

Court of Appeals, State of Michigan

ORDER

People of MI v Joshua Jeremiah Eubanks

Kathleen Jansen
Presiding Judge

Docket No. 348358

Elizabeth L. Gleicher

LC No. 2017-042366-FC

Jonathan Tukel
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting leave to appeal, pursuant to MCR 7.205(E)(2), the Court orders that the Genesee Circuit Court's April 5, 2019 order is VACATED. The court's responses to the jury's questions did not accurately explain the elements of the crimes charged. M Crim JI 16.4, 8.1, 8.4. The circuit court is ordered to read the following instructions to the jury in response to the jury's questions to the court on April 4, 2018:

The defendant is charged with first-degree felony murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

First, that the defendant caused the death of Albert Ballard, that is, that Albert Ballard died as a result of a gunshot wound.

Second, that the defendant had one of these three states of mind: he intended to kill, or he intended to do great bodily harm to Albert Ballard, or he knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of his actions.

Third, that when he did the act that caused the death of Albert Ballard, the defendant was committing, attempting to commit, or helping someone else commit the crime of First-Degree Home Invasion. For the crime of First-Degree Home Invasion, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) that the defendant broke into a dwelling. It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking. Entering a dwelling through an already open door or window without using any force does not count as a breaking.

(2) that the defendant entered the dwelling. It does not matter whether the defendant got his entire body inside. If the defendant put any part of his body into the dwelling after the breaking, that is enough to count as an entry.

(3) that when the defendant broke and entered the dwelling, he intended to commit armed robbery or assault with intent to rob while armed.

(4) that when the defendant entered, was present in, or was leaving the dwelling, either of the following circumstances existed: (a) he was armed with a dangerous weapon, and/or (b) another person was lawfully present in the dwelling.

Fourth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

Fifth, the defendant must have been either committing or helping someone else commit the crime of First-Degree Home Invasion. To help means to perform acts or give encouragement, before or during the commission of the crime, that aids or assists in its commission. At the time of giving aid or encouragement, the defendant must have intended the commission of the First-Degree Home Invasion.

In this case, the defendant is charged with committing First-Degree Home Invasion or intentionally assisting someone else in committing it

Anyone who intentionally assists someone else in committing a crime is as guilty as the person who directly commits it and can be convicted of that crime as an aider and abettor.

To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

First, that the alleged crime was actually committed, either by the defendant or someone else. It does not matter whether anyone else has been convicted of the crime.

Second, that before or during the crime, the defendant did something to assist in the commission of the crime.

Third, at that time the defendant must have intended the commission of the crime alleged or must have known that the other person intended its commission or that the crime alleged was a natural and probable consequence of the commission of the crime intended

It does not matter how much help, advice, or encouragement the defendant gave. However, you must decide whether the defendant intended to help another commit the crime and whether his help, advice, or encouragement actually did help, advise, or encourage the crime.

This order is to have immediate effect. MCR 7.215(F)(2).

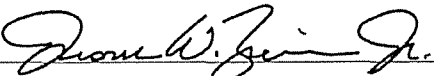
The Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR - 5 2019

Date


Chief Clerk