STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 26, 2001
v	No. 218592 Wayne Circuit Court
ERIC ONEIL WOODS, Defendant-Appellant.	Criminal Division LC No. 98-001357

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a), first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), two counts of armed robbery, MCL 750.529; MSA 28.797, assault with intent to murder, MCL 750.83; MSA 28.278, assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to concurrent prison terms of life without the possibility of parole for each of the murder convictions, forty to sixty years for each of the armed robbery convictions, forty to sixty years for the conviction of assault with intent to murder, and five to ten years for the conviction of assault with intent to do great bodily harm less than murder. Additionally, the court imposed a consecutive term of two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm in part, vacate in part, and remand for modification of the judgment of sentence to reflect the merger of certain convictions.

Defendant first contends that the trial court erred in not suppressing a statement that he made while he was in police custody. Defendant argued to the trial court, as he does on appeal, that he was coerced, through police misconduct, into waiving his privilege against self-incrimination.[1] "Although engaging in a de novo review of the entire record, this Court does not

[1] Defendant also asserts on appeal that the trial court should have suppressed his statement under the rule announced in *Riverside v McLaughlin*, 500 US 44; 111 S Ct 1611; 114 L Ed 2d 49 (1991) (holding an arrestee in excess of forty-eight hours, without a magistrate's review of the probable cause to arrest, is presumptively unreasonable). Because defendant was in custody for less than forty-eight hours at the time his statement was obtained, we find this portion of

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disturb a trial court's factual findings regarding a knowing and intelligent waiver of *Miranda* rights 'unless that ruling is found to be clearly erroneous.'" *People v Cheatham*, 453 Mich 1, 30; 551 NW2d 355 (1996) (citations omitted).

"Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waives his Fifth Amendment rights." *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997).[2] Defendant testified that the police informed him of his rights and that he understood them. Defendant therefore effectuated a knowing and intelligent waiver. See *People v Daoud*, 462 Mich 621, 644; 614 NW2d 152 (2000). Whether defendant's waiver was voluntary depends on whether it was the product of impermissible police coercion or of a free and deliberate choice. *Daoud*, *supra* at 635; *Howard*, *supra* at 538. The trial court did not attach any credibility to defendant's version of the events and nothing in the lower court record leads us to conclude that the trial court's determination was clearly erroneous. Given that the trial court accepted the police testimony regarding the circumstances surrounding defendant's statement, and the police testimony did not suggest that defendant's statement was involuntary, the trial court did not err in concluding that the prosecution carried its burden of establishing that defendant's statement was obtained after he knowingly and voluntarily waived his Fifth Amendment rights.

Defendant next argues that due process required the lower court to suppress his statement because it was not videotaped or otherwise electronically recorded. We adhere to this Court's recent decision resolving this issue adversely to defendant's position. *People v Fike*, 228 Mich App 178, 183-186; 577 NW2d 903 (1998).

Finally, defendant correctly contends, and the prosecutor agrees, that the armed robbery conviction relating to the decedent must be vacated in favor of the felony murder conviction, for which the robbery served as the predicate felony. Likewise, the separate convictions of first-degree premeditated murder and first-degree felony murder must be consolidated as one conviction of first-degree murder, supported by two theories. *People v Mackle*, 241 Mich App 583, 600-601; 617 NW2d 339 (2000); *People v Bigelow*, 229 Mich App 218, 221-222; 581 NW2d 744 (1998).

Affirmed in part, vacated in part, and remanded for modification of the judgment of sentence consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper

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defendant's argument to be without merit, *New York v Harris*, 495 US 14, 17-18; 110 S Ct 1640; 109 L Ed 2d 13 (1990), and we decline to address this unpreserved issue further.

[2] Const 1963, art 1, § 17, which also provides a right to be free from compelled self-incrimination, has not been interpreted to provide greater protection than that flowing from US Const, Am V. See *Daoud*, *supra* at 631 n 9.