

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER L. BELL,

Defendant-Appellant.

UNPUBLISHED

November 18, 1997

No. 195705

Genesee Circuit Court

LC No. 95-053159-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE COSTON,

Defendant-Appellant.

No. 195706

Genesee Circuit Court

LC No. 95-053162-FC

Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Following a joint jury trial before separate juries, defendants Bell and Coston were each convicted of conspiracy to commit first-degree premeditated murder, MCL 750.157a; MSA 28.354(1), first-degree premeditated murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Each defendant was sentenced to life in prison for his convictions of conspiracy and first-degree murder, and to two years' imprisonment for his felony-firearm conviction. Both defendants appeal as of right. We affirm.

Docket No. 195705

Defendant Bell first argues that he has been denied due process because the direct examination of the prosecution's first witness, Eddie Adams, was not transcribed. We find that there has been no infringement of defendant's constitutional right to appeal because the available transcript is sufficient to allow evaluation of his claims on appeal. *People v Federico*, 146 Mich App 776, 799; 381 NW2d 819 (1985). As discussed below, we have found that there was sufficient evidence to establish the element of premeditation and deliberation by looking to testimony that was transcribed. Moreover, the missing testimony has no impact on defendant Bell's other claim on appeal regarding the voluntariness of his confession.

Next, defendant Bell argues that there was insufficient evidence to sustain his conviction because the prosecution did not produce any evidence that he planned to kill Lavelle Mitchell. Instead, defendant Bell contends that the evidence only showed that he planned to shoot Mitchell. We disagree.

Defendant Bell draws a distinction without a difference by claiming that he only meant to wound the victim, not kill him. The evidence showed that he shot the victim four times in the left chest with a shotgun loaded with buckshot. We find that the jury could have inferred that defendant intended to kill, not merely wound, from these facts.

Moreover, we find that there was ample evidence from which the jury could have found that this intent to kill was formed after premeditation and deliberation, which is necessary to convict a defendant of first-degree murder. *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993). Sergeant Middleton testified that he conducted both an informal and formal interview with defendant Bell. During these interviews, defendant Bell detailed the events leading up to the murder. Bell told Sergeant Middleton that prior to the shooting, he and defendant Coston had observed the victim and Eddie Adams at a party store. After spotting Mitchell, defendant Bell indicated that he made arrangements to rent a car from a "crackhead." They then drove the rented car to the home of Tina Hurley to pick up another member of their gang, Kevin "Stretch" Mitchell, and a shotgun. Bell loaded the gun with buckshot, and he, Stretch, and Coston then drove the rented car to the area where they had seen the victim. Bell admitted that their purpose in searching for Mitchell was to shoot him. Once they located Mitchell and Adams, Bell stated that they drove past them and proceeded around the block. Bell then allowed Coston to drive so that he could shoot from the passenger seat. Coston drove past Mitchell and Adams again. Bell pointed the gun, but did not shoot because he "choked up." Coston drove around the block a third time, and it was on this pass that defendant Bell shot Mitchell. He fired the gun four times, and before firing the gun the fourth time he turned the gun upside down. We find that this evidence was sufficient to establish the elements of premeditation and deliberation. *Id.* The shooting was planned and defendant had ample opportunity to rethink his actions before shooting the victim.

Defendant Bell's final argument on appeal is that his confession should have been suppressed because it was not voluntarily made. After examining the record of the *Walker*¹ hearing, we find that defendant's confession was voluntary under the totality of the circumstances. *People v Krause*, 206 Mich App 421, 423; 522 NW2d 667 (1994); *People v Haywood*, 209 Mich App 217, 226; 530 NW2d 497 (1995). While defendant Bell now appears to question the wisdom of his decision to waive his right to counsel and speak to Sergeant Middleton, the record indicates that he was twice advised of

his *Miranda*² rights, and that he waived his rights both times. Moreover, we find that the trial court did not make a mistake in determining that the fact that defendant Bell was possibly held in police custody for hours prior to being questioned did not affect the voluntariness of his statements. We further find that defendant's suggestion that lengthy questioning and the presence of armed police officers somehow coerced him into making a statement is without merit. Accordingly, we find that the trial court did not err by denying defendant's motion to suppress his statements.

Docket No. 195706

Defendant Coston argues that the trial court made a prejudicial comment in the presence of the jury, denying him a fair trial. This issue is not properly preserved, because defendant Coston failed to object to the allegedly prejudicial comment at trial. *People v Sardy*, 216 Mich App 111, 117-118; 549 NW2d 23 (1996). Moreover, the comment itself was not prejudicial. When taken in context, the trial court's discussion of the correctness of the use of the term "fiend" clearly referred to the description of the person from whom defendants had rented the vehicle that they drove at the time of the shooting. The lack of prejudice convinces us that no manifest injustice would result by our refusal to review this unpreserved issue. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995).

Affirmed.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ Joel P. Hoekstra

¹ *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965)

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966)