

STATE OF MICHIGAN
IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN

HON. KYM WORTHY
CASE NO. 97-0790

V.

EDDIE RAY COLEMAN
FREDERICK LAMONT TERRY

LOUISA M. PAPALAS P 48971
PATRICIA M. LEONARD P 43925
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MOTION TO INTRODUCE EVIDENCE OF OTHER ACTS

NOW COMES WAYNE COUNTY PROSECUTOR JOHN D. O'HAIR, by and through assistant prosecuting attorneys, Louisa Papalas and Patricia Leonard, and in support of the above motion states as follows:

1. That the Michigan Supreme Court has recently clarified and revolutionized the analysis of evidence of "other bad acts" in criminal cases. *People v. Vandervliet*, 444 Mich 52 (1993).

2. That in the case before the Court, both defendants are charged with Felony Murder and Armed Robbery.
3. That the People's theory in this case is that following the commission of the armed robbery, both defendants endeavored to escape from the scene in their stolen getaway vehicle. That as part of the escape attempt they tried to outrun police in a high-speed chase and this resulted in a double homicide thereby amounting to Felony Murder.
4. That the testimony will show that defendant Coleman carjacked Mr. Fred Patton and drove away with his Ford Tempo. Defendant Terry eventually joined Defendant Coleman as the front seat passenger in this vehicle. Both defendants then drove to the Garden City 7-11 store for the purpose of committing a robbery. Defendant Terry remained in the vehicle as the lookout. Following the robbery, Defendant Coleman drove away from the store. Shortly thereafter a high speed chase ensued and this resulted in the double fatality.
5. That in order to convict the above defendants of felony murder, the prosecution must show that the defendant's not only had the intent to commit the underlying felony, but also that they possessed the requisite intent required for murder.
6. That the court through People v. Aaron, 409 Mich 672 (1980) has made it clear that the requisite intent is either an intent to kill, intent to cause great bodily harm or knowingly creating the high risk of death or great bodily harm knowing that death or such harm would be the likely result.
7. That the prosecution must prove at a minimum that through their actions the defendants were knowingly creating a high risk of death or great bodily harm, knowing that death or such harm would be the likely result.
8. That the Prosecution seeks to introduce testimony of other acts of the defendants as it reflects on their intent and knowledge at the time of the murder.
9. That the testimony the People seek to admit is that on February 20, 1996 the two above defendants were involved in a similar robbery of a gas station. In that case, defendant Terry was driving a stolen Ford Tempo and defendant Coleman was the passenger. Terry dropped Coleman off at the gas station, and Terry waited outside as the lookout while Coleman went in and committed the robbery. Upon leaving the store with the money, Coleman entered the passenger side of the vehicle and Terry drove away. Police located the vehicle and a high speed chase ensued. Terry continued to evade police while driving at speeds in excess of 100 mph. The chase eventually ended when Terry crashed the car into a fire hydrant.
10. That the People seek to introduce this evidence for the proper purpose of the defendants' intent under Aaron, to wit; that **at the very least** the defendants, by engaging in the high speed chase, were knowingly creating a high risk of death or great

bodily harm, knowing that death or such harm would be the likely result.

Respectfully submitted,

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February 27, 1997

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BRIEF IN SUPPORT OF MOTION TO INTRODUCE EVIDENCE OF OTHER ACTS

NOW COMES WAYNE COUNTY PROSECUTOR JOHN D. O'HAIR, by and through assistant prosecuting attorneys, Louisa Papalas and Patricia Leonard, and in support of the above notice state as follows:

The Michigan Supreme Court has recently clarified and revolutionized the analysis of evidence of "other bad acts" in criminal cases. People v. Vandervliet, 444 Mich 52 (1993). The

court stated that evidence of other acts of a criminal defendant may not be introduced for the purpose of proving the defendant's character and that he acted in conformity therewith. The evidence of other acts may be admissible for other purposes. MRE 404 (b). A proper purpose under MRE 404 (b) may be "proof of motive, opportunity, intent, preparation, scheme, plan or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case." MRE 404 (b).

The Vandervliet court directed that the MRE 404 (b) analysis of Huddleston v. United States, 485 US 681, 108 S. CT 1496 (1988) be used. Other acts evidence must meet four safeguards: (1) it must be offered for a proper purpose; (2) it must be relevant under MRE 402 as endorsed through MRE 104 (b); (3) the probative value of the evidence must not be substantially outweighed by unfair prejudice to the defendant, and (4) a limiting instruction shall be given upon request so that the jury understands that the evidence may only be considered for the proper purpose for which it was admitted, Vandervliet, pages 74-74.

In the case before the Court, both defendants are charged with Felony Murder and Armed Robbery. The People's theory in this case is that following the commission of the armed robbery of the convenience store, both defendants endeavored to escape from the scene in their stolen getaway vehicle and as part of the attempted escape tried to outrun police in a high-speed chase. This resulted in a double homicide and thereby amounts to Felony Murder.

Testimony will show that defendant Coleman carjacked Mr. Fred Patton and drove away with his Ford Tempo. Defendant Terry eventually joined Defendant Coleman as the front seat passenger in this vehicle. Both defendants then drove to the Garden City 7-11 store for the purpose of committing a robbery. Defendant Terry remained in the vehicle as the lookout. Following the robbery, Defendant Coleman drove away from the store. Shortly thereafter a high speed chase ensued and this resulted in the double fatality.

In order to convict the above defendants of felony murder, the prosecution must show that the defendant's not only had the intent to commit the underlying felony, but also that they possessed the requisite intent required for murder. The court through People v. Aaron, 409 Mich 672 (1980) has made it clear that the requisite intent is either an intent to kill, intent to cause great bodily harm or knowingly creating the high risk of death or great bodily harm knowing that death or such harm would be the likely result.

Thus, not only must the Prosecution prove that Coleman and Terry possessed the specific intent to rob the store, but the prosecution must also prove at a minimum that through their actions they were knowingly creating a high risk of death or great bodily harm, knowing that death or such harm would be the likely result.

To this end, the Prosecution seeks to introduce testimony of other acts of the defendants as it reflects on their intent and knowledge at the time of the murder.

The testimony the People seek to admit is that on February 20, 1996 the two above defendants

were involved in a similar robbery of a total gas station in Livonia. In that case, defendant Terry was driving a stolen Ford Tempo and defendant Coleman was the passenger. Terry dropped Coleman off at the gas station, and Terry waited outside as the lookout while Coleman went in and committed the robbery. Upon leaving the store with the money, Coleman entered the passenger side of the vehicle and Terry drove away. Police located the vehicle and a high speed chase ensued. Terry continued to evade police while driving at speeds in excess of 100 mph. The chase eventually ended when Terry crashed the car into a fire hydrant. However, unlike the case at bar, there were, fortunately, no fatalities.

The People seek to introduce this evidence for the proper purpose of the defendants' intent under Aaron. Certainly, in the case at bar, the defendants were knowingly creating a high risk of death or great bodily harm by robbing the 7-11 and then leading the police on the high speed chase, when they have personal knowledge from an identical incident that occurred months earlier.

Respectfully submitted,

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