

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANGEL LADONNA PETERSON,

Defendant-Appellant.

UNPUBLISHED

September 20, 1996

No. 182872

LC No. 94-005547

Before: Gribbs, P.J., and Young and W.J. Caprathe,* JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial convictions for three counts of felony murder, MCL 750.316; MSA 28.548;¹ one count of attempted murder, MCL 750.91; MSA 28.286; and one count of arson, MCL 750.72; MSA 28.267. Defendant was sentenced to life imprisonment for the felony murder convictions, twenty to forty years of imprisonment for the attempted murder conviction, and four to twenty years of imprisonment for the arson conviction. We remand and direct the trial court to vacate defendant's conviction and sentence for arson, and affirm in all other respects.

Defendant first argues that her convictions for both felony murder and the underlying felony of arson constitute double jeopardy. We agree. A defendant's right not to be put in jeopardy twice for the same offense is violated when a defendant is convicted and sentenced for both first-degree felony murder and the underlying felony which serves as the predicate for the felony murder conviction. *People v Robideau*, 419 Mich 458, 482, 489 n 8; 355 NW2d 592 (1984); *People v Wilder*, 411 Mich 328, 332; 308 NW2d 112 (1981). The remedy for this violation is to vacate the conviction and sentence for the underlying felony. *People v Jankowski*, 408 Mich 79, 96; 289 NW2d 674 (1980); *People v Martin*, 398 Mich 303, 313; 247 NW2d 303 (1976). Accordingly, defendant's conviction and sentence for arson should be vacated.

Defendant next argues that the trial court abused its discretion when admitting other acts evidence. A trial court's decision to admit evidence will not be disturbed on appeal absent a showing

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

that the court abused its discretion. *People v Davis*, 199 Mich App 502, 516-517; 503 NW2d 457 (1993). The prosecution moved in limine to introduce testimony of witnesses who observed examples of property destruction at the victims' house. The prosecution offered this testimony to establish defendant's motive and absence of mistake or accident. Defendant objected arguing that the witnesses had not observed who committed these acts, making any connection to defendant tenuous. Yet, defendant admitted to two of these acts in her statements to police. In one incident, defendant had driven a car over the lawn at the victims' house, and on another occasion, defendant threw a beer bottle through the window of the victims' house.

The trial court partially granted the motion, allowing only the evidence which corroborated by defendant's statements to the police. The court ruled that this evidence was an admission, see MRE 801(d)(2), and reasoned that any prejudice was minimal because defendant's admission to these acts would corroborate the testimony of the other witnesses. See MRE 403. We find no error.

Nonetheless, defendant contends that the evidence was not admissible because the acts were not similar to the charged acts, and hence, lacked any probative value, citing *People v Golochowicz*, 413 Mich 298, 325; 319 NW2d 518 (1982). However, in *People v VanderVliet*, 444 Mich 52, 69; 508 NW2d 114 (1993) amended 445 Mich 1205 (1994), the Supreme Court rejected interpreting *Golochowicz* to require a showing of similarity in every case that other acts are offered into evidence. Instead, the probative value of this evidence should be determined by the purpose for which the evidence was offered. *Id.* In the instant case, the prosecution offered the evidence to establish motive and absence of mistake or accident. As such, a showing of similarity was not required. See *Id.*, n 21. Accordingly, we find no abuse of discretion.

Finally, defendant contends that the prosecutor's rebuttal argument was so improper that it denied her a fair trial. Defendant failed to object to the remarks that the prosecutor made in his rebuttal argument. Appellate review of allegedly improper prosecutorial remarks during trial is precluded if the defendant fails to object at trial to the prosecutorial remarks, unless the prejudicial effect could not have been cured by a cautionary instruction and failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

First, defendant argues that the prosecutor improperly denigrated defense counsel when arguing that the only reason defense counsel mentioned a theory of police coercion in his closing argument was to distract the jury from what really happened in the case. We disagree. Prosecutor arguments are to be considered in light of defense counsel arguments. *People v Spivey*, 202 Mich App 719, 723; 509 NW2d 908 (1993). A prosecutor is free to argue the evidence and all reasonable inferences arising from it to the jury. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). In the instant case, the prosecutor properly responded to defense counsel's theory of police coercion, stating that the evidence adduced at trial did not support defense counsel's theory.

Second, defendant contends that the prosecutor asserted his personal belief in defendant's guilt. We disagree. A prosecutor may not ask the jury to convict a defendant on the basis of the prosecutor's personal knowledge. *Bahoda, supra*, 448 Mich 282-283. In the instant case, the prosecutor properly argued that defendant committed the crime charged drawing reasonable inferences from the facts adduced at trial. *Id.*, 282.

We remand to the lower court for vacation of defendant's conviction and sentence for arson, and affirm in all other respects. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Robert P. Young, Jr.

/s/ William J. Caprathe

¹ The jury also convicted defendant of three alternate counts of first-degree premeditated murder, MCL 750.316; MSA 28.548. At sentencing, the judge vacated the sentences on these counts and then imposed sentence for the felony murder convictions.