police, defendant admitted that he and codefendant Hanson went to the Bachs' home that Friday night with the intention of breaking into their home, but "lost our nerve" after cutting the phone wires to the house. Further, on the Sunday night before the slayings, defendant called Szucs to ask him if he wanted to go to Florida with him because "the cops would be looking for him" after he killed his grandmother. The evidence also showed that both victims suffered blunt force and slicing injuries and numerous abrasions. Further, defendant admitted that he killed his grandparents, cutting his grandmother's throat and assisting codefendant Hanson in cutting his grandfather's throat by placing his hand over Hanson's hand to make the first cut. As for Mrs. Bach, the evidence indicated that he planned to kill her. In killing Mr. Bach, defendant acknowledged that he had to kill him because Mr. Bach was a witness. Moreover, after the killings and before fleeing with his codefendants to North Carolina where they were apprehended, defendant admitted to Kimberly Huggins, the sister of codefendant Huggins, and also Duford that he killed his grandparents, and was laughing when codefendant Hanson told Duford about what had happened.

No. 189366

Defendant Huggins argues that the trial court erred in finding that her statement to the police was voluntary. We disagree.

When reviewing the trial court's findings, this Court must examine the entire record and make an independent determination on the issue of voluntariness of the confession. This Court reviews the trial court's determination of voluntariness for clear error, "giv[ing] deference to the trial court's findings, especially where the demeanor of the witnesses is important, as where credibility is a major factor." *People v Cipriano*, 431 Mich 315, 339; 429 NW2d 781 (1988). If, after such a review, this Court does not possess a definite and firm conviction that the trial court made a mistake, this Court will affirm the court's ruling. *People v Robinson*, 386 Mich 551, 557; 194 NW2d 709 (1972).

In this case, the trial court did not err in concluding, under the totality of the circumstances test, *Cipriano*, *supra* at 333-335, that the preponderance of the evidence established that defendant voluntarily gave the police a statement when she was in police custody in North Carolina. Defendant

was competent to waive her *Miranda* rights, was not deprived of food or sleep, was not drugged or physically coerced or abused, and had been in custody for about twelve hours when the police began to interrogate her. Further, defendant agreed to sign the *Miranda* rights form and give the police a statement after about two hours of interrogation, after being informed that the police had statements from three other people. Although defendant argues that her statement was not given voluntarily because the police used "coercion" and made "promises" to her, the police detective who questioned her denied that he used any coercion or tricks, or that he made any promises to defendant. According deference to the trial court's findings, especially since credibility was a major factor, we conclude that the court's determination of voluntariness was not clearly erroneous.

Next, there was sufficient evidence establishing that defendant, as an aider and abettor, had the intention to cause great bodily harm or had wantonly and willfully disregarded the likelihood of the natural tendency of her behavior to cause great bodily harm. See *People v Turner*, 213 Mich App 558, 566-567; 540 NW2d 728 (1995). Specifically, the testimony established that when Hanson jumped on Mr. Bach, defendant hit Mr. Bach about two or three times on the head with a teakettle, and then watched while Hanson cut Mr. Bach's throat with a butcher's knife. There was evidence that evidence that defendant hit Mr. Bach over the head with sufficient force to leave bloodstains on the teakettle; the police found the bloodstained teakettle on a coffee table near Mr. Bach's body. The coroner testified that the cause of Mr. Bach's death was blunt force injuries and slicing wounds to the head and neck. Even if the act of hitting the decedent with a teakettle would not have caused his death, this evidence, viewed in a light most favorable to the prosecution, was sufficient to establish the requisite intent.

Defendant Fuson's conviction for breaking and entering is vacated and we remand for modification of his Judgment of Sentence to reflect that he was convicted of two counts of first degree murder supported by two theories. The remaining convictions and sentences of all the defendants are affirmed. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Roman S. Gribbs
/s/ Robert J. Danhof