STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYNARD WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
August 5, 1997

No. 189621
Recorder's Court
LC No. 94-012704

Before: Young, P.J., and Gribbs and S. J. Latreille*, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of first-degree felony murder, MCL 750.316; MSA 28.548, and armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced to life in prison for the felony-murder conviction and to twenty to forty years for the armed robbery conviction. We affirm defendant's felony-murder conviction and sentence and vacate defendant's armed robbery conviction and sentence.

Defendant's first contention on appeal is that the trial court erred in admitting his confession. Specifically, defendant argues that his intoxication prevented him from voluntarily and knowingly waiving his *Miranda*[1] rights, and that his confession was the product of an unlawful detention. We disagree.

The issue of the voluntariness of a confession is a question of law for the court's determination. *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). On appeal, this Court examines the entire record and makes an independent determination of voluntariness. *Id.* In doing so, this Court gives deference to the trial court's findings unless they are clearly erroneous. *Id.* A finding is deemed clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *People v Jobson*, 205 Mich App 708, 710; 518 NW2d 526 (1994).

Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his right against self-incrimination. *People v*

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

Garwood, 205 Mich App 553, 555-556; 517 NW2d 843 (1994). To be valid, a waiver "must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and it "must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v Burbine*, 475 US 412, 421; 106 S Ct 1135; 89 L Ed 2d 410 (1986). Advanced intoxication may preclude the effective waiver of *Miranda* rights. *People v Davis*, 102 Mich App 403, 410; 301 NW2d 871 (1980). However, the fact that a person was intoxicated is not dispositive of the issue of voluntariness. *People v Leighty*, 161 Mich App 565, 571; 411 NW2d 778 (1987). Rather, voluntariness depends on the totality of the circumstances surrounding the confession. See *Moran, supra* at 421.

We hold that, under the totality of the circumstances, the trial court's determination that defendant voluntarily and knowingly waived his *Miranda* rights was not clearly erroneous. *Etheridge, supra* at 57. Defendant was a twenty-seven year old man, with two-years' university education, who, according to Smith, was coherent and expressed himself very well. Defendant indicated that he wanted to help the police, his rights were carefully explained to him twice, and he was not subjected to any force, threats, or coercion. See *Moran, supra* at 421. Therefore, giving due deference to the trial court's assessment of Investigator Isiah Smith's testimony at the *Walker*[2] hearing, we are not left with a definite and firm conviction that a mistake has been made. *Jobson, supra* at 710.

As to defendant's argument that his confession was the product of an unlawful detention, we note that an unlawful detention does not require suppression of a confession unless there is a causal nexus between the unlawful detention and the confession. *People v Spinks*, 206 Mich App 488, 496; 522 NW2d 875 (1994). Assuming that defendant, who was handcuffed to a desk in the interrogation room of the police station before he was arrested, was unlawfully detained prior to his arrest, we find no causal connection between his unlawful detention and the confession he gave after his arrest. Defendant's argument that he "let the cat out of the bag" with his first statement is not supported by the facts. Defendant's initial exculpatory statement let nothing "out of the bag" that could have created any "lingering compulsion." See *People v Bieri*, 153 Mich App 696, 706-707; 396 NW2d 506 (1986). Therefore, we hold that defendant's confession was properly admitted. *Spinks, supra* at 496-497.

Defendant next argues that double jeopardy bars his convictions and sentences for both felony murder and armed robbery arising from the same incident. We agree, and further note that the prosecution concedes that defendant's armed robbery conviction should be reversed. Double jeopardy is a question of law. As such it is reviewed de novo on appeal. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

The double jeopardy guarantee protects defendants against a second prosecution for the same offense after an acquittal, a second prosecution for the same offense after a conviction, and multiple punishments for the same offense. *People v Robideau*, 419 Mich 458, 468; 355 NW2d 592 (1984). Where the issue is one of multiple punishments, as in the instant case, the essential question is one of legislative intent. In other words, if the legislature intended separate punishments for the offenses

charged, double jeopardy is not violated by dual punishments. *Id.* at 485; see also *People v Harding*, 443 Mich 693, 707-708; 506 NW2d 482 (1993).

The Michigan Supreme Court has determined that the legislature did not intend to impose punishments for armed robbery and felony murder with armed robbery as the predicate crime. *Harding, supra* at 712. The instant case is distinguishable, however, in that defendant's felony-murder conviction was based on the predicate offense of larceny rather than the separately charged crime of armed robbery. The precise issue before this Court, then, is whether the legislature intended to impose punishments for both (1) felony murder based on larceny, and (2) armed robbery based on the same larceny. We hold that it did not. Because larceny is a lesser included offense of armed robbery, *People v Jankowski*, 408 Mich 79, 87-88; 289 NW2d 674 (1980), where the facts of a crime permit charges of felony murder and armed robbery, prosecutors always have the option of basing the felony-murder charge on larceny rather than armed robbery. To allow separate punishments in such a situation would permit prosecutors to frustrate the legislative intent identified in *Harding, supra*. Therefore, we vacate defendant's conviction and sentence of armed robbery.

Defendant next argues that he was denied effective assistance of counsel because trial counsel neglected to present a voluntary intoxication defense on his behalf. We disagree.

In order to justify reversal on a claim of ineffective assistance of counsel, a defendant must establish (1) that counsel's performance was deficient, by showing that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) he was thereby prejudiced, by showing that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Voluntary intoxication may be a defense to a specific intent crime if the degree of intoxication is so great as to render the accused incapable of entertaining the requisite specific intent. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Because felony murder is a compound crime requiring proof of both second-degree murder and one of the enumerated felonies, see *People v Wilder*, 411 Mich 328, 345; 308 NW2d 112 (1981), and second-degree murder is a general intent crime for which voluntary intoxication is no defense, see *People v Langworthy*, 416 Mich 630, 652; 331 NW2d 171 (1982), the only way voluntary intoxication could be a defense to felony murder in the instant case is if it negated the specific intent necessary for the predicate crime of larceny. See *People v Hughey*, 186 Mich App 585, 590-591 n 1; 464 NW2d 914 (1990). Larceny requires a showing that the defendant specifically intended to permanently deprive the victim of his property. *People v Wilbert*, 105 Mich App 631, 639; 307 NW2d 388 (1981).

We find that there is no reasonable possibility that the presentation of a voluntary intoxication defense would have made a difference in the outcome of defendant's trial. Despite evidence that defendant had consumed substantial amounts of alcohol and crack cocaine on the night he stabbed Ruth Williams to death, three of the police officers who responded to the scene and came into contact with

defendant on the night of the incident testified that defendant was responsive to their questions, that he spoke coherently, that his speech was not slurred, and that he did not stagger. Furthermore, defendant's confession provided strong evidence that he and Katrina Harvey intended to permanently deprive Williams of her property in order to purchase crack cocaine. Defendant admitted that he and Harvey discussed getting money by "robbing Granny," and that twice they used force to render Williams helpless prior to taking money and purchasing crack cocaine. Finally, defendant admitted to concocting a false story to tell the police. The defense of voluntary intoxication would have been weakened by the apparent purposefulness of defendant's actions. *People v LaVearn*, 448 Mich 207, 214; 528 NW2d 721 (1995). Because we find no reasonable possibility that the jury could have found that defendant's voluntary intoxication rendered him incapable of entertaining the specific intent required for larceny, we hold that defendant was not denied effective assistance of counsel.

Defendant's last argument on appeal is that the prosecution failed to present sufficient evidence of armed robbery. Because we vacate defendant's armed robbery conviction and sentence on double jeopardy grounds, we need not address this issue.

Affirmed in part and vacated in part.

/s/ Robert P. Yoiung, Jr.
/s/ Roman S. Gribbs
/s/ Stanley J. Latreille

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694, (1966).

[2] *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).