

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMIEN TRON WHITE,

Defendant-Appellant.

UNPUBLISHED

September 17, 1999

No. 207963

Recorder's Court

LC No. 96-007827

Before: Gribbs, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for felony 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). Defendant was sentenced to life imprisonment for the felony murder conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court committed error requiring reversal when it denied defendant's motion to suppress his statements to police. Defendant argues that the delay between his arrest and arraignment impaired the voluntariness of the statements. We disagree. In reviewing a trial court's findings regarding the voluntariness of a defendant's confession, this Court must examine the entire record and make an independent determination on the issue of voluntariness. *People v DeLisle*, 183 Mich App 713, 719; 455 NW2d 401 (1990). However, the trial court's findings will not be reversed unless they are clearly erroneous. *Id.* A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Id.* To the extent that resolution of disputed factual questions turns on the credibility of witnesses or the weight of the evidence, this Court will ordinarily defer to the trial court, which has a superior opportunity to evaluate these matters. *People v Marshall*, 204 Mich App 584, 587; 517 NW2d 554 (1994).

Our review of the record and consideration of the relevant factors convinces us that defendant voluntarily provided the police with his statements. Defendant had sufficient intellectual capacity to understand his rights. He was twenty-one years old at the time he was arrested, and admitted that he could read and write. Defendant's questioning was not prolonged and overly repetitious. Defendant had been in custody for approximately fifteen hours prior to giving the first statement, and gave the

second statement to Officer Fields approximately two days after that. Defendant had been read his constitutional rights on both September 13 and 15 prior to being questioned by Fields, and was questioned only twice. According to Officer Fields, defendant indicated that he understood his rights. Defendant did not appear to be in need of medical attention or food, or under the influence of drugs or alcohol during either time he met with Officer Fields, and defendant did not testify that he was in need, or under the influence, of anything during his conversations with Officer Fields. Defendant also confirmed that he had been fed during the first interview. We are not convinced that the delay between defendant's arrest and arraignment contributed to the provision of the statements, since defendant gave the first statement on the day he was arrested, and gave essentially the same statement, except for the admission that he provided Pit Bull with the gun, two days later. See *People v Cipriano*, 431 Mich 315, 319, 334; 429 NW2d 781 (1988). The trial court did not err in denying defendant's motion to suppress.

Defendant also argues that he was denied the effective assistance of counsel. We disagree. To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance was deficient and that, under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. *People v Harris*, 201 Mich App 147, 154; 505 NW2d 889 (1993), citing *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). Moreover, the defendant must overcome the presumption that the action was sound trial strategy, about which this Court is reluctant to substitute its judgment for that of trial counsel, and the deficiency must be prejudicial to the defendant. *People v Strong*, 143 Mich App 442, 449; 372 NW2d 335 (1985).

Defendant alleges that defense counsel was ill during trial and that this illness impaired his ability to effectively represent defendant. Defendant fails, however, to identify any instances during trial where counsel's alleged illness negatively affected his ability to represent defendant. Defendant also alleges that counsel objected only twice during trial, submitted no effective evidence in support of the defense, persuaded defendant not to testify, and failed to fully investigate the incident and offer a valid and proper defense. However, defendant has not provided this Court with references to the transcript where any alleged deficiencies can be found.

Defendant also argues that counsel's opening statement left the jury with only the prosecution's version of the case. Our review of the opening statements establishes that defendant's assertion is without merit. The prosecution argued that defendant planned and participated in the robbery of the battery shop, and was the man who shot and killed the complainant. In contrast, defense counsel argued that, while defendant had knowledge of the crime, he did not participate in it and that another man actually killed the complainant. Counsel also noted that the single identification witness did not pick defendant out of a line-up, and was at least two-hundred feet away from the battery shop at the time the robbery occurred. Thus, in contrast to defendant's assertion on appeal, the record shows that the jury was given two very

conflicting versions of the event, one suggesting that defendant was the perpetrator of the crime, and one suggesting that he was not. Defendant has failed to establish that he was denied the effective assistance of counsel. *Harris, supra*, 201 Mich App 154.

Affirmed.

/s/ Roman S. Gibbs

/s/ Michael R. Smolenski

/s/ Hilda R. Gage