STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 16, 2004
v MAURICE FERRELL, Defendant-Appellant.	No. 249419 Wayne Circuit Court LC No. 02-002131-01

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v CHRISTOPHER EDDINGS, Defendant-Appellant.	No. 249421 Wayne Circuit Court LC No. 02-002131-02

Before: Cavanagh, P.J., and Kelly and H. Hood*, JJ.

PER CURIAM.

In this consolidated appeal, defendant, Maurice Ferrell, appeals as of right his jury convictions of felony murder, MCL 750.316, second-degree murder, MCL 750.317,[1] assault with intent to rob while armed, MCL 750.89, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. Defendant, Christopher Eddings, appeals as of right his jury convictions of felony murder, MCL 750.316, and assault with intent to rob while armed, MCL 750.89. We affirm.

[1] At the sentencing hearing, defendant Ferrell's motion to dismiss his conviction of second-degree murder was granted in light of his conviction of felony murder.

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

On appeal, defendant Ferrell first argues that there was insufficient evidence to support his felony murder conviction because a rational jury could not find the elements of assault with intent to rob while armed proved beyond a reasonable doubt. However, the charged predicate felony of the felony murder charge was larceny or attempted larceny, not assault with intent to rob. And, after review of the evidence in the light most favorable to the prosecution, we conclude that the evidence was sufficient to support the conviction. See *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002).

A felony murder conviction requires the prosecutor to prove: (1) the killing of a human being, (2) with the intent to kill, intent to do great bodily harm, or intent to create a very high risk of death or great bodily harm while having knowledge that death or great bodily harm was the likely result, (3) while committing, attempting to commit, or aiding in the commission of any of the felonies delineated in MCL 750.316(1)(b), which includes larceny or attempted larceny. *People v Hutner*, 209 Mich App 280, 282-283; 530 NW2d 174 (1995). Larceny is the actual or constructive taking of another person's goods or property, carrying them away, with a felonious intent, and without the consent and against the will of the owner. *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999), citing *People v Anderson*, 7 Mich App 513, 516; 152 NW2d 40 (1967). Attempt to commit a crime requires proof of an attempt to commit a crime and any act beyond mere preparation in furtherance of the commission of the intended offense. MCL 750.92; *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001).

Here, the evidence presented included both preliminary examination testimony, which was admitted pursuant to MRE 801(d)(1)(A), and eyewitness trial testimony. In particular, Vincent Turner testified at the preliminary exam that he heard defendant Eddings say on the day before the murder that he wanted to "hit a lick," or rob the victim, David Young. See *People v Chavies*, 234 Mich App 274, 281-282; 593 NW2d 655 (1999). At trial, Atron Wilson and Royce Mackey testified to seeing defendant Ferrell enter a vehicle with defendant Eddings and Yolanda Gipson near the location of the shooting on the night of the shooting. Gipson testified at the preliminary exam that she drove defendants to Kentfield, the street where Young resided, and observed a man shoveling snow. See *id*. She parked her car a few houses down from Young's house, and defendants exited her car. She then heard gunshots and saw defendants jogging back toward her car. As defendants entered the vehicle, Gipson saw defendant Ferrell place something in his coat. Gipson drove away.

At trial, Young's neighbor, Brittany Jones, testified that, on the evening of the murder, she looked through a window of her house and observed Young shoveling snow in his driveway. Shortly thereafter, Jones saw defendant Ferrell pointing a gun at Young. She testified that Young had his hands in the air, was backing away and told defendant Ferrell to put down the gun. Jones also testified that she told her mother that defendant Ferrell was "robbing" Young in his backyard and told the emergency telephone operator that her neighbor was being "robbed." Jones testified that she heard gunshots. She also testified that she had no doubt that defendant Ferrell was the gunman because she had seen his face. Another of Young's neighbors, Doretha Burks, testified at trial that, while she was outside shoveling snow, she saw a gunman holding a gun to Young's head. She also testified that she saw Young with his hands in the air backing away from the gunman and later heard gunshots. Gipson testified at the preliminary exam that defendant Eddings could not give her $5 before they went for the ride that night. However, after the events on Kentfield, she drove defendants to Margarita where defendant Eddings purchased

marijuana and later gave Gipson $3. From this evidence, a rational trier of fact could have found the elements of the predicate felony of larceny proved beyond a reasonable doubt.

Next, defendant Ferrell argues that the prosecutor improperly used her peremptory challenges in a discriminatory manner to exclude young jurors in favor of an older jury. We disagree. "[U]nless it is clear from the record that the prosecution is using its peremptory challenges in a discriminatory fashion, a defendant who fails to raise the issue or otherwise develop an adequate record of objections forfeits appellate review of the issue." *People v Vaughn*, 200 Mich App 32, 40; 504 NW2d 2 (1993). Defendant failed to object to the prosecutor's use of peremptory challenges during voir dire and to develop an adequate record to provide us with the facts necessary to determine the merits of this claim. Moreover, it is not clear from the record that the prosecutor used her peremptory challenges in a discriminatory fashion. Therefore, defendant Ferrell forfeited this issue for appellate review. Furthermore, defendant Ferrell waived this issue for appellate review because defense counsel conveyed satisfaction with the impaneled jury, and the record contains no indication that defense counsel was unsatisfied with the jury or consented to the composition of the jury in order not to alienate prospective jurors. See *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000); *People v Hubbard (After Remand)*, 217 Mich App 459, 466-467; 552 NW2d 493 (1996).

On appeal, defendant Eddings argues that there was insufficient evidence to support his felony murder conviction under an aiding and abetting theory. After considering the evidence in a light most favorable to the prosecution, we disagree. See *Bowman*, *supra*.

In *People v Flowers*, 191 Mich App 169, 178-179; 477 NW2d 473 (1991), this Court articulated the requirements for finding a defendant liable for a killing under an aiding and abetting theory:

> In order to convict one charged as an aider and abettor of a first-degree felony-murder, the prosecutor must show that the person charged had both the intent to commit the underlying felony and the same malice that is required to be shown to convict the principal perpetrator of the murder. Therefore, the prosecutor must show that the aider and abettor had the intent to commit not only the underlying felony, but also to kill or to cause great bodily harm, or had wantonly and willfully disregarded the likelihood of the natural tendency of this behavior to cause death or great bodily harm. Further, if it can be shown that the aider and abettor participated in a crime with knowledge of his principal's intent to kill or to cause great bodily harm, he was acting with wanton and willful disregard sufficient to support a finding of malice. [Citations omitted.]

The state of mind of an aider and abettor may be inferred from the facts and surrounding circumstances of the case. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Factors that may be considered include a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime. *Id*. at 757-758 (citations omitted). Malice can be inferred from a defendant's use of a deadly weapon or from a defendant's knowledge that the principal possessed a deadly weapon. *Id*. at 760.

Here, as discussed above, Turner testified that defendant Eddings talked about "hitting a lick," or robbing, Young the night before the shooting. Wilson and Mackey testified that they observed defendant Ferrell, defendant Eddings and Gipson in a car together in the area of the shooting the evening of the shooting. Gipson admitted that she drove defendant Ferrell and defendant Eddings to Young's street, where they exited her vehicle and returned just after she heard gunshots. Jones testified to seeing defendant Ferrell with a gun pointed at Young as Young was backing away. Jones and Burks testified to hearing gunshots. Moreover, Burks testified that she saw another person at the end of her driveway wearing a black mask at the approximate time of the robbery and shooting. Gipson testified that before the events on Kentfield, defendant Eddings did not have money but after the occurrence, he did. From this evidence, a rational jury could infer that both defendants entered into a common plan to kill Young to steal his money and that each participant was assigned a specific task in accomplishing their criminal objective, i.e., defendant Ferrell as the principal and defendant Eddings as the look-out during its commission. Accordingly, reversal is not warranted. See *id*. at 759-760.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Harold Hood