

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIUS DUCKWORTH a/k/a Demetrius
Ducksworth,

Defendant-Appellant.

UNPUBLISHED

January 22, 2002

No. 226304

Wayne Circuit Court

LC No. 98-005475

Before: Hood, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of two counts of assault with intent to commit armed robbery, MCL 750.89, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced, as a third habitual offender, MCL 769.11, to concurrent terms of fifteen to thirty years' imprisonment for the assault convictions, and a consecutive two-year sentence for the felony-firearm conviction. We affirm.

This case arises out of an attempted armed robbery in which one of the two robbery victims, an off-duty Detroit police officer, shot and wounded defendant and fatally shot defendant's accomplice. The second robbery victim was the police officer's father.

We first address defendant's argument that the trial court erred in determining that defendant's statement to police officers was voluntarily made, based on a knowing and intelligent waiver of his rights. Specifically, defendant contends that the trial court failed to determine the length of defendant's detention or whether the wound defendant suffered affected the taking of the statement, and only determined whether defendant was under the influence of drugs and alcohol by wrongfully relying on two photographs taken of defendant while in custody and defendant's signature on a constitutional rights form. We disagree.

Statements of an accused made during a custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). When reviewing a trial court's determination of voluntariness, this Court examines the entire record and makes an independent determination of the issue as a question of law. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). However, 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 will not

be reversed unless they are clearly erroneous. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *Id.* The ultimate test for determining voluntariness is whether, considering the totality of the circumstances, the confession is the product of an essentially free and unconstrained choice, or whether the defendant's will has been overborne and his capacity for self-determination critically impaired. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988).

In reviewing the record, we conclude that the trial court did not err in finding that defendant understood his constitutional rights, voluntarily, knowingly, and intelligently waived his rights, and thereafter made a voluntary statement. There was no evidence to support the argument that the detention was lengthy. Additionally, an officer testified that he asked defendant whether defendant was in pain or wanted to go to the hospital, and defendant stated that he was not in pain, that he was all right, and he declined to go to the hospital. Defendant, himself, was uncertain about the amount of drugs and alcohol, if any, that he had consumed prior to his arrest. Intoxication from alcohol or other substances can affect the validity of a waiver of Fifth Amendment rights; however, it is not dispositive. *People v Leighty*, 161 Mich App 565, 571; 411 NW2d 778 (1987). Here, the trial court disbelieved defendant's denial that the signature on the constitutional rights form was his. The trial court compared that signature with defendant's signatures on two court forms, and concluded that they were the same. Because the signature at issue was written as compactly and as straight as the signatures that defendant signed in the courtroom when he did not appear to be intoxicated, the trial court reasoned that defendant was not intoxicated when he signed the rights form. Police officer testimony indicated that defendant's demeanor appeared to be normal, that defendant was mentally alert, and that he did not appear to be under the influence of drugs or alcohol. Furthermore, the trial court relied on the conclusions of two psychiatric evaluations and inferred that because defendant was generally capable of understanding his rights, he was capable of waiving those rights. Therefore, considering the totality of the circumstances, the trial court did not err in denying the motion to suppress defendant's statement.

Defendant next argues that the evidence was insufficient to sustain the jury trial's verdict because there was insufficient evidence to identify him as one of the armed robbery perpetrators. Specifically, defendant contends that the complainants could not identify him, no fingerprints were found on the guns at the crime scene, and his friend's testimony that implicated him was suspect. We disagree. In reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Here, sufficient evidence was presented at trial to establish defendant's identity as the armed robber. Defendant's confession to a friend about his role in committing the crime corroborated the complainants' testimony concerning the robbery. Additionally, defendant's statement to police implicated him as one of the individuals who committed the crime.

Moreover, the accomplice's car was found parked next to defendant's house, and defendant had an injury consistent with a gunshot wound that was inflicted on one of the perpetrators of the crime.

Defendant testified at trial, stating that he knew his accomplice, but denying that he was with him that night, and defendant denied ever telling his friend anything or showing her his wound. Defendant explained that his wound was sustained from an ice-pick stab during a gambling fight. Defendant's testimony, which conflicted with the testimony of his friend and the complainants, created a question of fact and a question of witness credibility. It is the province of the jury to determine questions of fact and assess the credibility of witnesses. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). This Court will not interfere with the jury's role of determining the credibility of witnesses. *Terry, supra* at 452.

We reject defendant's argument that the testimony of his friend was suspect. There is nothing in the record to support defendant's contention that her statement to the police was an attempt to extricate herself from police custody and that the police assisted her in making her statement. Moreover, her credibility was properly left for jury determination.

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found that defendant was the second perpetrator in the crime beyond a reasonable doubt. Because the evidence was sufficient, the question was one for the jury, which we will not disturb.

Defendant finally asserts numerous instances of alleged misconduct by the trial court that denied him his right to a fair trial. Defendant contends that the trial court pierced the veil of judicial impartiality. Defendant did not object to the trial court's conduct at trial, and therefore, the issue has not been preserved for appeal. *People v Collier*, 168 Mich App 687, 697; 425 NW2d 118 (1988). Our review of this unpreserved issue is limited to determining whether the defendant had demonstrated a plain error affecting his substantial rights. *Carines, supra* at 763-764. This Court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 763.

A defendant in a criminal trial is entitled to a neutral and detached magistrate. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). The principal limitation on a court's discretion over matters of trial conduct is that its actions not pierce the veil of judicial impartiality. *People v Davis*, 216 Mich App 47, 50; 549 NW2d 1 (1996). A trial court's actions pierce the veil of judicial impartiality where its conduct or comments unduly influence the jury and thereby deprive the defendant of a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Portions of the record should not be taken out of context in an attempt to show bias, rather the record is to be reviewed as a whole. *Id.* The trial court may question witnesses in order to clarify testimony or elicit additional relevant information, but the trial court must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial. *People v Conyers*, 194 Mich App 395, 404-405; 487 NW2d 787 (1992).

Although we believe that the trial court, at times, came close to piercing the veil of judicial impartiality, we do not believe that defendant was deprived of a fair and impartial trial. Viewing the specific transcript references cited by defendant, the trial court's conduct in several

of the instances could be deemed simply as an effort by the court to clarify testimony or elicit additional relevant information. Other instances of alleged judicial misconduct concerned the trial court's attempts to explain the reasoning for its decisions on objections, concerned the court's effort to have defense counsel follow proper procedure, and concerned the court's attempt to prevent the jury from being misled regarding the status of the law. Moreover, considering the overwhelming evidence of defendant's guilt, defendant has failed to demonstrate a plain error affecting his substantial rights.

Affirmed.

/s/ Harold Hood
/s/ William B. Murphy
/s/ Jane E. Markey