

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT FRANK MATLOCK,
a/k/a ROBERT FRANKLIN MATLOCK,

Defendant-Appellant.

UNPUBLISHED

June 17, 1997

No. 191244

Recorder's Court

LC No. 94-010403-FC

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549 following a bench trial. He was sentenced to fifty to eighty years' imprisonment as a third offense habitual offender, MCL 769.11; MSA 28.1083. He appeals as of right, and we affirm.

Defendant argues that the trial court's finding that he gave a statement to the police voluntarily was clearly erroneous. Defendant claims that he was intoxicated when he gave the statement and therefore could not comprehend what "you have the right to remain silent" meant. A hearing was held pursuant to *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965), before trial, and the trial court found that defendant gave his statement voluntarily.

Whether the defendant's statement was given voluntarily is a question of law and is reviewed de novo. *People v Cheatham*, 453 Mich 1, 30; 551 NW2d 355 (1996). A trial court's finding of a knowing and intelligent waiver of *Miranda* rights will not be disturbed unless it is clearly erroneous. *Id.* The prosecutor has the burden of showing that defendant knowingly, intelligently, and voluntarily waived his right against self-incrimination by a preponderance of the evidence. *Id.* at 27. Factors that a trial court should consider when determining voluntariness include the education, experience, and conduct of the defendant, the credibility of the police, the defendant's mental and physical state, and whether the defendant was threatened or abused. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988); *People v Garwood*, 205 Mich App 553, 557; 517 NW2d 843 (1994); *People v Haywood*, 209 Mich App 217, 225-226; 530 NW2d 497 (1995).

Defendant testified at the *Walker* hearing that he had smoked twenty “rocks” of cocaine and drank four forty-ounce bottles of beer before his arrest. He claimed that he was so “out of it” he would have put his signature on anything. The officer who took defendant’s statement testified that defendant did not appear intoxicated. He also testified that defendant was read his rights and that defendant read them as well. The officer stated that defendant told him that he had graduated from high school and had two years of college. These facts indicate that defendant knowingly, intelligently, and voluntarily waived his right to remain silent. Under the totality of the circumstances the court’s finding that defendant gave his statement voluntarily was not clearly erroneous.

Defendant also argues that the trial court’s findings of fact were clearly erroneous as they pertain to the defense of diminished capacity. Defendant claims that he raised the defense of diminished capacity and that the trial court in its findings improperly shifted the burden of proof onto him.

Findings of fact will not be set aside unless they are clearly erroneous. MCR 2.613(C). Defendant’s expert testified that defendant suffered from diminished capacity when he committed the homicide. However, both defendant’s expert and the prosecution’s expert opined that defendant’s actions that night were both goal-directed and purposeful.

The trial court specifically addressed the issue of diminished capacity in its findings. It noted that defendant’s comments after his arrest suggested that he had the mental ability to form specific intent and that he was not acting by virtue of any diminished capacity. In light of the fact that both experts agreed that defendant displayed goal-directed actions that night, the trial court’s finding that defendant did not suffer from any diminished capacity was not clearly erroneous.

Furthermore, diminished capacity is not a defense to general intent crimes. *People v Biggs*, 202 Mich App 450, 454; 509 NW2d 803 (1993). “Second-degree murder is not a specific-intent crime since it does not require intent to kill, but rather, only wanton and wilful disregard of the likelihood that the natural tendency of the person’s behavior is to cause death or great bodily harm must be shown.” *People v England*, 164 Mich App 370, 375; 416 NW2d 425 (1987). Here, the trial court found defendant guilty of second-degree murder, concluding there was no premeditation. Therefore, the court could not consider defendant’s diminished capacity defense.

Plaintiff next argues that the trial court abused its discretion when it imposed a sentence of fifty to eighty years’ imprisonment for second-degree murder.

As recently stated in *People v Hansford (After Remand)*, ___ Mich ___ (Docket No. 104770, issued May 13, 1997):

[A] trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender’s underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society. [Slip op at 6.]

Defendant had prior convictions of breaking and entering an occupied dwelling and larceny from a person.

Defendant committed this brutal murder while he was on tether. He strangled his victim and then cut her throat. He then tried to cover up his crime by dumping her naked body in an alley and cleaning up blood in his apartment. These facts, and defendant's prior record, demonstrate that the trial court did not abuse its discretion when it sentenced defendant to fifty to eighty years' imprisonment.

Affirmed.

/s/ Clifford W. Taylor

/s/ Richard Allen Griffin

/s/ Henry William Saad