COURT OF APPEALS
DECISION
DATED AND RELEASED

February 27, 1996

NOTICE

No. 95-0286-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

EDDIE J. SHUMAKER,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JANINE P. GESKE and MAXINE A. WHITE, Judges. *Affirmed*.

Before Sullivan, Fine and Schudson, JJ.

PER CURIAM. Eddie J. Shumaker appeals from a judgment of conviction, after a jury trial, for four counts of first-degree intentional homicide while using a dangerous weapon, as party to a crime, contrary to §§ 940.01(1), 939.63(1)(a)2, and 939.05, STATS. He also appeals from an order denying his

postconviction motion. Shumaker claims that: (1) his sentence was excessive;[1] (2) he did not knowingly, voluntarily and intelligently waive his rights in giving his statement; (3) the trial court erred in admitting certain evidence; (4) the evidence was insufficient to convict him; and (5) we should exercise our discretionary authority under § 752.35, STATS., to reverse his conviction. We reject his claims and affirm.

I. BACKGROUND.

Shumaker was involved in a planned armed robbery of a drug house with several other individuals. In the end, three teenage girls and one male "drug dealer" were killed. Another "drug dealer" was seriously injured, but survived. Shumaker was charged with the murders and with attempted murder as party to a crime. The jury convicted on the four murder counts, but acquitted Shumaker of the attempted murder.

Shumaker was sentenced to four consecutive 25-year sentences, with a parole eligibility date of July 7, 2093. Shumaker filed a postconviction motion seeking sentence modification, which was denied. He now appeals. Any additional relevant facts will be provided as necessary throughout this opinion.

II. ANALYSIS.

A. Sentence.

Shumaker claims that the 100-year sentence he received was too harsh. We reject this claim. Our review is limited to a two-step inquiry. We first determine whether the trial court properly exercised its discretion in imposing the sentence. If so, we then consider whether that discretion was

[1] He also claims that § 973.014(1)(b), STATS., which provides that a defendant may be given a fixed-term sentence for homicide without possibility of early parole, is unconstitutional. He does not, however, seek review of this issue in this court. We therefore do not address it.

erroneously exercised by imposing an excessive sentence. ***State v. Glotz***, 122 Wis.2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984).

It is clear from the record that the trial court properly exercised its discretion in imposing sentence. It examined the three primary factors—gravity of the offense, protection of the public, and the rehabilitative needs of the defendant. *See* ***State v. Curbello-Rodriquez***, 119 Wis.2d 414, 433, 351 N.W.2d 758, 767 (Ct. App. 1984). In addition, in order to find that a sentence was excessive requires us to conclude that the sentence is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). Under the circumstances of the instant case, we cannot so conclude. The crimes committed were vicious, execution-style slayings. Four people, including three teenage girls who were innocent bystanders, were killed. Accordingly, we reject Shumaker's claim that his sentence was excessive.

B. Shumaker's Statement.

Shumaker next argues that the statement elicited from him should have been suppressed because he did not knowingly, voluntarily, and intelligently waive his ***Miranda*** rights. We reject his claim.

Detective Eugene Farmer testified that he orally advised Shumaker of each of the ***Miranda*** rights, that Shumaker said he understood each of these rights, and that Shumaker agreed to speak to the police. Based on our review of the record, the trial court's findings of fact in accord with this testimony are not clearly erroneous. This testimony, therefore, is sufficient to satisfy the State's burden of proving that Shumaker waived his rights. ***State v. Jones***, 192 Wis.2d 78, ___, 532 N.W.2d 79, 94 (1995), *amended upon denial of motion for reconsideration by*, No. 92-1316-CR (per curiam order) (Wis. June 29, 1995) (holding that State must show defendant waived rights by a preponderance of the evidence). The State also produced witnesses who testified that Shumaker voluntarily gave the statement and that no coercive methods were used to elicit the statement. Shumaker offered no evidence to refute either that he waived his rights or that the statement was not given voluntarily. Therefore, it was not erroneous for the trial court to admit Shumaker's statement into evidence.

C. Evidentiary Issues.

Shumaker next claims that the trial court erred in admitting certain evidence—the trial court should not have allowed a jury view of the scene of the crime; the trial court should not have allowed a demonstration of weapons similar to those used to commit the crimes; and the trial court should not have admitted the statement of Tyrone Anderson. We again reject Shumaker's contentions.

"A trial court possesses great discretion in determining whether to admit or exclude evidence. We will reverse such a determination only if the trial court erroneously exercises its discretion." ***State v. Morgan,*** 195 Wis.2d 388, 416, 536 N.W.2d 425, 435 (Ct. App. 1995).

The trial court decided to allow the jury view because it thought the view would be extremely helpful to the jury and assist them in conceptualizing the relationship of the rooms and the testimony of the various witnesses. Shumaker's main complaints were that the jury view created sympathy for the victims and the view was not necessary because everyone knows the general layout of a ground floor, duplex flat. We are not persuaded by either contention.

First, Shumaker failed to make a convincing argument that the view would create sympathy for the victims. At the time of the jury view, the duplex had been cleaned, repaired and re-rented. The bodies, the blood, the guns and other evidence were no longer present. Hence, we fail to see how the jury view would garner sympathy for the victims. Second, Shumaker does not offer any support for his argument that everyone knows the layout of a typical duplex and we therefore reject it.

The trial court did not erroneously exercise its discretion in allowing the jury view. It provided a reasonable basis for doing so, which is in accord with the law. *See* ***State v. Coulthard***, 171 Wis.2d 573, 588, 492 N.W.2d 329, 336 (Ct. App. 1992) (the purpose of a jury view is to assist the jury in understanding the evidence). Given the variety of testimony regarding the rooms inside the duplex, and what happened where, the first-hand view of the

scene of the crimes certainly would assist the jury in understanding the evidence.

We reach the same conclusion regarding the weapons demonstration. The trial court permitted Reginald Templin, a firearms expert from the State Crime Laboratory, to demonstrate the mechanical functioning of the kinds of guns used to commit the crimes involved in this case. The trial court thought the demonstration would help the jury understand how the firearms work, why ejected bullet casings wind up where they do, and why certain markings are made on bullets and casings. Shumaker claimed such a demonstration would confuse the jury because the actual weapons used to commit the crimes were not used in the demonstration.[2] The trial court, however, expressly advised the jury that the firearms being demonstrated were not recovered from the scene of the crime, but were taken from the crime lab's collection for purposes of conducting the demonstration. Accordingly, Shumaker's confusion argument is without merit.

We conclude that the trial court did not erroneously exercise its discretion in allowing the demonstration because it had a reasonable basis for doing so, which was in accord with the law. *See* ***State v. Baldwin***, 101 Wis.2d 441, 455, 304 N.W.2d 742, 750 (1981) (an expert demonstration may be permitted when it will assist the trier of fact to determine a fact in issue). In the instant case, the jury heard testimony about several different types of weapons and testimony about the numerous bullet casings recovered from the scene. Hence, the demonstration undoubtedly would assist them in deciding the case.

Finally, we also reject Shumaker's claim that the trial court should not have admitted Tyrone Anderson's statement regarding conversations between Shumaker and his co-defendant, Emmett White. Anderson testified that Shumaker and White planned to either kill another co-defendant, Elliot House, if he were lying to them, or to rob the individuals who House claimed had stolen his money. The trial court ruled that the statement was admissible as a statement of a co-conspirator made during the course and in furtherance of

[2] Shumaker argues additional new grounds on appeal for excluding the demonstration. By failing to raise these objections at the time of trial, however, Shumaker waived his right to assert them on appeal. *See* ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980).

the conspiracy. The trial court's ruling was not an erroneous exercise of discretion. The testimony clearly indicates that Shumaker and White conspired to either kill House or commit a robbery. This was the entire purpose for their trip to the drug house. There is nothing in the record or in Shumaker's brief to contradict this conclusion.

We also reject Shumaker's claim that the statement should not have been used to convict him of murdering the three teenage girls because the conspiracy evidences only an intent to commit robbery. A party to a conspiracy is liable not only for the crime he intended to commit, but also for any other crime committed as a natural and probable consequence of the intended crime. ***State v. Nutley***, 24 Wis.2d 527, 556, 129 N.W.2d 155, 167 (1964), *cert. denied*, 380 U.S. 918 (1965). Murder often occurs as a natural and probable consequence of a robbery in which one or more of the robbers is armed. ***State v. Dyelski***, 154 Wis.2d 306, 310-11, 452 N.W.2d 794, 796 (Ct. App. 1990). In the instant case, both White and Shumaker were armed. Accordingly, Shumaker's contention is without merit.

D. Sufficiency of the Evidence.

Next, Shumaker claims the evidence was not sufficient to convict him of the three counts of homicide relating to the three teenage girls, because the physical evidence demonstrated that the girls were killed from bullets from the gun White was using. We reject Shumaker's contention.

> [I]n reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence

> adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990) (citations omitted). Although Shumaker is correct about the fact that the evidence demonstrated that the three teenage girls died from shots fired from the weapon of his co-defendant, this fact does not absolve Shumaker of responsibility. Shumaker was charged as party to a crime. There is evidence in the record from which a reasonable jury could conclude that Shumaker intended to aid or assist White in committing the murders. Shumaker conspired with White from the beginning to commit either murder or robbery. Shumaker brandished a weapon *and* discharged his weapon. Shumaker apparently stopped shooting to watch White firing the assault rifle at the victims, "because it looked so pretty." When it was over, Shumaker drove the getaway car, aiding and abetting the escape of the person he knew had just murdered the girls.

From this evidence, a jury could reasonably find Shumaker guilty of being a party to these murders. Accordingly, we reject his claim that the evidence is insufficient to support his conviction.

E. Discretionary Reversal.

Finally, Shumaker claims that we should reverse his conviction in the interests of justice, pursuant to the discretionary reversal statute, § 752.35, STATS. He has provided us with no reason for doing so.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.