

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH COOPER,

Defendant-Appellant.

---

UNPUBLISHED

October 14, 2003

No. 240830

Wayne Circuit Court

LC No. 01-005593-02

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE D. STOVALL,

Defendant-Appellant.

---

No. 240831

Wayne Circuit Court

LC No. 01-005593

Before: Whitbeck, C.J., and Gage and Zahra, JJ.

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

I fully concur with the majority's conclusions and join in the majority's opinion with regard to defendant Stovall; however, with regard to defendant Cooper, I disagree with the majority's conclusion that the prosecution presented sufficient evidence to convict defendant Cooper of felony-murder. In that regard, I respectfully dissent. The majority concludes that "taken in the light most favorable to the prosecution, sufficient evidence was presented at trial for a rational trier of fact to find that defendant Cooper shot and killed Lleshaj during an armed robbery." On the record before this Court, I simply cannot agree with that conclusion. Fundamentally, this case is one of identity. It is undisputed that a shooting occurred during which the victim was killed; however, the question remains whether defendant Cooper took part in that murder.

Allegedly, the most damaging evidence against defendant Cooper in this case is his possession of the victim's wallet and use of the victim's credit card shortly after the murder. However, as the prosecution admits on appeal, this evidence alone is insufficient to sustain defendant Cooper's conviction. See *People v Rankin*, 52 Mich App 130, 132; 216 NW2d 620

(1974) (the unexplained possession of recently stolen property, unaccompanied by other facts and circumstances of guilt, cannot sustain a conviction for breaking and entering, even though it is some evidence that the possessor is the thief). While defendant Cooper attempts to provide alternate theories to explain his possession of the wallet and credit card, the majority correctly concludes that the prosecution need not negate these theories. See *People v Hardiman*, 466 Mich 417, 424; 646 NW2d 158 (2002). However, defendant Cooper's possession of the wallet and credit card standing alone is simply insufficient to sustain his conviction.

The remaining evidence presented does not place defendant Cooper at the scene of the murder. The prosecution presented as evidence a jacket containing gunshot residue that was found at defendant Cooper's sister's house several weeks after the murder.<sup>1</sup> The prosecution alleged that this jacket was similar to a jacket defendant was seen wearing while making purchases with the victim's credit card at a Meijer's store. With regard to this jacket, however, there was no evidence presented that linked this jacket to the crime scene, nor was there evidence presented that the gunshot residue could be attributed to this murder. The prosecution also presented evidence that several days after the murder, defendant Cooper was seen wearing a disguise and carrying a Tech-9 that was identified as the *type* of gun used to kill the victim. However, there was no evidence presented specifically linking *that* gun to the murder. Finally, there was evidence presented that when Lavee Tolliver-Wooden, the woman who was with defendant Cooper when they made purchases with the victim's credit card, asked defendant Stovall where the card came from, defendant Stovall stated that someone had gotten hurt for the credit card. However, this statement does not specifically refer to the murder, nor does it link defendant Cooper to the murder.

In this case, there is simply no evidence identifying defendant Cooper as being involved in the murder. There was no witness testimony placing defendant Cooper at or near the crime scene either before or after the murder. The only eyewitness to the murder, Karen Bright, could not identify defendant Cooper at any lineup or at the preliminary examination, and she did not identify him at trial. In fact, at the photographic lineup, Bright picked out two photographs, neither of which was defendant Cooper. While circumstantial evidence can be used to prove a defendant's guilt, in this case, even viewing the evidence cumulatively, I do not believe a rational jury could infer defendant Cooper's presence at the murder scene. Therefore, even viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could not find that defendant Cooper shot and killed the victim during an armed robbery. Under the circumstances, I would reverse defendant Cooper's felony-murder conviction.

/s/ Hilda R. Gage

---

<sup>1</sup> Descriptions of the jacket were not completely clear – it appears that at times the jacket was referred to as a Michigan jacket and at other times as a Michigan State jacket.