

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

July 30, 1996

Plaintiff-Appellee/
Cross-Appellant,

v

No. 176111

LC No. 93-008476-FC

KEITH TRENELL TAYLOR,

Defendant-Appellant/
Cross-Appellee.

Before: Doctoroff, C.J., and Hood and Gribbs, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, felony-firearm, MCL 750.227b; MSA 28.424(2), and carrying a concealed weapon (CCW) in a vehicle, MCL 750.227; MSA 28.424. An additional conviction of conspiracy to commit murder was stricken by the trial court. Defendant subsequently pled guilty to habitual offender-second, MCL 769.10; MSA 28.1082, and was sentenced to forty to sixty-five years' imprisonment. Defendant raises several issues on appeal. Plaintiff has filed a cross appeal, challenging the trial court's order striking the conspiracy conviction. We affirm.

Defendant argues on appeal that his conviction for second-degree murder, on an aiding and abetting theory, is logically inconsistent and must be vacated. We do not agree. A person may be convicted as an aider and abettor of a killing so long as he either possessed the required intent or participated while knowing that the principal possessed the required intent. *People v Turner*, 125 Mich App 8, 10; 336 NW2d 217 (1983). While defendant may be correct that he should have been convicted of first-degree murder, we find he was not prejudiced by the jury's decision to convict of second-degree murder. Juries are not held to any rules of logic. *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980).

Defendant also argues that the evidence was insufficient to sustain his convictions for second-degree murder, felony-firearm and CCW. Viewing the evidence in a light most favorable to the prosecution, there was ample evidence of second-degree murder and felony-firearm.. Defendant, a passenger, directed the driver of the truck to bring the truck to a stop in front of complainants' car. Defendant grinned as he passed complainants' car and he pointed a gun at decedent and pulled the trigger. When the gun did not fire, defendant handed the gun to a codefendant, who fired the fatal shot.

The evidence was also sufficient to sustain defendant's conviction for carrying a concealed weapon. There was evidence that one of defendant's friends took the gun away from defendant shortly before this incident and placed it in a tool box in the back of the truck, and clearly there was evidence that defendant briefly "carried" the weapon during the incident. Although defendant denied that he knew the gun was in the truck, there was some evidence that he was aware that the gun was placed in the truck prior to the shooting, and that it was carried back into the truck after the shooting. The decision concerning what evidence to believe was a matter for the jury.

There is no merit to defendant's claim that the prosecutor must negate every reasonable theory consistent with defendant's innocence. The prosecutor need only prove his theory beyond a reasonable doubt in face of whatever contradictory evidence the defendant may provide. *People v Carson*, 189 Mich App 268, 269; 471 NW2d 655 (1991).

Defendant also argues that the trial judge did not sufficiently articulate the reasons for defendant's sentence. We do not agree. The trial court noted that defendant was released from prison just six months before his involvement in this senseless crime, which involved the close range execution of a "15-year-old who was pleading for his life." The trial court indicated that defendant, a habitual offender, had demonstrated that he is a "clear and present danger to the citizens of this community." The trial court also stated that defendant's sentence was intended to protect society and the community, to discipline and "hopefully" reform defendant, and to deter others. We find the articulation sufficient.

Finally, there is no merit to defendant's claim that his sentence is disproportionate. Because defendant was sentenced as a habitual offender, the sentencing guidelines do not apply. *People v Cervantes*, 448 Mich 620, 625-626; 532 NW2d 831 (1995); *People v Spivey*, 202 Mich App 719, 728; 509 NW2d 908 (1993). However, defendant's sentence must still be proportionate to the seriousness of the crime and the defendant's prior record. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995). We do not find defendant's sentence disproportionate in this case.

Defendant also contends that the trial court erred in imposing sentences consecutive to the sentence he was currently serving. The appropriate calculation of sentences imposed while a defendant is on parole was recently resolved by our Supreme Court in *People v Young*, 451 Mich 569; ___ NW2d ___ (1996). Defendant's sentence is to be calculated by the Department of Corrections in accordance with that opinion.

Finally, plaintiff argues on cross-appeal that the trial court erred in granting defendant's motion to strike his conviction of conspiracy to commit murder. We do not agree. The jury found defendant not guilty of first-degree murder, and there is no such crime as conspiracy to commit second-degree murder. *People v Hammond*, 187 Mich App 105, 106-107; 466 NW2d 335 (1991). Because the jury instruction did not specify the degree of murder required for a conviction of conspiracy to commit murder, the trial court did not err in clarifying the verdict. Further, because the jury specified that it intended a conviction of conspiracy to commit second-degree murder, the trial court did not abuse its discretion in denying plaintiff's request for a new trial on the conspiracy charge.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Roman S. Gibbs