COURT OF APPEALS
DECISION
DATED AND FILED

March 28, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 00-3167-CR **Cir. Ct. No. 99-CF-6222**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL R. HARTMANN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Michael Hartmann appeals a judgment of conviction and an order denying postconviction relief. The issues are whether the evidence was sufficient to support the conviction and whether the court erred in sentencing him. We affirm.

¶2 Hartmann was convicted of felony murder, WIS. STAT. § 940.03 (1999-2000),[1] in connection with his aiding and abetting of an attempted armed robbery. The trial was conducted to the court, primarily on stipulated facts.

¶3 Hartmann argues that he was not aware that one of the people who was going to directly commit the robbery had a gun, and that his lack of knowledge negates his involvement in the charge of felony murder. This argument fails because the court found that Hartmann *was* aware of the gun. We affirm the finding of guilt unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). A police detective described the statement Hartmann gave, and in that statement Hartmann said that one of the people who was going to directly commit the robbery said he had a gun. This testimony, if believed, is sufficient to support a finding that Hartmann knew of the gun.

¶4 Hartmann also argues that the court's finding of guilt was not supported by sufficient evidence because the State's theory was that armed robbery is a natural and probable consequence of robbery, and that the homicide in this case was a natural and probable consequence of armed robbery. Thus, according to Hartmann, the State is adding one natural and probable consequence on top of another, and as a result the finding of guilt is merely speculation, not proof beyond a reasonable doubt. We reject this argument because the "natural

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

and probable consequence" concept is not involved in making the link between attempted armed robbery and felony murder. That link exists by the terms of the felony murder statute itself, which makes it a crime to cause the death of another human being while committing or attempting to commit the crime of armed robbery. WIS. STAT. § 940.03.

¶5 Hartmann also argues that his sentence was unduly harsh. The court sentenced him to twenty-five years in prison, out of a maximum possible forty years. A sentence will be overturned as excessive only when it 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. ***State v. Thompson***, 172 Wis. 2d 257, 264, 493 N.W.2d 729 (Ct. App. 1992). Hartmann's sentence was not excessive. He participated in planning the robbery that led to the homicide, including suggesting the target, who lived downstairs from Hartmann, for the purpose of revenge over a personal dispute, and agreeing to leave a door in the building unlocked to allow the robbers to enter. Hartmann was aware that one of the robbers would be armed, and he continued to go ahead with the plan. These facts show him to be a highly culpable participant in the armed robbery that led to the homicide.

¶6 Hartmann argues that his sentence was ten years longer than was given to one of the co-defendants who entered the residence. Hartmann does not tell us where in the record we may find this information about the sentence of the co-defendant. Nor does he provide other information that would enable us to learn the court's reasons for the sentence given to the co-defendant. We do note that at Hartmann's sentencing the prosecutor stated that the person who actually shot the victim had been sentenced to thirty years, another adult participant received fifteen years, and another adult participant was yet to go to trial. Based on this limited

information, Hartmann's sentence does not appear disproportionate to his co-defendants'.

By the Court.—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.