

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW BELL,

Defendant-Appellant.

UNPUBLISHED

May 15, 2003

No. 239518

Wayne Circuit Court

LC No. 99-009228-02

Before: Wilder, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316, first-degree felony murder, MCL 750.316, two counts of armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.157a and MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b, arising from the robbery and shooting deaths of Chanel Roberts and Amanda Hodges.¹ Defendant appeals as of right. We vacate defendant's conviction and sentence for the armed robbery of Amanda Hodges, but affirm in all other respects.

Defendant first argues that the trial court abused its discretion during jury voir dire by refusing to ask written questions submitted by defense counsel. We disagree.

A trial court is given considerable discretion in both the scope and conduct of voir dire. *People v Tyburski*, 445 Mich 606, 619; 518 NW2d 441 (1994). We review a trial court's rulings concerning voir dire for an abuse of discretion. *Id.*; MCR 6.412(C)(1). This Court must determine whether the trial court conducted a voir dire "sufficiently probing . . . to uncover potential juror bias." *Id.* at 609. In this case, the trial court sufficiently addressed defendant's concerns during the jury selection process by discussing the prosecutor's burden of proof and how the venire members should evaluate the credibility of witness testimony. An abuse of discretion has not been shown.

¹ He was sentenced to the mandatory two-year term of imprisonment for the felony firearm conviction, to be served consecutive to concurrent terms of life imprisonment without parole for the first-degree premeditated murder and felony murder convictions, and life imprisonment for each of the remaining convictions of armed robbery and conspiracy to commit armed robbery.

Next, we agree with defendant that, because he was convicted of the felony murder of Amanda Hodges, his associated conviction and sentence for the armed robbery of Hodges must be vacated. As the parties recognize, dual convictions and sentences for both felony murder and the underlying felony are violative of the Double Jeopardy Clause. US Const, Am V; Const 1963, art 1, § 15; *People v Coomer*, 245 Mich App 206; 627 NW2d 612 (2001). Although the predicate felony for the felony murder conviction was larceny, because larceny is a necessarily included lesser offense of armed robbery, and because the charged larceny and robbery offenses were based on a single course of conduct, we regard them as the same offense for double jeopardy purposes. Accordingly, we vacate defendant's conviction and sentence for the armed robbery of Amanda Hodges

Finally, we reject defendant's claim that the evidence was insufficient to support his convictions for armed robbery and conspiracy to commit armed robbery. In considering this issue, we must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the charged crimes were proven beyond a reasonable doubt. *Jackson v Virginia*, 443 US 307, 319; 99 S Ct 2781; 61 L Ed 2d 560 (1979); *People v Jolly*, 442 Mich 458, 465; 502 NW2d 177 (1993); *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of the crime. *Jolly*, *supra* at 466.

To establish armed robbery, the prosecution must show (1) an assault; (2) a felonious taking of property from the victim's presence or person; (3) while the defendant is armed with a dangerous weapon. MCL 750.529; *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995).

In *Turner*, *supra* 569-570, this Court set forth the elements of conspiracy as follows:

"A conspiracy is a partnership in criminal purposes. . . . The gist of the offense of conspiracy lies in the unlawful agreement between two or more persons. . . . Establishing a conspiracy requires evidence of specific intent to combine with others to accomplish an illegal objective. [Quotations omitted.]" [Quoting *People v Blume*, 443 Mich 476, 481, 505 NW2d 843 (1993).]

To prove the intent to combine with others for an unlawful purpose, it must be shown that the intent, including knowledge, was possessed by more than one person. *Id.* at 482. A defendant may become a member of an existing conspiracy if he cooperates knowingly to further the object of the conspiracy, although mere knowledge that someone proposes unlawful action is alone not enough. *Id.* at 483-484. For intent to exist, the defendant must know of the conspiracy, know of the objective of the conspiracy, and intend to participate cooperatively to further that objective. *Id.* at 485.

The evidence in this case showed that defendant was present when Troy King made a telephone call in which he told the caller that he needed a rental car in order to "hit a lick," i.e., rob someone. Defendant did not act surprised by King's remark. Defendant was also present at the house when King returned with the two victims. Shortly after their arrival, defendant shot each victim to death and took their purses, which contained a substantial amount of money. He

gave \$800 to King and instructed him to dispose of the purses. Viewed in a light most favorable to the prosecution, the evidence and reasonable inferences arising therefrom were sufficient to support defendant's convictions of armed robbery and conspiracy to commit armed robbery.

Affirmed in part and vacated in part.

/s/ Kurtis T. Wilder

/s/ E. Thomas Fitzgerald

/s/ Brian K. Zahra