

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN DWAYNE HUDSON,

Defendant-Appellant.

UNPUBLISHED
September 6, 1996

No. 184205
LC No. 94-009159

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony murder, MCL 750.316; MSA 28.548, and felony firearm, MCL 750.227b; MSA 28.424(2). He was sentenced to the mandatory terms of life without parole for felony murder and two years in prison for felony-firearm. Defendant appeals as of right and we affirm.

This case arises from a shooting which occurred at the Worldwide Bookstore, an adult gift and video store located in Highland Park. James Hall, a cashier at the store, was shot and killed by defendant during an apparent armed robbery.

On appeal, defendant argues that he was denied a fair trial because the prosecutor elicited testimony on cross-examination revealing that he was in possession of a concealed weapon. According to defendant, such information was irrelevant, prejudicial, and added nothing more to the case than to show that he was a "bad man." Defendant, however, failed to preserve this issue for appellate review by making the appropriate objection in the trial court. *People v Holt*, 207 Mich App 113, 122; 523 NW2d 856 (1994). Because evidence that defendant was carrying a concealed weapon was admissible under the res gestae exception, we find no manifest injustice. See, e.g., *People v Robinson*, 128 Mich App 338, 340; 340 NW2d 303 (1983); *People v Bostic*, 110 Mich App 747, 749; 313 NW2d 98 (1981).

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

Next, defendant contends that it was improper for the prosecutor to question him concerning his religious views and opinions. We review this issue despite defendant's failure to object. See *People v Bouchee*, 400 Mich 253, 263 n 4; 253 NW2d 626 (1977).

MCL 600.1436; MSA 27A.1436 provides:

No person may be deemed incompetent as a witness, in any court, matter or proceeding, on account of his opinions on the subject of religion. *No witness may be questioned in relation to his opinions on religion, either before or after he is sworn.* [Emphasis supplied.]

This statute was intended to prevent the possibility that jurors will be prejudiced against a particular witness because of a personal disagreement with that witnesses' religious views. *People v Jones*, 82 Mich App 510, 516; 267 NW2d 433 (1978).

In the instant case, it is apparent from the record that the issue of religion was intentionally introduced by defendant and his trial counsel as part of a strategy designed to establish a basis for defendant's self-defense claim. On direct examination, defendant testified that, as a Muslim, he felt compelled to confront the cashier regarding the licentious activities which were allegedly taking place in the store. Shortly thereafter, defense counsel questioned defendant about his religious beliefs. Later, when the prosecutor interrupted defendant's attempt to answer a question on cross-examination, defense counsel implored the court to allow defendant to testify "in terms of his theology." Defense counsel also called Allem Abdullah, a Muslim cleric, to the stand to testify on defendant's behalf. Abdullah was questioned extensively by defense counsel regarding the precepts of Islam. During closing arguments, defense counsel engaged in a lengthy discussion concerning Islam and Malcolm X. Under such circumstances, we find that the prosecutor did not violate MCL 600.1436; MSA 27A.1436. See *People v Umerska*, 94 Mich App 799, 808-810; 289 NW2d 858 (1980).

Finally, defendant argues that his conviction for first-degree felony murder must be reversed because there was insufficient evidence to establish that he committed or attempted to commit armed robbery. In determining whether the prosecution has presented sufficient evidence to sustain a conviction, this Court is required to view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

Michael George observed Hall and defendant engaging in conversation near the cash register at the front of the store. At that time, approximately twelve to eighteen customers were in the store. As George made his way toward the back, gunfire erupted behind him. George turned and saw defendant pointing a gun toward Hall. According to George, smoke was emanating from the tip of defendant's gun. Thereafter, more shots were fired and defendant left the store, discharging his gun wildly as he moved toward the door. Hall was found laying behind the counter. The cash register drawer was open and the \$10 and \$20 slots were empty. In Hall's left hand was approximately \$600 in denominations of

\$10 and \$20 bills. Kevin Brown, an employee at the store, testified that it was the practice of the cashiers never to allow the cash register drawer to open completely. Although Brown admitted that the cashiers removed money from the register periodically, he testified that it was necessary to leave some bills of each denomination in the drawer. In addition, Brown testified that there were times when it was not possible to remove money from the register due to the volume of customers in the store. Based on the evidence presented, including the reasonable inferences that may be drawn therefrom, we find that a rational juror could conclude that all of the elements of felony murder were proven beyond a reasonable doubt.

Affirmed.

/s/ Maura D. Corrigan

/s/ Kathleen Jansen

/s/ Meyer Warshawsky