

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL CRENSHAW,

Defendant-Appellant.

---

UNPUBLISHED

July 28, 2000

No. 214696

Wayne Circuit Court

LC No. 98-001640

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

PER CURIAM.

Defendant was convicted, following a bench trial, of first-degree murder, MCL 750.316(1)(a); MSA 28.548(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life in prison for the first-degree murder conviction and two years' imprisonment for the felony-firearm conviction. He appeals as of right, and we affirm.

On October 31, 1997, Kimberly Samuels heard a gunshot in the parking lot. She looked out her window and saw a man being chased by a group of people. Approximately five to ten minutes after the shooting, the victim, Michael Brown arrived at Samuels' home. They spoke of what Samuels saw when the doorbell rang. Four men, including defendant, were at the door, carrying handguns and an AK-47. Brown let them into the house. The men had a discussion with Brown, but then left the home. Five minutes later there was a knock on Samuels' bedroom window. Brown let defendant and his brother into the home through the patio door. Minutes later, the other two men returned to the home. There was a second discussion then the four men indicated that they were leaving. Suddenly, defendant stood over Brown and said, "I hate that I have to do this, clown." "Clown" was Brown's nickname. Defendant shot Brown in the head. Defendant's brother then shot Samuels. Brown was shot multiple times and died from his injuries. Samuels was shot eight times, but survived. On cross-examination, Samuels acknowledged that she did not see the shot fired by defendant enter Brown's head.

Defendant testified that one of the members of the group told Brown about the shooting, and therefore, Brown would have to be killed. Defendant did not want to shoot Brown but did so under duress because of threats from other members. In fact, he fired the gun once at Brown, but it hit the wall. He then dropped the gun and fled the scene. Defendant acknowledged that he had given a

statement to police after the shooting, but denied that he admitted killing Brown. The trial court found that defendant consciously fired bullets into the head of Brown despite the opportunity to give it a second thought. The trial court also denied defendant's motion for acquittal or new trial. The trial court explained that Samuels' testimony was overwhelmingly credible, while defendant's testimony was entirely lacking credibility.

Defendant first argues that there was insufficient evidence "for conviction."<sup>1</sup> We disagree. In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution and determine whether a rational factfinder could conclude that the essential elements of the crime were proved beyond a reasonable doubt. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). To convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation and deliberation may be inferred from the circumstances surrounding the killing and require sufficient time to allow the defendant to take a second look. *Id.* Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence of premeditation and deliberation to satisfy the first-degree murder conviction. *Terry, supra*. The men came to the residence and knew that Brown was aware of the earlier shooting. The men returned a short time later to the home, and defendant killed Brown just prior to departing the home. Accordingly, defendant's argument is without merit.

Defendant next argues that the verdict was against the great weight of the evidence. We disagree. "A new trial based upon the weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Specifically, defendant takes issue with the credibility of Samuels. Where resolution of an issue involves the credibility of two diametrically opposed version of events, the test of credibility rests in the trier of fact. *Lemmon, supra* at 646-647. The trial court found that Samuels' testimony was inherently credible despite minor inconsistencies and that defendant's testimony was entirely lacking in credibility. Accordingly, the verdict was not against the great weight of the evidence, but hinged on the trier of fact's assessment of credibility. *Id.*

Defendant next argues that his due process rights were violated by the trial court's denial of his motion to suppress involuntary statements. We disagree. The voluntariness of a statement is to be determined using a totality of the circumstances analysis. *People v Sexton*, 458 Mich 43, 67-68; 580 NW2d 404 (1998). The voluntariness of a confession is a question for the trial court, but we examine the entire record and make an independent determination of voluntariness. *Id.* at 68. The trial court's decision will not be disturbed unless it is clearly erroneous. *Id.* A decision is clearly erroneous when it leaves this Court with a definite and firm conviction that a mistake has been made. *People v Hampton*, 237 Mich App 143, 148; 603 NW2d 270 (1999). Review of the *Walker*<sup>2</sup> hearing reveals that

<sup>1</sup> Defendant does not address or argue the sufficiency of the evidence to support the felony-firearm conviction.

<sup>2</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

defendant asserted that he wished to go to the bathroom, but was not allowed to do so. Defendant did not indicate that he was forced to make a statement in order to use the facilities. The trial court concluded that the statement was voluntary, and there was no basis presented for a conclusion to the contrary. We cannot conclude that the trial court's decision was clearly erroneous. *Hampton, supra*.

Lastly, defendant argues that his statement to the police should have been suppressed because police failed to make an audio or video recording of the statement. In *People v Fike*, 228 Mich App 178, 183; 577 NW2d 903 (1998), we declined to mandate police practice in the absence of legislation addressing the subject. Furthermore, defendant has failed to identify material misconduct or demonstrate that the failure to record his statement was "fundamentally unfair." *Id.* at 186. Accordingly, defendant's request is without merit.

Affirmed.

/s/ Harold Hood

/s/ David H. Sawyer

/s/ Mark J. Cavanagh