

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROY B. JACKSON,

Defendant-Appellant.

UNPUBLISHED
October 28, 2003

No. 240370
Wayne Circuit Court
LC No. 01-001749

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYKEE J. ROSS,

Defendant-Appellant.

No. 240371
Wayne Circuit Court
LC No. 01-001749

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMEL A. DUKES,

Defendant-Appellant.

No. 240373
Wayne Circuit Court
LC No. 01-001749

Before: Whitbeck, CJ, and Jansen and Markey, JJ.

PER CURIAM.

Defendants Roy B. Jackson, Tykee J. Ross, and Demel A. Dukes were each charged with the December 11, 2000, robbery of a Dollar Value Plus store in Detroit, and the shooting death of

its owner, Hani Zebib. They were tried jointly, before two separate juries, one for defendant Jackson and the other for defendants Ross and Dukes. All three defendants were convicted of first-degree felony murder, MCL 750.316, and armed robbery, MCL 750.529, and defendant Jackson was also convicted of possession of a firearm during the commission of a felony, MCL 750.227b. Each defendant was sentenced to mandatory life imprisonment for the murder conviction. Additionally, defendant Jackson was sentenced to a concurrent term of eighteen to thirty years' imprisonment for the robbery conviction and a consecutive two-year term for the felony-firearm conviction, defendant Ross was sentenced to a concurrent term of seventeen to thirty years' imprisonment for the robbery conviction, and defendant Dukes was sentenced to a concurrent term of fifteen to thirty years' imprisonment for the robbery conviction. All three defendants appeal by right. We vacate each defendant's conviction and sentence for armed robbery, but affirm in all other respects.

I. Docket No. 240370 (Defendant Jackson)

Defendant Jackson first argues that the trial court erred in instructing the jury on the defense of insanity. Defendant initially requested the instruction, but subsequently withdrew his request. The trial court determined that it was obligated to give the instruction, CJI2d 7.11, which provides that the jury can find a defendant legally insane if he is mentally retarded and lacks the capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. The insanity defense is the "sole standard for determining criminal responsibility as it relates to mental illness or retardation." *People v Carpenter*, 464 Mich 223, 241; 627 NW2d 276 (2001).

This Court reviews jury instructions as a whole to determine if there is error requiring reversal. *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999). The trial court is obligated to instruct the jury as to the law applicable to the case.

While defendant presented evidence that his intelligence level was low, specifically, that he read at no more than a second grade level and tested between "mildly retarded" and "moderately retarded," no evidence was presented regarding his ability to appreciate the nature and quality or the wrongfulness of his conduct or his ability to conform his conduct to the requirements of the law. Contrary to what defendant argues, the insanity instruction the trial court gave was not erroneous. We agree, however, that no evidence supported it.

Although the evidence did not support the instruction, we disagree with defendant's claim that the instruction impermissibly shifted the burden of proof. The jury was instructed that the prosecutor had the burden of proving all of the elements of the charged crimes beyond a reasonable doubt and that it could not consider the insanity defense unless it first found that defendant had committed the crimes. So, the prosecutor was not relieved of his burden of proving each of the elements of the charged crimes beyond a reasonable doubt. Preserved nonconstitutional error is not ground for reversal unless it is more probable than not that the error was outcome determinative. *People v Rodriguez*, 463 Mich 466, 473-474; 620 NW2d 13 (2000); *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). Because the prosecutor was first required to prove that defendant committed the crimes, it is not more probable than not that the trial court's error was outcome determinative, and reversal is not required.

Defendant Jackson also contends that the trial court erred in failing to suppress his statement to the police. Defendant argues that the statement was not voluntarily made, and that he did not knowingly and intelligently waive his *Miranda*¹ rights.

In considering whether a custodial suspect's statement is voluntary, this Court examines the entire record and makes an independent determination of voluntariness. *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997). But, we will not disturb a trial court's factual findings regarding a knowing and intelligent waiver of *Miranda* rights unless they are clearly erroneous. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). If resolution of a disputed factual question turns on the credibility of witnesses or the weight of the evidence, this Court will defer to the trial court given its superior opportunity to evaluate these matters. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). We will affirm the trial court's decision unless we are left with the definite and firm conviction that the trial court erred. *Id.*

In determining whether a statement is voluntary, a court should consider the following factors: the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

Whether a suspect's waiver of *Miranda* rights was knowing and intelligent requires an inquiry into the suspect's level of understanding, irrespective of police behavior. *Daoud, supra*, 636. It is not necessary that the suspect know and understand every possible consequence of a waiver of *Miranda* rights. The state must merely "present evidence sufficient to demonstrate that the accused understood that he did not have to speak, that he had the right to the presence of counsel, and that the state could use what he said in a later trial against him." *Id.*

The record discloses that defendant arrived at the police station for questioning on January 6, 2001, and did not give a statement until the early morning hours of January 8. During that time, he was interviewed several times and was not permitted to have visitors or make phone calls. He was 17-1/2 years old and had completed the tenth grade, but had been in special education classes throughout school and read at an elementary school level, at best. There were no allegations that defendant was injured, intoxicated, drugged, in ill health or physically abused. Although defendant contends that the record is "unclear" whether he was fed, he does not assert that he was deprived of food. The record discloses that defendant was advised of his *Miranda*

¹ *Miranda v Arizona*, 384 US 436, 477; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

rights several times and waived those rights each time. On balance, the totality of the circumstances demonstrates that defendant's statement was voluntarily made.

Conflicting evidence was presented regarding defendant's intelligence level and reading capability, but Dr. Montgomery testified that he interviewed defendant and believed that he was capable of understanding his *Miranda* rights. According to Dr. Montgomery, defendant was able to articulate the meanings of his various *Miranda* rights by stating, "I ain't got to talk," "If I go to court anything I said can be used against me," "I ain't got to say nothing until an attorney gets there," "They will pay for me an attorney," "I ain't got to say nothing." As in *People v Abraham*, 234 Mich App 640, 649-650; 599 NW2d 736 (1999), "[d]efendant's own words plainly indicate that he had an adequate understanding" of his rights. We are not left with the definite and firm conviction that the trial court erred in determining that defendant was capable of knowingly and intelligently waiving his *Miranda* rights. Therefore, defendant's custodial statement was properly admitted at trial.

Next, defendant argues that the trial court erred in admitting codefendant Ross' statement to Ramone Neal shortly after the charged offense that Ross told Neal that they could not give him a ride because "we just did a robbery at the Dollar Store" and that defendant "just shot the man in the stomach." Ross also remarked that defendant was "nothing to f--k with."

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000). "[W]hen a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is unavailable." *Ohio v Roberts*, 448 US 56, 66; 100 S Ct 2531; 65 L Ed 2d 597 (1980). Further, to satisfy the Confrontation Clause a hearsay statement must bear adequate "indicia of reliability" either by falling within a firmly rooted hearsay exception or possessing "particularized guarantees of trustworthiness." *Id.*; *People v Washington*, 468 Mich 667, 671-672; 664 NW2d 203 (2003). Here, the trial court admitted codefendant Ross' statements to Neal under MRE 804(b)(3), as statements against Ross' penal interest, where the declarant is not available to testify at trial. It is clear the statement was against Ross' penal interest, and defendant acknowledges that Ross could not be compelled to testify. But Michigan has not recognized statements against penal interest as a "firmly rooted" hearsay exception. *Washington*, supra at 672 (recognizing some jurisdictions have held that the hearsay exception for statements against penal interest is firmly rooted); *Schutte*, supra at 718.

As the trial court found, there was no suggestion here that Ross' statements to Neal were not voluntarily. Indeed, the circumstances show that the statements were made spontaneously, to a friend, and were contemporaneous with the charged crimes. These factors clearly weigh in favor of admissibility. *People v Poole*, 444 Mich 151, 164-165; 506 NW2d 505 (1993). Moreover, we disagree with defendant's claim that Ross' statements demonstrate a "blatant attempt to minimize his role in any crime and shift responsibility for the more serious offense of murder on to Mr. Jackson." Although Ross stated that defendant had "shot the man in the stomach," his statements do not reflect an attempt to downplay his own involvement. On the contrary, Ross admitted taking part in the offense and admitted that his car had been involved. The trial court did not abuse its discretion in admitting the statements because, based on the

totality of circumstances, they bore sufficient indicia of reliability to satisfy the Confrontation Clause. *Washington*, supra at 672-673; *Poole*, supra.

Defendant next argues that the evidence was insufficient to link him to the charged crimes. In considering this issue, we must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the charged crimes were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). The standard of review is deferential and this Court is required to draw all reasonable inferences and make credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Although there was no physical evidence or eyewitness identification in this case, there was evidence that masked men robbed the Dollar Store at gunpoint and that the owner was shot to death. Defendant confessed to the police that he went to the Dollar Store to rob it, that he had a gun, and that he shot the decedent "accidentally" because "he moved." Additionally, shortly after the offense, codefendant Ross told his friend Ramone Neal that "we just did a robbery at the Dollar Store," and that defendant had "just shot the man in the stomach." Although defendant asserts that both his custodial police statement and codefendant Ross' statements to Neal were not admissible, we have previously rejected each of those arguments. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find that defendant committed the charged crimes beyond a reasonable doubt.

Lastly, defendant argues, the prosecutor concedes, and we agree, that defendant's dual convictions and sentences for both felony murder and the underlying felony of armed robbery violate his double jeopardy protections. *People v Coomer*, 245 Mich App 206, 224; 627 NW2d 612 (2001). The proper remedy is to vacate defendant's conviction and sentence for the underlying felony. *Id.* Accordingly, we vacate defendant's conviction and sentence for armed robbery.

II. Docket No. 240371 (Defendant Ross)

Defendant Ross first argues that he was denied his right to confront the witnesses against him because he was not allowed to cross-examine Investigator Sims regarding codefendant Jackson's statement, nor was he allowed to present codefendant Jackson's defense witnesses to his jury. A criminal defendant does not have an unlimited right to confront witnesses against him, *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998), and the trial court's limitation of cross-examination is reviewed for an abuse of discretion, *People v Bell*, 88 Mich App 345, 348; 276 NW2d 605 (1979). A trial court's decision regarding an appropriate remedy for a discovery violation is also reviewed for an abuse of discretion. *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997).

The record does not support defendant's claim that he was denied the right to cross-examine Investigator Sims. At the close of the prosecutor's direct examination of Investigator Sims, the trial court dismissed the Ross/Dukes jury without objection so that counsel for codefendant Dukes could attend another matter. Codefendant Jackson's jury remained to hear the cross-examination of Investigator Sims by codefendant Jackson's counsel. The trial court

indicated that counsel for defendant and codefendant Dukes could conduct their cross-examination of Investigator Sims later in the afternoon. The Ross/Dukes jury returned to the courtroom later that day, but Investigator Sims was not recalled. Although there is no indication in the record that defendant ever cross-examined Investigator Sims, nothing in the record suggests that the trial court prohibited defendant from doing so. The record indicates that the trial court expressly stated that defendant would be allowed to cross-examine Investigator Sims, and there is no explanation on the record for the absence of this cross-examination. Moreover, there was no objection to any subsequent restriction of, or prohibition against, cross-examination; consequently, this issue unpreserved. Unpreserved issues are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Because the record is silent as to why defendant never cross-examined Investigator Sims, defendant has not sustained his burden of demonstrating plain error. *Id.* Therefore, this issue does not warrant appellate relief.

Defendant also argues that his jury should have heard the testimony of codefendant Jackson's defense witnesses, education experts Alfred Weeks and Dr. Michael Abramsky. The trial court dismissed the Ross/Dukes jury just before Weeks and Dr. Abramsky testified. Counsel for defendant responded:

MR. PRICE: Judge, our Jury wants to hear – I mean, we want our Jury to hear. I thought there was a misunderstanding and I apologize.

THE COURT: Approach.

(Bench conference held at 11:53 A.M. as follows)

THE COURT: The Jury wants to hear from Mr. Jackson's teacher?

MR. PRICE: You don't think they should hear that?

THE COURT: No, that's Mr. Jackson, it goes to his defense, his diminished capacity. I mean –

MR. PRICE: So you're not going to let our Jury hear?

THE COURT: No. What for?

MR. PRICE: Okay.

THE COURT: Okay.

Defense counsel later told the court that he was "concerned about the fact that our Jury was unable to hear the professor [Weeks] or the doctor [Abramsky]. I think the Court's ruling may be right, but I may like to revisit this on Monday if I find law that supports my position." As the discussion continued, the court ruled over defense counsel's objection that the testimony regarding codefendant Jackson's mental disabilities was not relevant to defendant's case. Additionally, the prosecutor noted that he had no notice regarding this issue, and defense counsel acknowledged that he had not included Mr. Weeks or Dr. Abramsky on his witness list.

A party is required to disclose any lay or expert witnesses he intends to call at trial. MCR 6.210(A)(1). Where, as here, a party does not list a witness in accordance with the trial court's order, the court may prohibit the testimony of the witness "except upon good cause shown." MCR 2.401(I)(2). As below, defendant does not clearly explain why codefendant Jackson's educational experts should have testified in his case. As the trial court noted, all defendants had ample opportunity to cross-examine the police officers who interviewed codefendant Jackson concerning the circumstances surrounding his custodial statement. Defendant admitted below that he had no authority to support his request for the unlisted witnesses and, therefore, failed to show "good cause" for their testimony. Thus, we cannot conclude that the trial court abused its discretion by refusing to allow codefendant Jackson's witnesses to testify before defendant's jury. *Davie (After Remand), supra*.

Next, defendant argues that there was insufficient evidence to convict him of felony murder. To prove felony murder on an aiding and abetting theory, the prosecution must show that the defendant (1) performed acts or gave encouragement that assisted the commission of the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of the predicate felony. *People v Riley*, 468 Mich 135, 140; 659 NW2d 611 (2003). "[I]f an aider and abettor participates in a crime with knowledge of the principal's intent to kill or to cause great bodily harm, the aider and abettor is acting with 'wanton and willful disregard' sufficient to support a finding of malice." *Id.*, at 141. A defendant's knowledge that a codefendant was armed may establish "'wanton and willful disregard' sufficient to support a finding of malice." *People v Turner*, 213 Mich App 558, 572-573; 540 NW2d 728 (1995).

Here, the evidence indicated that defendant agreed to commit a robbery with codefendant Jackson, knowing that codefendant Jackson was armed with a gun. There was evidence that the Dollar Store was robbed and that Mr. Zebib was shot to death during the robbery. Defendant subsequently told Ramone Neal, "we just did a robbery at the Dollar Store," and said that codefendant Jackson "just shot the man in the stomach." Defendant also told Neal that codefendant Jackson had a gun and that codefendant Jackson was "nothing to f__k with." Defendant told the police that codefendant Jackson suggested the robbery, that "me and [codefendant Dukes] agreed with it," that codefendant Jackson had a gun, that they wore ski masks during the robbery, that he stood "look-out" by the door, that they ran from the store after codefendant Jackson shot Zebib, and that they split the robbery proceeds afterward. Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could find sufficient evidence of malice to support defendant's felony murder conviction. *Hampton, supra*.

Defendant also argues that he was improperly convicted and sentenced for both felony murder and the underlying felony, armed robbery. Because we agree, we vacate defendant's conviction and sentence for armed robbery. *Coomer, supra*.

Finally, defendant argues that he was denied a fair trial because of the prosecutor's misconduct during closing arguments. Prosecutorial misconduct issues are decided case by case. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). This Court generally considers the alleged misconduct in context to determine whether the defendant was denied a fair

and impartial trial. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). Here, however, defendant failed to object to most of the remarks that he now challenges on appeal. “Appellate review of allegedly improper conduct by the prosecutor is precluded where the defendant fails to timely and specifically object; this Court will only review the defendant’s claim for plain error.” *Schutte, supra* at 720. Where a curative instruction could have alleviated any prejudicial effect, error warranting reversible will not be found. *Id.*, at 721.

A prosecutor is afforded great latitude during closing argument, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), and is not required to state his inferences and conclusions in the “blandest possible terms,” *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996). The prosecutor may use strong and emotional language in making his argument so long as it is supported by the evidence. *People v Ullah*, 216 Mich App 669, 678-679; 550 NW2d 568 (1996).

Although the arguments in this case were heated, most of the remarks challenged on appeal, viewed in context, were part of the prosecutor’s larger argument of explaining why the evidence did not support the defendants’ theories. Additionally, many of the challenged remarks were in response to defense issues. Even improper remarks do not require reversal when they are of a responsive nature. *People v Duncan*, 402 Mich 1, 16; 260 NW2d 58 (1977); *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). Further, a prosecutor does not shift the burden of proof by commenting on the improbability of a defendant’s theory. *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995). To the extent that some of the prosecutor’s remarks may have been ill-advised, such as the comment that the prosecutor’s duty is to seek justice, any perceived prejudice could have been cured by a cautionary instruction. *Schutte, supra* at 721. Also, the jury was instructed that the prosecution had the burden of proof and that the arguments of counsel were not evidence. The jury is presumed to follow the court’s instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). For these reasons, we conclude that this issue does not warrant reversal.

III. Docket No. 240373 (Defendant Dukes)

Initially, we agree that defendant Dukes was improperly convicted and sentenced for both felony-murder and the underlying felony, armed robbery. Accordingly, we vacate defendant’s conviction and sentence for armed robbery. *Coomer, supra*.

Defendant also argues that he was denied a fair trial because of the prosecutor’s remarks during closing argument. Because defendant did not object to the challenged remarks at trial, we review this issue for plain error affecting defendant’s substantial rights. *Schutte, supra* at 720. Although defendant did object to the prosecutor’s remark that there was “a murderer in our midst,” the objection was made after the jury was excused from the courtroom and, therefore, was untimely.

Considering both the context of this heated and vigorously contested trial and the responsive nature of most of the challenged remarks, we are not persuaded that the prosecutor’s remarks amounted to plain error that deprived defendant of a fair and impartial trial. *Bahoda, supra*; *Duncan, supra*. Moreover, the jury was instructed that the prosecution had the burden of proof, and that the arguments of counsel were not evidence. We must presume that the jury

followed those instructions. *Graves, supra*. Although the remark that there was “a murderer in our midst” may have been intemperate, it is apparent from the surrounding context that the remark was not intended as an appeal to the “broader issue of crime,” but as a statement that the evidence showed that defendants were the perpetrators of the charged crime. *People v Cooper*, 236 Mich App 643, 651; 601 NW2d 409 (1999). Accordingly, this issue does not warrant reversal.

Finally, defendant argues that the trial court erred in admitting codefendant Jackson’s custodial statement as substantive evidence against him. As discussed previously, MRE 804(b)(3) provides a hearsay exception for a statement against penal interest when the declarant is not available to testify at trial. Defendant acknowledges that codefendant Jackson was not available to testify at his trial. The trial court determined that codefendant Jackson’s statement was voluntary and that it was made within a month of the killing, which it concluded weighed in favor of admissibility. Although the court acknowledged that Jackson gave the statement to the police at their prompting, the court also found that the statement had sufficient indicia of reliability because codefendant Jackson did “not in any way shift blame to his co-defendants.” Instead, he admitted that the crime was his idea, he was the shooter, and that neither defendant nor codefendant Ross had a gun. Accordingly, defendant has failed to show that the trial court erred by finding under the totality of circumstances that Jackson’s statement bore sufficient indicia of reliability to satisfy the Confrontation Clause and admitting the statement as substantive evidence against him. MRE 804(b)(3); *Washington, supra* at 672-673; *Poole, supra* at 164-165.

We recognize that a custodial confession of an accomplice when used as substantive evidence to inculcate a codefendant is presumed to be unreliable, and therefore, inadmissible under Confrontation Clause jurisprudence. *Schutte, supra* at 717, citing *People v Richardson*, 204 Mich App 71, 75, 514 NW2d 503 (1994). See also *Lilly v Virginia*, 527 US 116, 131 (Stevens, J.), 146 (Rehnquist, C.J.); 119 S Ct 1887; 144 L Ed 2d 117 (1999). But even if constitutional error occurred in admitting Jackson’s statement as substantive evidence against defendant, it is not structural error that defies harmless error analysis. *Lilly, supra*, 527 US at 140, 149; *People v Smith*, 243 Mich App 657, 630; 625 NW2d 46 (2000), remanded 465 Mich 928; 639 NW2d 255 (2001), clarified by 249 Mich App 728; 643 NW2d 607 (2002). Where preserved constitutional error occurs, it is harmless if the benefiting party demonstrates on appeal that no reasonable possibility exists that the evidence complained of might have contributed to the conviction. *Smith, supra*, 249 Mich App at 730.

Here, defendant’s own confession was sufficient to demonstrate that any error in admitting Jackson’s confession was harmless beyond a reasonable doubt. Defendant admitted to agreeing with Jackson and codefendant Ross to commit the robbery, admitted going to the crime scene with Jackson and Ross, admitted that Jackson had a gun and demanded money from the victim, admitted that, he then went behind the sales counter of the store to collect the stolen money from the cash register, admitted fleeing with his codefendants after Jackson fired another gunshot, and admitted that he then divided the stolen the stolen money with his codefendants. Although Jackson’s statement contained a claim that defendant gave him the handgun he used in the robbery, it is clear that the jury rejected this added detail by acquitting defendant of felony firearm charges. In sum, there is no reasonable possibility that the admission of Jackson’s

statement might have contributed to the conviction. *Smith, supra*, 249 Mich App at 730. So, any constitutional error was harmless beyond a reasonable doubt. *Id.*; *People v Anderson (After Remand)*, 446 Mich 392, 406; 521 NW2d 538 (1994).

We vacate each defendant's conviction and sentence for armed robbery and affirm in all other respects.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Jane E. Markey