

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS MILTON ROBERSON,

Defendant-Appellant.

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UNPUBLISHED

July 27, 2001

No. 217666

Oakland Circuit Court

LC No. 98-160024-FC

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

A jury convicted defendant Thomas Roberson of first-degree murder.<sup>1</sup> The trial court sentenced Roberson to natural life in prison. We affirm.

I. Basic Facts And Procedural History

This case involves a killing in March 1998 at a motel in Ferndale. At trial, the motel desk clerk, Frank Shipley, testified that he noticed a “little man,” later identified as the victim, talking to people in the lobby. The victim seemed distant, frightened, and “scared.” Shipley observed Roberson enter the lobby and engage the victim in what appeared to be casual conversation. After about ten or fifteen minutes, Roberson and the victim left the lobby and apparently went to room 118.

The motel guest who was staying in room 116 at the time stated that, among other things, she heard bumping and groaning coming from room 118 that persisted for approximately ten to fifteen minutes. She also heard one voice saying that he wanted to hear the other person moan. A motel guest staying in room 120 also heard sounds coming from room 118 that lasted between seven and fifteen minutes. In particular, the guest from room 120 said, she heard a voice yelling five or six times “be quiet” and “shut up,” she heard four or five knocks against her wall, and she heard a person who sounded as if he had a pillow over his face and was being choked.

Shipley received a call saying that there was a fight occurring near room 120. About twenty minutes later, Roberson approached the security window in the lobby and told Shipley

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<sup>1</sup> MCL 750.316.

that he had just murdered somebody. At first, Shipley did not believe Roberson because he thought that Roberson was drunk. Roberson told Shipley again that he had murdered somebody and then became irritated when Shipley started questioning him. Shipley then contacted the police to report Roberson's crime.

The police arrived at the motel soon after Shipley's call. According to Officer Andrew Wurm, when he entered the motel, he noticed Roberson standing in the lobby facing Shipley, who was on the other side of the security glass. As soon as Roberson saw him and Officer Tim Andre, Roberson put his hands over his head and placed them on the security glass. Officer Wurm then asked Roberson if he had killed somebody and Roberson said, "yes." Officer Wurm asked Roberson if he had used a gun or a knife and Roberson said, "no." At that point, Roberson became irritated with the questions, and Officer Andre, who was standing behind Officer Wurm, handcuffed Roberson. Officer Wurm asked Roberson where the body was and Roberson reportedly told him that the body was in one of the rooms, but that the key to the room was in his pocket. When Officer Wurm searched Roberson for the keys, he found keys to rooms 118 and 123, but also several syringes. Roberson informed him that the syringes belonged to the man he had killed. Though they were in close proximity during this interaction, Officer Wurm did not notice if Roberson was intoxicated.

Officer Wurm then went to room 118 with several other officers where they found the victim lying on the floor. Officer Wurm checked the victim to see if he was breathing or had a pulse, but did not find any signs of life. He noticed that the victim's clothes were torn and his shirt had been pulled over his head, halfway down his arms. The victim's pants were undone and he had on red underwear that was pulled up and torn. Officer Wurm noticed trauma to the victim's head and back, as well as marks on several spots on his body.

Dr. Kanu Virani, Deputy Chief Medical Examiner for Oakland County, investigated the cause of death. At trial he testified that the victim was thirty-seven years old, five feet three inches tall, and he weighed 128 pounds. He believed that the victim died from a combination of blunt force head injury and strangulation. Dr. Virani estimated that the victim was strangled between twenty and thirty seconds and that the injuries to the victim's back, shoulder, and buttock areas were consistent with blunt force trauma. Although Dr. Virani did not know exactly how many injuries the victim had sustained to these areas, he estimated that the victim sustained at least ten such injuries. Further, Dr. Virani stated that he found injuries to the victim's wrists and arms and that these wounds were consistent with defensive wounds. He concluded that the victim's death was a homicide.

Detective Sergeant Thomas J. Thomson question Roberson after he was arrested, during which time he provided a confession that was later the subject of a pretrial *Walker*<sup>2</sup> hearing. According to Detective Sergeant Thomson, before he interviewed Roberson regarding the murder, he read Roberson his *Miranda*<sup>3</sup> rights from a form that he used on a daily basis. Roberson indicated that he was familiar with the *Miranda* rights and, in response to Detective

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

<sup>3</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1601; 16 L Ed 2d 694 (1966).

Sergeant Thomson's questions, Roberson said that he understood his rights, he did not wish to speak with an attorney, and he waived his right to remain silent. Though Roberson expressed concern that he was going to be harmed in some way, Detective Sergeant Thomson tried to reassure Roberson that he was safe. At this point, according to Detective Sergeant Thomson, he handed a written copy of the *Miranda* rights to Roberson and gave him an opportunity to read and sign the consent form. Roberson asked that the interview be recorded and that Detective Sergeant Thomson add the words "in my own writing" to the form. Sergeant Thomson added the requested words, Roberson signed the form, and Detective Sergeant Thomson taped the interview. Sergeant Thomson also informed Roberson that there would come a point when the trial court would appoint an attorney to represent him.

Detective Sergeant Thomson said that, during the interview, Roberson described how he murdered the victim, demonstrating how he knelt on the victim's neck and, at the same time, struck the victim with a coat hanger he found in the room. Despite police academy training concerning social and scientific aspects of alcoholism and alcohol abuse, and extensive experience arresting people who were under the influence of intoxicating liquor, nothing about Roberson's demeanor or communication led Detective Sergeant Thomson to believe that Roberson was intoxicated even though he smelled of alcohol and had a blood alcohol level of .133.

Detective Sergeant Thomson conducted a second interview with Roberson after he examined evidence retrieved from the crime scene. Again, Roberson requested that the interview be recorded and Detective Sergeant Thomson read him his *Miranda* rights. According to Detective Sergeant Thomson, Roberson waived his right to remain silent and his right to an attorney. During the course of this second interview, Detective Sergeant Thomson learned that Roberson had broken a finger on his right hand and arranged to have Roberson taken in a patrol car to the hospital. At no point in time did he notice anything unusual about the way Roberson was walking, nor did he see Roberson stumble or fall. Further, according to Detective Sergeant Thomson, Roberson never asked for an attorney and he was not aware of Roberson being threatened.

In the course of these interviews, Detective Sergeant Thomson said that he made several promises to Roberson. First, he promised Roberson that he would not be hung. Second, he promised Roberson that he would be fair. Third, he promised Roberson that he would record the interviews. Fourth, he promised Roberson that he would include the fact that Roberson was cooperative in his report.

However, at the *Walker* hearing, Roberson presented a different version of events surrounding his custodial confessions. Roberson claimed that his level of intoxication, coupled with the fact that he was not taking his medication for his manic depression, made him incapable of giving a voluntary, knowing, and intelligent waiver of his *Miranda* rights. Roberson argued that his *Miranda* waiver was invalid because Detective Sergeant Thomson gained his confidence by promising leniency and that the tape recording of the interviews had a gap, which excluded Roberson's request for an attorney. In fact, according to Roberson, he asked Detective Sergeant Thomson for an attorney more than once and Detective Sergeant Thomson told him that he would provide him with an attorney after he gave his statement.

The prosecutor opposed the motion, arguing that, under the totality of the circumstances, Roberson's waiver of his *Miranda* rights was voluntary, knowing, and intelligent. The prosecutor asserted that whether Roberson's confession was taken while he was under the influence of drugs and alcohol was not dispositive. Further, the prosecutor stated that Roberson fully understood his rights when he waived them and that he never asked for an attorney when he was being questioned.

In denying the motion to suppress, the trial court stated that the totality of the circumstances indicated that Roberson had waived his *Miranda* rights voluntarily, knowingly and intelligently. The trial court rejected Roberson's claim that his intoxication prevented him from giving a valid waiver, reasoning that, because Roberson had good command of the language, was responsive to questions, and was able to walk, he understood the *Miranda* warnings when he signed the form. Regarding Roberson's claim that his depression made the waiver invalid, the trial court stated that it was satisfied that Roberson had the requisite level of comprehension when waiving his rights.

At trial, Roberson moved for a directed verdict at the close of the prosecutor's proofs arguing that the prosecutor failed to show that the murder was premeditated. Consequently, he contended, there was insufficient evidence to allow the jury to deliberate on the first-degree murder charge. The trial court denied the motion, stating:

I think there was testimony that there was anywhere from 10, 11 minutes to 15 or 20 minutes. There was evidence that there could have been as many as 50 blows or more to the victim. The Court finds that a jury could find that there was time to rethink and the Court will let the matter go to the jury.

The jury returned a guilty verdict.

## II. The Motion To Suppress

### A. Standard Of Review

Roberson argues that the trial court committed error requiring reversal when it denied his motion to suppress the statements he made to the police. "In reviewing suppression hearing findings, this Court will defer to the trial court's findings of historical fact, absent clear error."<sup>4</sup> However, whether a waiver is knowing and intelligent presents a question of law, which this Court reviews de novo.<sup>5</sup>

### B. The *Miranda* Standards

In *Miranda*, *supra*, the United States Supreme Court held that

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<sup>4</sup> *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997).

<sup>5</sup> *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000).

before custodial interrogation, an individual must be apprised of (1) the right to remain silent, (2) the accompanying explanation that anything said can and will be used against him in court, (3) the right to consult with an attorney and to have one present during interrogation, and (4) the right to appointed counsel before questioning, if he cannot afford counsel.<sup>[6]</sup>

Once an accused asserts his right to counsel under *Miranda*, the police must cease all interrogation “‘until counsel has been made available to him, [or] unless the accused himself initiates further communication, exchanges, or conversations with the police.’”<sup>7</sup> In this context, “‘interrogation refers to express questioning and to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect.’”<sup>8</sup>

Nevertheless, a defendant may waive his *Miranda* rights if, under the totality of the circumstances, the waiver is made voluntarily, knowingly, and intelligently.<sup>9</sup>

Whether the waiver is valid involves a two-part inquiry. First, the waiver must be a “product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Moran v Burbine*, 475 US 412, 421; 106 S Ct 1135; 89 L Ed 2d 410 (1986). Second, “the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Id.*<sup>[10]</sup>

### C. Voluntary Waiver

Our first inquiry is whether, under the totality of the circumstances, Roberson’s waiver was made voluntarily.<sup>11</sup> Although there was testimony that Roberson believed that he would be harmed, there was no evidence showing that he formed this belief based on the police officers’ actions. To the contrary, Detective Sergeant Thomson testified that he assured Roberson several times that he would not be harmed. Additionally, when Detective Sergeant Thomson discovered that Roberson had broken his finger, he had another officer take Roberson to the hospital in a patrol car. Further, Roberson never testified that the police coerced or intimidated him. Hence, we conclude that Roberson’s confession was not the product of coercion or intimidation.

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<sup>6</sup> *People v Hoffman*, 205 Mich App 1, 6; 518 NW2d 817 (1994).

<sup>7</sup> *People v Slocum (On Remand)*, 219 Mich App 695, 698; 558 NW2d 4 (1996), quoting *Minnick v Mississippi*, 498 US 146, 150; 111 S Ct 486; 112 L Ed 2d 489 (1990), quoting *Edwards v Arizona*, 451 US 477, 484-485; 101 S Ct 1880; 68 L Ed 2d 378 (1981).

<sup>8</sup> *People v Marsack*, 231 Mich App 364, 374; 586 NW2d 234 (1998), *People v Anderson*, 209 Mich App 527, 532-533; 531 NW2d 780 (1995), citing *Rhode Island v Innis*, 446 US 291, 301; 100 S Ct 1682; 64 L Ed 2d 297 (1980).

<sup>9</sup> *Daoud*, *supra* at 633.

<sup>10</sup> *People v Bender*, 452 Mich 594, 604; 551 NW2d 71 (1996).

<sup>11</sup> *Daoud*, *supra* at 634.

At first glance, Roberson's testimony at the *Walker* hearing suggested that he was deceived into confessing. Specifically, Roberson said that he asked for an attorney and was told that he would be given an attorney after he gave his statement. This request was not recorded on the tape, Roberson explained, because he asked for an attorney before Detective Sergeant Thomson began to record his statement. Notwithstanding Roberson's apparent mistrust of Detective Sergeant Thomson, Roberson admitted that he did not ask for an attorney once the officer began recording the interview. In contrast, Detective Sergeant Thomson testified that Roberson waived his right to an attorney and never indicated that he wanted an attorney. Given the deference we accord to the trial court's findings, especially because the demeanor of witnesses and credibility are so vitally important to a trial court's determination,<sup>12</sup> there is no basis for overturning the trial court's finding that Roberson's confession was voluntary because of this dispute concerning his request for an attorney.

Roberson also contends that his heavy alcohol use rendered him incapable of waiving his rights. However, intoxication is not dispositive of voluntariness.<sup>13</sup> In the present case, other than smelling alcohol on Roberson, Detective Sergeant Thomson had no other indication that Roberson was intoxicated. According to Detective Sergeant Thomson, Roberson was articulate during his interview and never had any problems walking. Moreover, there was no evidence presented at the *Walker* hearing supporting Roberson's contention that his mental illness affected his intelligence.<sup>14</sup> Roberson, who had graduated from high school, even testified that his mental illness did not prevent him from understanding everything that he was asked. Therefore, we conclude that Roberson's waiver was voluntary.<sup>15</sup>

#### D. Knowing And Intelligent Waiver

The final inquiry is whether Roberson's waiver was knowing and intelligent. Roberson argues that because he had ingested large amounts of alcohol and did not take the medication prescribed to control his mental illness, he was incapable of rendering a knowing and intelligent waiver. Our focus in this analysis is on whether Roberson "understood that he did not have to speak, that he had the right to the presence of counsel, and that the state could use what he said in a later trial against him."<sup>16</sup> Detective Sergeant Thomson testified that, other than the smell of alcohol, there was no other indication that Roberson was under the influence of either drugs or alcohol at the first interview. Additionally, Roberson requested that his interview be taped, he said that he understood his rights, and he signed a form indicating that he understood his rights. Moreover, Roberson asked Detective Sergeant Thomson to add the words "in my own writing" to the *Miranda* waiver form before he would sign the form, indicating that he understood what he was doing and the consequences of this actions. Roberson's testimony that, because he was claiming self-defense, he wanted to tell his side of the story only supports this inference. Further,

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<sup>12</sup> See *id.* at 629.

<sup>13</sup> *People v Feldman*, 181 Mich App 523, 530-531; 449 NW2d 692 (1989).

<sup>14</sup> *People v Howard*, 226 Mich App 528, 541-542; 575 NW2d 16 (1997).

<sup>15</sup> *Daoud*, *supra* at 635.

<sup>16</sup> *People v Cheatham*, 453 Mich 1, 29; 551 NW2d 355 (1996).

Detective Sergeant Thomson noticed that Roberson was able to communicate well and was aware that his statement would be used against him or in his behalf. As a whole, this evidence shows that Roberson was coherent, he responded in a normal way, and he was not so intoxicated that he was unable to waive his rights in a knowing and intelligent manner. Thus the trial court did not err in denying the motion to suppress this evidence.

### III. Motion For Directed Verdict

#### A. Standard Of Review

Roberson argues that the trial court erred in denying his motion for a directed verdict. In reviewing a claim from the denial of a directed verdict motion, this Court must review the evidence up to the time the motion was made in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt,<sup>17</sup> which requires review de novo.<sup>18</sup>

#### B. Premeditation

“First-degree premeditated murder requires proof that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate.”<sup>19</sup> “Premeditation and deliberation require sufficient time to allow the defendant to take a second look.”<sup>20</sup> “Premeditation and deliberation may be established by evidence of ‘(1) the prior relationship of the parties; (2) the defendant’s actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant’s conduct after the homicide.’”<sup>21</sup> “The length of time necessary to ‘measure and evaluate a choice before it is made is incapable of precise determination’; all that is necessary is enough time to take a ‘second look’ at the actions contemplated.”<sup>22</sup>

In this case, the evidence suggested that Roberson manually strangled the victim for twenty or thirty seconds, long enough for him to think twice about what he was doing.<sup>23</sup> That the attack lasted long enough for the victim to sustain wounds while trying to defend himself from several blows was evidence of premeditation.<sup>24</sup> The other motel guests’ testimony established that this attack lasted much longer, up to twenty minutes, far in excess of the minimum necessary

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<sup>17</sup> *People v Crawford*, 232 Mich App 608, 615-616; 591 NW2d 669 (1998).

<sup>18</sup> *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

<sup>19</sup> *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999), quoting *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992).

<sup>20</sup> *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998).

<sup>21</sup> *Abraham*, *supra* at 656, quoting *Schollaert*, *supra* at 170.

<sup>22</sup> *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993), quoting *People v Coddington*, 188 Mich App 584, 599; 470 NW2d 478 (1991).

<sup>23</sup> *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999).

<sup>24</sup> *Id.*

to premeditate and deliberate a murder.<sup>25</sup> Consequently, we conclude that the trial court did not err in denying the motion for a directed verdict.

#### IV. The Testimony Of The Victim's Daughter

##### A. Preservation And Standard Of Review

Roberson argues that the trial court erred when it permitted testimony that the victim's daughter was not able to say goodbye to her father before he was killed. He contends that this testimony from the daughter's mother was inadmissible because it was irrelevant,<sup>26</sup> it should have been excluded under MRE 403 because it was highly inflammatory, and that it should have been excluded as hearsay.<sup>27</sup> However, he failed to preserve this issue for appeal by objecting to this testimony on these grounds.<sup>28</sup> Thus, our review is for plain error affecting his substantial rights.<sup>29</sup>

##### B. Harmless Error

Assuming that the trial court committed plain error in admitting this testimony, we nevertheless conclude that the evidence was insufficiently prejudicial in light of the evidence as a whole to warrant reversing his conviction.<sup>30</sup> Roberson confessed that he killed the victim. To say the least, this was strong evidence that Roberson murdered the victim. There was also other overwhelming evidence from the motel guests and Shipley that Roberson murdered the victim. There is no reasonable probability that this snippet of testimony referring to the effect of the murder on the victim's daughter made any difference in the outcome of this trial. Because the testimony was harmless, Roberson is not entitled to a new trial on this basis.<sup>31</sup>

#### V. Photographic Evidence

##### A. Standard Of Review

Roberson argues that the trial court erred when it admitted a gruesome photograph of the victim taken after his death, which was used solely to arouse the sympathies or prejudices of the jury. The admission of photographs into evidence is within the trial court's discretion, and this Court reviews for abuse of discretion.<sup>32</sup>

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<sup>25</sup> *People v Gonzalez*, 178 Mich App 526, 531, 533; 444 NW2d 228 (1989).

<sup>26</sup> MRE 401.

<sup>27</sup> MRE 802.

<sup>28</sup> *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000); MRE 103(a)(1).

<sup>29</sup> *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); MRE 103(d).

<sup>30</sup> *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000).

<sup>31</sup> MCL 769.26.

<sup>32</sup> *People v Ho*, 231 Mich App 178, 188; 585 NW2d 357 (1998).



## B. Premeditation And Deliberation

At trial, Roberson objected to two photographs that were later admitted as exhibits 24 and 25.<sup>33</sup> The trial court ruled that the probative value of the photograph, which depicts the serious face and neck injuries the victim sustained, was not substantially outweighed by the danger of unfair prejudice. When the photograph was admitted, Roberson stipulated to its admission subject to the trial court's earlier ruling. Though somewhat shocking, the photograph was clearly relevant to proving premeditation and deliberation on the basis of the nature of the injuries.<sup>34</sup> Because it was relevant, the photograph was not subject to exclusion solely because it accurately portrayed the violent way the victim died.<sup>35</sup> Accordingly, we conclude that the trial court did not abuse its discretion in admitting this evidence.

Affirmed.

/s/ William C. Whitbeck

/s/ Jessica R. Cooper

I concur in result only.

/s/ William B. Murphy

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<sup>33</sup> In Roberson's brief on appeal, he does not make clear whether he is arguing that one photograph was erroneously admitted or if more than one photograph was erroneously admitted. Further, Roberson did not indicate which exhibit number or numbers in the trial court record corresponded with the photograph or photographs he is now contending was or were erroneously admitted. After reviewing the record and the briefs, it is this Court's opinion that Roberson is referring to one photograph, which was admitted as either exhibit 24 or exhibit 25.

<sup>34</sup> *People v Anderson*, 209 Mich App 527, 536; 531 NW2d 780 (1995); *Abraham*, *supra* at 656.

<sup>35</sup> *Ho*, *supra*.