STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON DANIEL WOJCIECHOWSKI,

Defendant-Appellant.

UNPUBLISHED
June 5, 2001

No. 224773
Marquette Circuit Court
LC No. 99-035892-FC

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of first-degree felony murder, MCL 750.316; MSA 28.548, and conspiracy to commit unarmed robbery, MCL 750.157a; MSA 28.354(1).[1] Defendant was sentenced to life imprisonment without parole for the first-degree murder conviction and seven to fifteen years' imprisonment for the conspiracy conviction. He appeals as of right. We affirm.

Defendant challenges the admissibility of his partially inculpatory statement, which was given to the police following his arrest in Chicago, Illinois. He challenges the statement on a number of different grounds. Following a pretrial *Walker*[2] hearing, the trial court ruled that the statement was admissible.

Defendant first argues that the police did not have probable cause to arrest him and, therefore, his subsequent statement should have been suppressed. We disagree.

A police officer may arrest an individual without a warrant if a felony has been committed and the officer has probable cause to believe that the individual committed the felony. MCL 764.15(c); MSA 28.874(c); *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996);

[1] Defendant was also convicted of attempted unarmed robbery, MCL 750.530; MSA 28.798, but that conviction was vacated because it served as the underlying felony for the felony-murder conviction.

[2] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

People v Kelly, 231 Mich App 627, 631; 588 NW2d 480 (1998). In reviewing a challenged finding of probable cause, an appellate court must determine whether the facts available to the arresting officer at the moment of arrest would justify a fair-minded person of average intelligence in believing that the suspected individual had committed the felony. *People v Oliver*, 417 Mich 366, 374; 338 NW2d 167 (1983); *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992); *People v Sloan*, 450 Mich 160, 168, 538 NW2d 380 (1995); *Kelly*, *supra* at 631-632. A police officer may reasonably rely on information provided by another source, including other police departments, as a basis for finding probable cause. See *People v Freeman*, 240 Mich App 235, 236; 612 NW2d 824 (2000); see also *US v Woods*, 544 F2d 242, 260 (CA 6, 1976).

In the instant case, the trial court correctly found that probable cause existed to arrest defendant following the Marquette Police Department's initial investigations and that their probable cause determination could properly be imputed to the Chicago police officers who arrested defendant.

At the time of defendant's arrest, the police had ample justification to believe that the victim's death was neither natural nor accidental, given the condition of his body and the location in which it was found. The police also obtained information from witness accounts that both defendant and a codefendant had arranged to meet with the victim at the time he was killed in order to sell him a large quantity of marijuana. The police also learned that the hotel room in which the victim's body was found was registered to defendant, and that both defendant and a codefendant were present in the hotel near the time of the killing and left shortly thereafter. The foregoing facts were sufficient to provide probable cause to believe that defendant was involved in the victim's murder. See *People v Degraffenreid*, 19 Mich App 702, 707; 173 NW2d 317 (1969).

Moreover, apart from the killing itself, the circumstances known to police at the time of defendant's arrest also provided probable cause to believe that defendant and the codefendant had conspired to sell a large amount of marijuana and cocaine to the victim, which is also a felony. MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2); MSA 14.15(7401)(2). Contrary to what defendant suggests, it was not necessary for the police to know defendant's exact role in the killing or intended drug transaction. Where probable cause exists to believe that a suspect is guilty of one of several alternative felonies, the police have probable cause to make an arrest. *People v Mitchell*, 138 Mich App 163, 167-168; 360 NW2d 158 (1984). Thus, the trial court did not err in finding that the police had probable cause to arrest defendant.

Next, defendant argues that he was arrested inside his home without a warrant and, therefore, his arrest was unlawful. Accordingly, he contends that his subsequent statement must be suppressed as the fruit of this unlawful arrest. We disagree. Officer Gilger testified that he arrested defendant while he was on his front porch. Although defendant disputed this testimony, the trial court found that Officer Gilger was more credible. Affording deference to the trial court's determination of credibility, defendant's arrest without a warrant on his front porch was not unlawful. *United States v Santana*, 427 US 38, 42; 96 S Ct 2406; 49 L Ed 2d 300 (1976). Furthermore, even if the police did improperly arrest defendant inside his home without a warrant, or improperly coerced him to leave his house, see *United States v Morgan*, 743 F 2d

1158, 1166-1167 (CA 6, 1984), suppression of defendant's subsequent custodial statement would not be required. In *People v Dowdy*, 211 Mich App 562, 570; 536 NW2d 794 (1995), this Court, adopting the rationale set forth in *New York v Harris*, 495 US 14, 17-18; 110 S Ct 1640; 109 L Ed 2d 13 (1990), observed that "the exclusionary rule was not intended to grant criminal suspects protection for statements made outside their premises where the police have probable cause to arrest the suspect for committing a crime." See also *People v Snider*, 239 Mich App 393, 415-416; 608 NW2d 502 (2000). Having already determined that the police had probable cause to arrest defendant, suppression of defendant's statement is not warranted on the basis of this issue.

Defendant also argues that suppression of his statement was required because he did not receive his *Miranda*[3] rights before the police questioning and because the police did not honor his requests for counsel. According to the arresting officer, however, defendant was advised of his *Miranda* rights and voluntarily waived those rights. The officer also testified that defendant did not request an attorney. As to these direct factual disputes, the trial court found the arresting officer's testimony to be more credible. Special deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's findings of fact will not be reversed unless they are clearly erroneous. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). After reviewing the contradictory testimony, we find no error in the trial court's decision to believe the testimony of the arresting officer over that of defendant.

Defendant also argues that the police unreasonably held him in custody for twenty-three hours prior to questioning and delayed his arraignment as part of a deliberate design to enable the police to question him without an attorney present, and to "maximize the potential, they would elicit a custodial statement in absence of counsel" and, therefore, his statement should be suppressed. We disagree.

The question whether a defendant's statement was voluntary is determined by examining police conduct. *Howard*, *supra* at 538. It is the prosecutor's burden to show that the defendant knowingly, intelligently and voluntarily waived his Fifth Amendment rights by a preponderance of the evidence. *People v Daoud*, 462 Mich 621, 633; 614 NW2d 152 (2000). In determining voluntariness, this Court considers all the circumstances surrounding the waiver, including: the duration of the defendant's detention and questioning; the age, education, intelligence and experience of the defendant; whether there was unnecessary delay of arraignment; the defendant's mental and physical state; whether the defendant was physically or psychologically threatened, abused or unduly coerced; and any promises of leniency. *People v Sexton*, 458 Mich 43, 66; 580 NW2d 404 (1998); *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988); *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997); *People v DeLisle*, 183 Mich App 713, 721; 455 NW2d 401 (1990). However, no single factor is determinative. *People v Sexton (After Remand)*, 461 Mich 746, 753; 609 NW2d 822 (2000); *Cipriano*, *supra* at 334; *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

In the instant case, the trial court found that the delay in questioning defendant was attributable to the circumstances of the investigation, and was not deliberately designed to

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[3] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966).

prejudice defendant or undermine his will in order to extract an illegal confession. Furthermore, viewing the totality of the circumstances, we are satisfied that defendant's statement was voluntarily made. Accordingly, the trial court did not err in refusing to suppress defendant's statement.

Lastly, defendant argues that the prosecutor committed misconduct during closing argument by improperly referring to the codefendant's possible defense, i.e., that he would blame the actual killing on defendant. Viewing the challenged remark in the context of the evidence presented at trial, and considering the trial court's repeated instructions that the attorney's remarks are not evidence, we are satisfied that any impropriety in the prosecutor's remark did not have an effect on the outcome of the trial. *People v Lukity*, 460 Mich 484, 492; 596 NW2d 607 (1999).

Affirmed.

/s/ David H. Sawyer
/s/ Michael R. Smolenski
/s/ William C. Whitbeck