

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROY D. TAYLOR,

Defendant-Appellant.

UNPUBLISHED

June 30, 2000

No. 213412

Recorder's Court

LC No. 96-005478

Before: Owens, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions¹ for first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life imprisonment without parole for the murder conviction and twenty-five to forty years for the armed robbery conviction. These sentences were to be served concurrently but consecutively to a two-year sentence for the felony-firearm conviction. We affirm with regard to the first-degree felony murder and felony-firearm convictions and reverse with regard to the armed robbery conviction.

Defendant first argues that his statement to police was involuntary because of police coercion. Although defendant raised a coercion argument in a motion to suppress before commencement of the instant trial, the issue is abandoned because defendant never raised the issue at the *Walker*² hearing that was held before the commencement of his first trial in 1996.³ See *People v Howard*, 226 Mich App 528, 537; 575 NW2d 16 (1997). At that hearing, the issues raised were whether defendant's *Miranda*⁴ rights were violated, and whether his Sixth Amendment right to counsel⁵ was violated. The

¹ Defendant was previously tried twice for these charges. The two prior trials resulted in hung juries.

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

³ See n 1, *supra*.

⁴ *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966).

⁵ US Const, Am VI.

trial court rejected defendant's Sixth Amendment claim, but granted defendant's motion to suppress on the basis of a *Miranda* violation. After an interlocutory appeal was taken, this Court reversed the trial court's decision. As such, a factual record was never developed regarding defendant's claim that his statements were involuntary. See *Howard, supra* at 537; see also *People v Walker, (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965). Accordingly, this issue is abandoned. See *Howard, supra* at 537.

Assuming arguendo that the issue is properly before us, we nevertheless conclude, based on the testimony presented at the instant trial, that defendant's statements were voluntarily given. Although defendant was questioned for an arguably lengthy period of time on June 20, 1996, this factor, by itself, is not sufficient to conclude that a statement was involuntary. See *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998). The record reflects that defendant was of legal age, was not sleep-deprived, nor denied food and drink. Furthermore, there was no evidence that defendant was mentally deficient, or that he was physically beaten or threatened by the police. Accordingly, there is no indication from the record before us that defendant's statements were involuntary.

Defendant's second issue on appeal is that his dual convictions for felony murder and armed robbery violate his constitutional right not to be subject to double jeopardy. We agree. Although defendant did not raise this argument before the trial court, we will review the issue because a significant constitutional question is presented. *People v Peerenboom*, 224 Mich App 195, 199; 568 NW2d 153 (1997)

In this case, defendant was convicted of both felony murder, based on the predicate felony of larceny, and armed robbery. Both the predicate felony of larceny and armed robbery were based on the same act; that is, defendant used a gun to steal drugs and money from the victim. Larceny is an essential element of armed robbery. See *People v LaTeur*, 39 Mich App 700, 706; 198 NW2d 727 (1972). Furthermore, the prosecution concedes that the larceny here was "subsumed in the armed robbery"; it never argued that defendant committed two separate offenses.

Where a defendant is convicted of both felony murder and the predicate felony, the remedy on appeal is to reverse and vacate the conviction for the predicate felony. *People v Minor*, 213 Mich App 682, 690; 541 NW2d 576 (1995). Because defendant was convicted of both felony murder and armed robbery, the dual convictions violate double jeopardy principles. *People v Harding*, 443 Mich 693, 714; 506 NW2d 482 (1993). Therefore, defendant's conviction of armed robbery should be reversed and his sentence vacated. See *Minor, supra* at 690.

Defendant's convictions and sentences for felony murder and felony-firearm are affirmed and his armed robbery conviction and sentence are reversed and vacated.

/s/ Donald S. Owens

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald