STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 9, 2011
v	No. 296944 St. Clair Circuit Court
AARON DWAYNE FLORENCE, Defendant-Appellant.	LC No. 09-002400-FC

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of felony murder, MCL 750.316(1)(b); two counts of armed robbery, MCL 750.529; and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

First, defendant argues that there was insufficient evidence to support his two armed robbery convictions and his felony murder conviction. Sufficiency of the evidence is reviewed de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). "[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 the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Armed robbery, MCL 750.529, has three elements: "(1) an assault, (2) a felonious taking of property from the victim's person or presence, and (3) the defendant must be armed with a weapon described in the statue." *People v Smith*, 478 Mich 292, 319; 733 NW2d 351 (2007). Devon Sapp testified that defendant placed a gun against Matthew Rogel's neck and said "what you got man." Anthony Lindsay, Jr., testified that defendant pointed his gun at Rogel and said "like wrung [sic] out your pockets; give me everything you've got." Defendant told Bynell Orr that he wanted to rob Rogel. Rogel handed defendant $10. This testimony was sufficient evidence to convict defendant of armed robbery.

Sufficient evidence also supported defendant's conviction for the armed robbery of Sapp. The definition of armed robbery includes attempted armed robbery. *People v Williams*, 288 Mich App 67, 74; 792 NW2d 384 (2010). Armed robbery includes attempted larceny:

> As used in this section, "in the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property. [MCL 750.530(2).]

Defendant pointed his gun at Sapp and he and his codefendant Lorenzo Buckles asked Sapp for money. Sufficient evidence was introduced to enable a rational jury to conclude that defendant assaulted Sapp by pointing the weapon at him, attempted to take his property by asking him for money, and was armed. This was sufficient evidence to convict defendant of armed robbery. *Williams*, 288 Mich App at 74.[1]

Next, defendant argues insufficient evidence was introduced to convict him of felony murder or to show that he shot Rogel. Felony murder includes a murder committed during a robbery. MCL 750.316(1)(b); *People v Kelly*, 231 Mich App 627, 642-643; 588 NW2d 480 (1998). Lindsay, Jr., testified that immediately after Rogel gave defendant $10, defendant shot him twice. Bynell Orr testified that defendant told him he shot Rogel twice. Two gunshot wounds killed Rogel. This testimony was sufficient to establish that defendant committed felony murder.

Defendant argues that the witnesses who testified against him were not credible. Witness credibility, however, "is a matter for the trier of fact to ascertain." *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Defendant's credibility arguments ignore that in reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution. *Wolfe*, 440 Mich at 515.

Next, defendant argues that the trial court plainly erred by refusing the jury's request for a transcript of Sapp's testimony. A trial court cannot refuse a jury's reasonable request for portions of a transcript. MCR 6.414(J). The court may, however, "order the jury to deliberate further without the requested review, so long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed." MCR 6.414(J). Defendant did not preserve the error by objecting at trial, so it will be reviewed under the plain error rule. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, (2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In *People v Howe*, 392 Mich 670, 674-676; 221 NW2d 350 (1974), the trial court erred by unequivocally refusing the jury's request for the transcripts of two witnesses' testimony. In *People v Joseph*, 114 Mich App 70, 73-74; 318 NW2d 609 (1982), the trial court did not abuse its discretion when it refused a jury's request to have testimony read back to it. The trial court made it clear that the opportunity to hear the testimony was not permanently foreclosed. *Id.* at 74. During the jury's deliberations in this case, the jury requested a transcript of Sapp's testimony. The trial court responded:

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[1] Because sufficient evidence supported defendant's conviction as a principal, there is no reason to evaluate whether sufficient evidence supported his conviction as an aider and abettor.

> But at this point at least at this time we're not in a position to—we do not have the transcripts prepared for any of the witnesses and so reading it back at this time would not, would not be able to perform that.
>
> And so I'm going to send you back to the jury room and have you continue your deliberations and, and if you have any further question about it, as I said, put it to me in writing and we'll try to deal with it as best we can.

The trial court did not unequivocally foreclose the possibility of providing the jury with the transcript. The trial court let the jury know that they could come back with further questions on the matter. The trial court did not plainly err. *Joseph*, 114 Mich App at 73-74.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder
/s/ Donald S. Owens