

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 176486

LC No. 93-130079

CHARLES BERNARD GOODWIN, JR.,

Defendant-Appellant.

Before: Saad, P.J., and MacKenzie and C.F. Youngblood*, JJ.

YOUNGBLOOD, J. (concurring in part and dissenting in part.)

I concur in the majority's opinion that it was not error to allow Detective Ordiway to testify that Phillips was not a suspect, and that the conviction on all three charges was double jeopardy and that the felony-murder conviction must be vacated.

I write separately because the admission of Karen Dahlgren's testimony regarding the carjacking of her car is prohibited by MRE 404(b) and 403 and the trial judge abused his discretion in admitting the testimony. The defendant did not raise the issue of character in his defense and this evidence was only admissible if it was relevant to a noncharacter theory. The prosecution offered the testimony for three purposes: (1) to show Mr. Goodwin was in the area on the day of the crime; (2) to show Mr. Goodwin's state of mind; and (3) to corroborate Kelley's testimony because the only way Kelley could know those facts was from defendant. Defendant's objections to this evidence were properly preserved.

The only relevant evidence, that is not more prejudicial than probative, is the identification of the defendant by Ms. Dahlgren and that he was in the area. This is not prejudicial and corroborates the deli clerk's testimony that he ate dinner at the deli and that he lived in the area. The testimony would also corroborate Mr. Craig's testimony that he saw and spoke to the defendant that night. If the testimony had been limited to Ms. Dahlgren's identification of the defendant as being in the area, there would have been no error.

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

The testimony relative to the theft of Ms. Dahlgren's car by the defendant and that he stole her purse is highly prejudicial because it is evidence of an assaultive crime and it demonstrates a violent act against a woman, both of which are similar to the crimes the defendant is charged with here. The only two reasons offered for this portion of Ms. Dahlgren's testimony are that it corroborates Mr. Kelley's testimony and to show the defendant's state of mind.

Ms. Dahlgren's vehicle was stolen six hours after Mrs. Grossman was murdered; thus, the crime was remote in time to the carjacking. There is no evidence that the defendant was trying to leave the area or leave town. In fact, if he stole Ms. Dahlgren's car, he had the means to leave town and he failed to do so. Similarly, Ms. Dahlgren's testimony does not corroborate Mr. Kelley's testimony in any meaningful way. Clearly evidence that he stole a car, was involved in a violent carjacking, and assaulted a woman were more prejudicial than probative and should have been excluded.

In light of the highly prejudicial nature of this irrelevant testimony, I would reverse and remand for a new trial.

/s/ Carole F. Youngblood