

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

MOBILE LUNDY,

Defendant-Appellant.

UNPUBLISHED

October 9, 2001

No. 220100

Wayne Circuit Court

LC No. 98-010891

Before: K.F. Kelly, P.J., and Hood and Zahra, JJ.

ZAHRA, J. (*concurring in part and dissenting in part*).

I respectfully dissent from the majority's conclusion that defendant's first-degree felony murder conviction must be overturned. I conclude that there was evidence from which the jury could infer that defendant, at least, aided and abetted in a larceny from the victim. Thus, there was sufficient evidence supporting the jury verdict of first-degree felony murder. MCL 750.316(1)(b).

Defendant admitted at trial that he and Debra Hart were present at the victim's apartment. Defendant acknowledged that he saw the victim with money early in the evening. Hart testified that she also observed the victim with money. Defendant admitted that he stabbed the victim several times during an altercation. While defendant denied taking the victim's money, he claimed that Hart took the money as they were leaving the apartment. As noted by the majority, Hart denied taking the money, and blamed defendant for any larceny. Hart testified that there was blood on the money, which defendant washed off soon after leaving the victim's apartment. Hart claimed that she and defendant then went and spent the money on hamburgers and beer.

I conclude that evidence and the inferences that may logically arise from it were sufficient to allow the jury to determine that defendant committed a larceny or aided and abetted in a larceny and that the larceny was in conjunction with the murder. Circumstantial evidence and the inferences there from are sufficient to prove the elements of an offense. *People v Noble*, 238 Mich App 647, 655; 608 NW2d 123 (1999). It was entirely appropriate for the jury to conclude from the evidence that defendant and/or Hart knew that the victim had money and decided to seize the moment to rob and murder the victim. The jurors observed defendant and Hart's demeanor while testifying and were free to accept or reject any part of those witnesses' testimony. See *People v Stiller*, 242 Mich App 38, 42; 617 NW2d 699 (2000). It is not our role to second-guess the jury's credibility determinations. *Id.* By virtue of the murder, the jury was denied the opportunity to hear an account of the incident other than the self-serving accounts

offered by defendant and Hart. Given the verdict, the jury apparently discounted testimony suggesting that defendant or Hart formed the intent to take the money only after the altercation. The jury had discretion to do so. Evidence that defendant washed the victim's blood from the money, and very soon thereafter, used the money to purchase food and beer demonstrates the actors were in need of money. These circumstances allow for the inference that the intent to take the money was formed prior to the murder.

I concur with the majority's analysis of defendant's remaining issues. Accordingly, I would affirm defendant's conviction.

/s/ Brian K. Zahra