

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 262679

Kent Circuit Court

LC No. 04-002119-FC

Before: O’Connell, P.J., and White and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316(b), and larceny from a person, MCL 750.357. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to a mandatory term of life in prison for his felony-murder conviction, and 8 to 50 years’ imprisonment for his larceny conviction. He appeals as of right. We affirm defendant’s conviction and sentence for felony murder but vacate his conviction and sentence for larceny from a person.

Defendant argues that the evidence at trial was insufficient to enable a jury to conclude both that he was the person who shot the victim, Terrence Howard, to death and that the shooting occurred during a larceny. We disagree. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any 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, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). “[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). A trier of fact may make reasonable inferences on the basis of direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990). A defendant’s specific intent to commit a crime may be inferred from all the surrounding facts. See *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987).

According to MCL 750.316(b), an intentional killing “in the perpetration of” a “larceny of any kind” will substantiate a charge for first-degree felony murder. The underlying felony is a necessary element in a felony murder charge and must be proved accordingly. *People v Wilder*, 411 Mich 328, 345; 308 NW2d 112 (1981). Larceny is the intentional taking and carrying away of another’s property without consent and with the intent to permanently deprive. See *People v*

*Cain*, 238 Mich App 95, 120-121; 605 NW2d 28 (1999). A defendant who first gains temporary access to the property and then uses the advantage of momentary custody to carry it away is still guilty of larceny. *People v Malach*, 202 Mich App 266, 270-271; 507 NW2d 834 (1993). If temporary custody is gained in the owner's presence, then the owner never transfers legal "possession," but is legally considered to have maintained possession of the property. *People v Manning*, 38 Mich App 662, 666; 197 NW2d 152 (1972). Larceny from a person is a larceny accomplished by "stealing from the person of another," which includes situations in which the victim has possession of the property and it is taken in the victim's presence. MCL 750.357; See also *People v Perkins*, 473 Mich 626, 634; 703 NW2d 448 (2005).

The evidence in this case reveals that defendant's friend, Tanicqa Bolden, called her cocaine supplier, Amelia Uriegas, and asked to buy an ounce of cocaine – half powder, half crack. Uriegas' boyfriend, Howard, prepared the cocaine for delivery, and Uriegas drove him and the cocaine in his truck to the prearranged delivery spot. Uriegas pulled the truck behind Bolden's borrowed car, leaving plenty of space, and noticed two men slouching down in the two-door car, one in the front passenger seat and one in the back seat. She turned off her lights. Bolden exited the car, walked back to the truck, and climbed inside. She then asked to take the cocaine back to her boyfriend before paying for it. Uriegas refused, telling her to pay first. Uriegas asked Bolden who she was with, and then spotted defendant in the back seat of the car. Uriegas had known defendant through Bolden, and had known both of them since childhood. Bolden confirmed that it was defendant in the back seat. Howard told Bolden to get the money first, and Bolden went back to the car and sat back down in the driver's seat. Howard grew suspicious because Bolden could have gotten the money through the window. Uriegas turned on the truck's lights, turned the wheel, and inched away from the curb.

As Uriegas started to pull away, Bolden again opened her car door and walked back to the truck, but Howard would not let her back into the truck. Bolden repeated that her boyfriend wanted to see the drugs. Frustrated, Howard grabbed the cocaine and walked up to the passenger side of the car. Once Howard saw who was inside, he walked around to the driver's side of the coupe, where Bolden was holding the door open. Howard climbed into the backseat of the coupe, and Bolden resumed her place in the front seat and shut the door. Almost immediately, defendant pulled a pistol and pointed it at Howard's head. Howard grabbed for the pistol, and a struggle ensued. One shot was fired through the roof of the car as Howard struggled to simultaneously muscle his way out of the car and wrest the gun from defendant. From the truck, Uriegas saw defendant shoot directly at Howard after he had worked most of his body out of the car, and Howard's body lurched. Defendant again shot directly at Howard as he ran back to the truck. The front-seat passenger opened his door and fled. From the back seat, defendant leaned out the driver's side door and shot out the truck's tires as Uriegas tried to shield Howard with the truck. The car then sped away.

Several residents confirmed that the backseat passenger leaned out the driver's side door of the car and shot at the fleeing victim. The nearest neighbors confirmed that there were two men in the car: one in the front seat, who wore a distinctive rust-colored jacket and ran away during the shooting, and the gunman in the back seat, who wore a dark-colored, hooded jacket. These descriptions matched other testimony, including defendant's, about the respective clothing of the two men and the seating arrangement inside the car. In fact, defendant's testimony did not deviate substantially from Uriegas', except that he claimed the front-seat passenger, Koran

James, pulled the pistol and, during the ensuing struggle, essentially traded places with him while he tried to escape. Therefore, defendant essentially claimed that he was the fleeing passenger. Defendant's testimony contradicted his interview with police, in which he admitted he had planned, with James and Bolden, to trick Uriegas into handing over the cocaine without payment, at which point they could drive away with it. Defendant also admitted to his cousin that the group had obtained the crack cocaine from Howard before splitting up and fleeing, and the cousin and other witnesses testified that the three later met to divide the spoils.

Under the circumstances, the testimony supports the reasonable inference that defendant pointed the pistol at Howard to secure James' possession of the cocaine, and then shot and killed him to further ensure the accomplishment of the crime. Therefore, the prosecutor presented sufficient evidence to satisfy the necessary elements for MCL 750.357 and MCL 750.316(b). We note that the jury necessarily found the testimony of Uriegas and defendant's cousin more credible than that of defendant and the witnesses he offered to impeach Uriegas, and we will not disturb a jury's determination of witness credibility. *Nowack, supra*.

Defendant next argues that his separate convictions and sentences for felony murder and the felony underlying the felony-murder charge violate double jeopardy provisions. We agree. To avoid a double jeopardy violation, the sentence and conviction for an underlying larceny must be vacated when the sentence for felony murder is entered. *People v Williams*, 265 Mich App 68, 73; 692 NW2d 722 (2005).<sup>1</sup> Accordingly, we vacate the defendant's larceny conviction and corresponding sentence.<sup>2</sup>

Affirmed in part and vacated in part.

/s/ Peter D. O'Connell  
/s/ Helene N. White  
/s/ Jane E. Markey

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<sup>1</sup> Our Supreme Court is currently reviewing the issue whether convictions of felony murder and certain predicate felonies violate double jeopardy protections, *People v Smith*, 475 Mich 864, 714 NW2d 310 (2006), but we must follow the law as it stands.

<sup>2</sup> This situation is different than the situation in *Williams, supra*, which involved premeditated murder and a felony murder grounded on larceny. Nevertheless, Judge O'Connell would uphold the separate convictions in this case because the felony murder conviction only requires "a larceny of any kind," and defendant accomplished more than a mere larceny in this case by taking the property from the victim's person. Therefore, the minimum elements of larceny alone establish the felony murder, and vacating the larceny from a person conviction forsakes the express legislative intent to punish those actions that carried the crime beyond mere larceny.