

**T A T E O F M I C H I G A N**  
**C O U R T O F A P P E A L S**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAUETO WATSON,

Defendant-Appellant.

UNPUBLISHED

March 7, 1997

No. 186967

Detroit Recorder's Court

LC No. 94-006951

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDRIC EUGENE DOSS,

Defendant-Appellant.

UNPUBLISHED

No. 186968

Detroit Recorder's Court

LC No. 94-006951

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Before: Kelly, P.J., and Saad and H.A. Beach,\* JJ.

PER CURIAM.

This consolidated appeal arises from the joint bench trial of both defendants for the armed robbery and murder of the victim. Defendant Laueto Watson ("Laueto"), appeals from his bench trial convictions of first-degree felony murder, MCL 750.316; MSA 28.548, and possession of a firearm during commission of a felony, MCL 750.227b; MSA 28.424(2). Laueto was sentenced to mandatory life in prison on the first-degree murder conviction, and two years in prison on the felony-firearm conviction, with the former sentence to run consecutively to the latter. Defendant Cedric Eugene Doss

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

(“Cedric”), appeals from his bench trial convictions of second-degree murder, MCL 750.317; MSA 28.549, and armed robbery, MCL 750.529; MSA 28.797. Cedric was sentenced to life in prison on the second-degree murder conviction and thirty-five to seventy years in prison on the armed robbery conviction, with the sentences to be served concurrently. We affirm as to both defendants.

### I. Laueto Watson

Laueto argues that the trial court erred in denying his motion for suppression of a gun seized from his home under a search warrant based on a statement Laueto made to police after he was arrested. Laueto argues that the statement could not support the warrant because Laueto’s warrantless arrest was not based on probable cause. We disagree.

We note that no transcript appears to be available of the evidentiary hearing held in this matter, despite the diligent efforts of Laueto’s appellate counsel. MCR 7.101(F), MCR 7.210. However, the surviving record is sufficient to allow evaluation of Laueto’s claim on appeal. See *People v Federico*, 146 Mich App 776, 799-800; 381 NW2d 819 (1985). Examining this record, we find that the trial court’s ruling admitting the gun was not clearly erroneous, because, contrary to Laueto’s claim, his warrantless arrest was based on probable cause. A police officer may arrest without a warrant if he has reasonable (or probable) cause to believe that a felony has been committed and that the suspect committed the felony. *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991). Probable cause to arrest exists if the facts available to the officer at the moment of arrest would justify a fair-minded person of average intelligence in believing that the suspected person has committed a felony. *Id.*

Here, at the moment of Laueto’s arrest, the arresting officers knew: (1) that the victim had been found dead a week earlier in his van at a location near Laueto’s home, (2) that on the day the victim was reported missing, a cab driver had taken a young black man in a sweatsuit from Laueto’s address to the building housing the victim’s Detroit rental office, (3) that the victim habitually kept large sums of money in this office, and that the victim removed money from the safe in that office near the time the cab driver dropped the young black man off at the rental office building, (4) that the victim habitually carried a cellular phone, and that the June and July bills for that phone showed that the phone had been used to make a call to Laueto’s home, and (5) that a resident of the street where the victim and his van were found had seen a young black man in a sweatsuit get out of a van on that street at around 10:30 p.m. on the day that the victim was reported missing and walk away. These facts would justify a fair-minded person of average intelligence to believe that Laueto had committed a felony. *Thomas*, 191 Mich App at 579. We hold that Laueto’s arrest was lawful, and that the trial court did not need to suppress the statement taken after Laueto’s arrest,<sup>1</sup> the search warrant based on it, or the evidence seized pursuant to the search warrant.

Laueto’s second argument is that the trial court abused its discretion in admitting into evidence Cedric’s statement to police, during the joint bench trial because the statement incriminated Laueto and Laueto did not have the opportunity to confront and cross-examine Cedric, as allowed by US Const, Am VI, and Const 1963, art 1, § 20. We disagree.

It is error to permit a jury to hear the powerfully incriminating unredacted statement made by a nontestifying codefendant into evidence; even with a cautionary instruction, this violates a defendant's right to confront and question the witnesses presented against him. *People v Frazier (After Remand)*, 446 Mich 539, 544; 521 NW2d 291 (1994). However, this rule does not apply in bench trials, because a judge, unlike a jury, is able to consider the statement for the limited purpose of establishing the guilt of the statement's maker. *People v Butler*, 193 Mich App 63, 66; 483 NW2d 430 (1992).

Here, the trial court did not abuse its discretion in admitting Cedric's statement into evidence at the joint bench trial. The trial court properly limited its consideration of Cedric's statement to Cedric's case. *People v Spearman*, 195 Mich App 434; 491 NW2d 606 (1992), is inapposite because there Spearman's codefendant had a jury trial, not a bench trial, and the record showed that the trial court relied on the codefendant's confession in finding Spearman guilty. *Spearman*, 195 Mich App at 440-441, 442. Here, however, the trial court made no reference to Cedric's statement in determining Laueto's guilt.

## II. Cedric Doss

Cedric asserts that the trial court reached an inconsistent verdict when it found that the prosecution failed to establish the elements of malice for first-degree murder, but then found Cedric guilty of second-degree murder; and that the trial court reached an inconsistent verdict when it found that Cedric had no malice at the time of the robbery, but Cedric had malice at the time the victim was shot. We disagree.

To convict a defendant of second-degree murder, the trier of fact must find malice. Malice consists of the intent to kill, to cause great bodily harm, or to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *People v Lewis*, 168 Mich App 255, 270; 423 NW2d 637 (1988). However, malice can properly be inferred from evidence that a defendant intentionally set in motion a force likely to cause death or great bodily harm. *Id.*

Here, the trial court found that Cedric helped set in force a motion likely to cause death or great bodily harm to the victim. Cedric accompanied a man he called "Veto" (Laueto) into the victim's van, and drove the victim's van around for hours while the victim lay tied up and blindfolded in the back of the van, while "Veto" sat nearby holding a gun. The victim was then shot and killed. This is sufficient to support a finding of malice. *Lewis*, 168 Mich App at 270.

As for Cedric's contention that the trial court erred in finding that he lacked malice at the time of the robbery but had it at the time of the shooting, we disagree. The robbery and the shooting were separate acts for which Cedric received separate convictions. Malice is not an element of armed robbery. See *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). The trial court's findings with regard to the timing of Cedric's malice are well supported by the facts establishing second-degree murder.

Cedric next contends that the life sentence imposed for second-degree murder violates the principle of proportionality. We disagree. Cedric's life sentence is within the recommended sentencing guidelines range – the grid indicates that the trial court could sentence defendant to either a term of years (with a minimum term ranging from twelve to twenty-five years), or life. Cedric's sentence is thus within the guidelines, and so presumptively valid. *People v Tyler*, 188 Mich App 83, 85; 468 NW2d 537 (1991). Although a sentence within the guidelines may be an abuse of discretion in unusual circumstances, *People v Milbourne*, 435 Mich 630, 661; 461 NW2d 1 (1990), such unusual circumstances are not present here. The victim was shot three times at close range, once through the head, while tied up and blindfolded. Cedric admitted driving the van around while the victim lay tied up and blindfolded, while “Veto” sat nearby with a gun. The trial court did not abuse its discretion in sentencing Cedric to life in prison on his second-degree murder conviction.

Cedric next argues that the trial court abused its discretion in sentencing him when the court considered Cedric's statement that he “didn't do it.” We see no error here.

There are three factors relevant to determining whether sentencing was improperly influenced by defendant's failure to admit guilt: (1) The defendant's maintenance of innocence after conviction, (2) the judge's attempt to get the defendant to admit guilt, and (3) the appearance that had the defendant affirmatively admitted guilt, his sentence would not have been so severe. *People v Badour*, 167 Mich App 186, 199; 421 NW2d 624 (1988), citing *People v Wesley*, 428 Mich 708, 713; 411 NW2d 159 (1987). Here, Cedric did not maintain innocence after conviction. Cedric stuck by the statement he had given police, admitting taking part in the abduction and robbery. Second, the trial court never attempted to make Cedric admit guilt. Its comments to Cedric were much like those of the trial court in *People v Calabro*, 166 Mich App 389, 395; 419 NW2d 791 (1988), which were a proper expression of the trial court's disgust with that defendant's lack of remorse. Finally, there was no indication that Cedric's failure to admit guilt increased his sentence. The court was already incensed before Cedric stated, “I didn't do it,” as is evident by the court's denial of a request for reduction in the sentencing guidelines, and its statement that it “was going to exceed the guidelines.” Thus, the trial court did not abuse its discretion in imposing sentence.

Cedric's fourth claim is that the trial court abused its discretion in preparing only one Sentence Information Report (SIR) although Cedric was convicted of two crimes. We disagree, because the guidelines state that where multiple convictions for a single offender carry the same statutory maximum, the trial court may choose which offense on which to score the offender. *People v Hodges*, 179 Mich App 629, 636; 446 NW2d 325 (1989). Since both second-degree murder and armed robbery carry statutory maximums of life in prison or any term of years, the trial court was within its discretion to score only one SIR for second-degree murder.

Cedric's final claim on appeal is that the trial court abused its discretion in sentencing him to a thirty-five to seventy year prison term for his armed robbery conviction. We see no abuse of discretion.

It is true that the SIR scored for Cedric's second-degree murder conviction recommended a minimum term ranging from twelve to twenty-five years or life, and the trial court exceeded this by

imposing a minimum term of thirty-five years. However, the trial court justified its departure from the guidelines, citing Cedric's planning of the robbery, the victim's terrorization and humiliation, and the effect of the robbery and murder on the victim's family. Moreover, departures from the guidelines recommendations are appropriate where the guidelines do not adequately account for factors that legitimately may be considered at sentencing. *People v Watkins*, 209 Mich App 1, 6; 530 NW2d 111 (1995). The second-degree murder factors applied to Cedric's sentencing did not take into account factors usually considered in scoring armed robbery convictions which were present in the instant case: Cedric admitted that the victim had been carried away, and that he had taken valuable property from the victim. Furthermore, the victim was robbed and abducted at gunpoint, tied up and blindfolded, and subjected to terror while being driven around for hours with a gun aimed at him. The trial court did not abuse its discretion in sentencing Cedric to thirty-five to seventy years on his armed robbery conviction.

Affirmed as to each defendant.

/s/ Michael J. Kelly  
/s/ Henry William Saad  
/s/ Harry A. Beach

<sup>1</sup> We note that the trial court denied Laueto's motion to suppress his statement to police after a full evidentiary hearing, ruling that the statement was voluntarily made.