

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD LOUIS GREVE,

Defendant-Appellant.

UNPUBLISHED

January 24, 2003

No. 234430

Saginaw Circuit Court

LC No. 00-018691-FC

Before: O’Connell, P.J., and Griffin and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316(1)(b); larceny of a firearm, MCL 750.357b; breaking and entering of a vehicle, MCL 750.356a(2)(c)(1); first-degree home invasion, MCL 750.110a(2); armed robbery, MCL 750.529; arson of a dwelling house, MCL 750.72; felon in possession of a firearm, MCL 750.224(F); and felony-firearm, MCL 750.227b(1). Defendant was sentenced to 2 years’ imprisonment for felony-firearm, to precede and run consecutive to concurrent terms of life imprisonment without the possibility of parole for first-degree murder, 40 to 60 months’ imprisonment for larceny of a firearm, 40 to 60 months’ imprisonment for breaking and entering of a vehicle, 13 to 20 years’ imprisonment for first-degree home invasion, 450 to 900 months’ imprisonment for armed robbery, 13 to 20 years’ imprisonment for arson of a dwelling house, and 40 to 60 months’ imprisonment for felon in possession of a firearm. Defendant appeals as of right. We affirm in part and vacate in part.

Defendant first alleges that error requiring defendant’s convictions be vacated was committed where the jury failed to follow the trial court’s specific instructions that the first-degree premeditated murder and the felony murder charges were to be considered in the alternative. We disagree.

In Michigan by statute, first-degree murder may be supported by one or more alternative theories, i.e., premeditation, the commission of a specified felony, or death of specified law enforcement personnel. MCL 750.316. The jury is not prohibited from finding a defendant guilty under both alternatives, but each verdict must be unanimous. See *People v Olsson*, 56 Mich App 500, 506; 224 NW2d 691 (1974); but see *People v Smielewski*, 235 Mich App 196, 205-206, 208; 596 NW2d 636 (1999) (to reverse on ground that unanimity instruction was not given, evidence must also be insufficient). However, the court’s sentencing decisions are

constrained by the double jeopardy clause, which allows only one sentence to be imposed for the murder of one victim. *People v Densmore*, 87 Mich App 434, 440-441; 274 NW2d 811 (1978).

In *People v Bigalow*, 229 Mich App 218, 220-221; 581 NW2d 744 (1998), a special panel of this Court concluded that the proper remedy in a challenge such as the one before us was not to reverse as defendant requests, but to modify the judgment to specify that the conviction is for one count and one sentence for first-degree murder, supported by two theories. See also *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001); *People v Adams*, 245 Mich App 226, 241-242; 627 NW2d 623 (2001). Because the trial court properly entered the conviction as one count of first-degree murder, there is no ground for reversal.

Moreover, the jury instructions fairly presented the issues and adequately protected defendant's rights. See *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). "[F]airness, not perfection, is the standard for jury instructions." *People v Wilson*, 242 Mich App 350, 361; 619 NW2d 413 (2000). The jury was not, as defendant claims, instructed that it must choose between premeditated and felony murder. Rather, the jury was merely instructed that defendant's first-degree murder charge was supported by alternative theories. The jury was free to find that both theories had been proven, so long as the verdicts were unanimous with respect to each theory and the evidence was otherwise sufficient to support the conviction. See *Olsson, supra*; see also *Smielinski, supra*.

Defendant also argues that his conviction of felony murder and the several predicate felonies violate his double jeopardy rights. We agree.

A challenge implicating constitutional double jeopardy provisions present a question of law that this Court reviews de novo. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001). Generally, both federal and state constitutions prohibit placing a defendant twice in jeopardy for a single offense. US Const Am V; Const 1963, art 1 § 15. "The principal thrust of double jeopardy protection by the very terms of our federal and state constitutional provision[s] is protection from repeated prosecution for the same criminal offense arising out of the same conduct." *Herron, supra* at 600, quoting *People v Harding*, 443 Mich 693, 705; 506 NW2d 482 (1993). The guarantees are substantially similar and protect against three general governmental abuses: a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. *Herron, supra* at 599; *People v Rodriguez*, 251 Mich App 10, 17; 650 NW2d 96 (2002). The present case concerns the third type of protection.

Our courts have consistently held that convictions and sentencing for both felony murder and the underlying felony constitute multiple punishments for the underlying felony and thus violate double jeopardy protections found in the Michigan Constitution. *People v Coomer*, 245 Mich App 206, 224; 627 NW2d 612 (2001); *People v Gimotty*, 216 Mich App 254, 259-260; 549 NW2d 39 (1996). In addition, this Court had also consistently determined that the appropriate remedy for this violation is to vacate the conviction and sentence for the underlying felony. *People v Wilder*, 411 Mich 328, 352; 308 NW2d 112 (1981); *Gimotty, supra*.

In the case at bar, our review fails to discern whether each or all of the listed felonies served as the predicate for defendant's felony murder conviction.¹ Because each predicate supports the felony murder conviction, the sentencing for both felony murder and the underlying felonies constitute multiple punishments for the underlying felony and thus violate double jeopardy protections. See *Coomer, supra*; *Gimotty, supra*. The appropriate remedy is to vacate the underlying felony sentences. See *Coomer, supra*.

Affirmed in part, vacated in part, and remanded with instructions to vacate defendant's sentences for larceny of a firearm, first-degree home invasion, armed robbery, and arson of a dwelling. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Jane E. Markey

¹ In this case, defendant's predicate felony was listed as one of several alternatives – first-degree criminal sexual conduct (CSC I), MCL 750.520b; larceny of a firearm, MCL 750.357b; first-degree home invasion, MCL 750.110a(2); armed robbery, MCL 750.529; and arson of a dwelling house, MCL 750.72. Thus, proof of any one would be sufficient to establish the predicate felony to support a charge of felony murder. Of these, defendant was found guilty of all predicate offenses except CSC I. The jury found defendant guilty of felony murder but failed to stipulate which underlying felony constituted the predicate felony.