

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANNIE LEE COLE,

Defendant-Appellant.

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UNPUBLISHED  
February 14, 1997

No. 186701  
Recorder's Court  
LC No. 94-006481

Before: Marilyn Kelly, P.J., and MacKenzie and J.R. Ernst\*, JJ.

PER CURIAM.

Defendant and her codefendants, Leander Foster and Steward McCoy, were tried before separate juries in a single proceeding for the murder of Stella Sproule. Defendant was convicted of first-degree premeditated murder, MCL 750.316; MSA 28.548, felony murder, MCL 750.316; MSA 28.548, and armed robbery, MCL 750.529; MSA 28.797. She was sentenced to life imprisonment for each conviction. Defendant appeals as of right. We affirm in part and vacate in part.

Evidence at trial established that defendant, who was facing legal problems, decided to stage her death and assume the identity of a non-existent sister, "Betty Cole." Sproule was selected as the person to die in defendant's stead. Defendant hired co-defendants Foster and McCoy to abduct and kill Sproule, promising them \$5000 of the proceeds of two life insurance policies she had recently obtained. She then arranged to meet Sproule at a store. The two youths arrived instead, took Sproule to an abandoned building, shot her, and removed some items from her purse. Defendant, as "Betty," reported "Annie" missing, told the police she had received some strange phone calls concerning her sister's whereabouts, and, when Sproule's body was discovered, identified her as "Annie" and made arrangements for her cremation. Defendant then traveled to Mississippi, where she was arrested after being spotted using a credit card issued in Sproule's name.

On appeal, defendant first claims she was prejudiced by not having a separate trial. Reversal is not warranted because defendant has not demonstrated prejudice to her substantial rights due to the

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

dual-jury system employed by the court. *People v Hana*, 447 Mich 325, 331; 524 NW2d 682 (1994). The evidence defendant contends was improperly leaked into her trial was either admissible, MRE 402; *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993), or else its admission was harmless beyond a reasonable doubt and its admission did not result in a miscarriage of justice. *People v Mateo*, 453 Mich 203; 551 NW2d 891 (1996); *People v Spinks*, 206 Mich App 488; 522 NW2d 875 (1994). Further, although defendant's jury mistakenly missed the beginning portion of McCoy's testimony, defendant was not prejudiced by the error; the testimony was reread to the jurors when they returned to the courtroom and McCoy himself subsequently reiterated the missed testimony. The jury therefore had an opportunity both to hear the substance of McCoy's testimony and to evaluate his credibility.

Defendant also maintains that the trial court should have suppressed evidence seized as a result of a search of the room, in defendant's mother's home, where defendant and her minor children stayed. We find no error. Defendant's possession of the room searched was not exclusive, and because her mother was caring for the children at the time of the search, it is reasonable to conclude that, as supervisor of the children, the mother had control of the room and could consent to the search. Cf., *People v Flowers*, 23 Mich App 523; 179 NW2d 56 (1970); *People v Overall*, 7 Mich App 153; 151 NW2d 225 (1967). Accordingly, the trial court did not clearly err by admitting the evidence. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). Moreover, even if the trial court did err, the error was harmless beyond a reasonable doubt because defendant would have been convicted regardless of the admission of the evidence seized. *People v Minor*, 213 Mich App 682, 685; 541 NW2d 576 (1995).

The trial court also did not clearly err in finding that defendant voluntarily made a statement to the police or in denying defendant's motion to suppress the statement. *People v DeLisle*, 183 Mich App 713, 719; 455 NW2d 401 (1990). Whether defendant voluntarily made the statement to the police involved a question of credibility and, as such, we defer to the trial court which was in a superior position to evaluate the credibility of the witnesses. *People v Young*, 212 Mich App 630, 634; 538 NW2d 456 (1995).

Defendant next argues that reversal is warranted because the trial court failed to sua sponte give the jury a cautionary instruction regarding accomplice testimony. *People v Buck*, 197 Mich App 404, 415; 496 NW2d 321 (1992), rev'd in part on other grounds sub nom *People v Holcomb*, 444 Mich 853; 508 NW2d 502 (1993). Contrary to defendant's claim, the court did give the jury a cautionary instruction on accomplice testimony with respect to Steward McCoy, the only accomplice to testify and who did so favorably to defendant. Accordingly, we decline to reverse on this ground.

Defendant also claims there was insufficient evidence to find her guilty beyond a reasonable doubt of first-degree premeditated murder. We disagree. In addition to other evidence presented at trial, defendant's confession provided a detailed account of how she hired Foster and McCoy to kill Sproule so that she could obtain a new identity and be rid of her legal problems. Viewing this evidence in a light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to find that the essential elements of first-degree premeditated murder were proven beyond a reasonable

doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

Defendant argues that codefendant Foster's failure to testify denied her the right to confront him and cross-examine him as to her role in the crime, as guaranteed by the Sixth Amendment. The Confrontation Clause of the Sixth Amendment guarantees a criminal defendant a "face-to-face" meeting with witnesses. *Maryland v Craig*, 497 US 836; 110 S Ct 3157-3162; 111 L Ed 2d 666, 677 (1990); *People v Staffney*, 187 Mich App 660, 663; 468 NW2d 238 (1991). In this case, Foster was not a witness. Therefore, defendant's Sixth Amendment right to confront witnesses was not violated. Moreover, defendant was not denied her right of confrontation by hearsay testimony of Foster inculcating defendant since Foster was unavailable and his statement bore an adequate indicia of reliability. *Poole, supra*, p 163.

Finally, although defendant does not raise the issue, we note that defendant's convictions for both felony murder and first-degree premeditated murder for the death of a single victim violate the constitutional guarantee against double jeopardy. US Const, Am V; Const 1963, art 1, § 15; *People v Passeno*, 195 Mich App 91, 95; 489 NW2d 152 (1992). Accordingly, defendant's conviction and sentence for felony murder must be vacated. *Id.*

Defendant's convictions and sentences for first-degree premeditated murder and armed robbery are affirmed. Her conviction and sentence for felony murder are vacated.

/s/ Marilyn Kelly

/s/ Barbara B. MacKenzie

/s/ J. Richard Ernst