

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELLIS LEE ROBINSON, JR.,

Defendant-Appellant.

UNPUBLISHED

January 13, 2005

No. 248098

Wayne Circuit Court

LC No. 02-009290-01

Before: Talbot, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of first-degree murder, MCL 750.316,¹ felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to two years in prison for the felony-firearm conviction, thirty-eight to sixty months in prison for the felon in possession of a firearm conviction, and mandatory life in prison for the first-degree murder convictions. We affirm.

On appeal, defendant first claims that the trial court erred in ruling that defendant's confession to the murders was voluntary and admissible at trial. We disagree.

We review de novo a trial court's ultimate determination on a motion to suppress evidence. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). Reversal is warranted if the trial court's findings of fact regarding the *Walker*² hearing were clearly erroneous. *Id.* "A finding is clearly erroneous if it leaves us with a definite and firm conviction that the trial court has made a mistake." *Id.* at 564, quoting *People v Manning*, 243 Mich App 615, 620; 624 NW2d 746 (2000).

¹ The trial court merged defendant's convictions of two counts of first-degree murder and two counts of felony murder into convictions of two counts of first-degree murder in order not to violate double jeopardy principles. See *People v Bigelow*, 229 Mich App 218, 222; 581 NW2d 744 (1998).

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

“A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights.” *Akins, supra* at 564, citing *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). A confession or waiver of constitutional rights requires a statement made without “intimidation, coercion, or deception.” *Akins, supra* at 564. The prosecution bears the burden of proving by a preponderance of the evidence that a defendant’s statement was made voluntarily. *Id.* To determine the voluntariness of a statement, a court must consider the non-exclusive factors delineated in *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). The *Cipriano* factors include:

[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Id.* (citations omitted).]

“The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made.” *Id.*

At the conclusion of the *Walker* hearing, the trial court rejected defendant’s claim that the police used psychological coercion to force a confession. The trial court noted that it believed the officers’ accounts of the events, but it found the credibility of defense witnesses “to be questionable and contradictory, and at times self-serving.” The trial court concluded that the prosecutor proved by a preponderance of the evidence that defendant’s confession was “voluntary” and “made with the full understanding of the consequences.” Therefore, the trial court ruled that defendant’s statement was admissible.

This Court has recognized that a trial court is in “the best position to assess the crucial issue of credibility.” *Akins, supra* at 566. Accordingly, this Court has refused to reverse a trial court’s determination regarding a *Walker* hearing absent clearly erroneous findings. *Id.* Here, the following evidence supported the trial court’s ruling: (1) defendant graduated from high school and attended about a year and a half of college; (2) defendant was previously convicted of embezzlement so he had prior experience with the criminal justice system and had been read his constitutional rights before; (3) testimony by Sergeant Goralski that the initial interview with defendant lasted approximately one hour; (4) testimony by Officer Crawford that defendant’s second interview lasted approximately 2 ½ hours; (5) defendant had been detained for less than forty-eight hours before confessing to the murders; (6) testimony by Sergeant Goralski that defendant was advised of his constitutional rights during the first interview and again when he reinitiated contact with Sergeant Goralski, and that defendant twice signed the constitutional rights consent form; (7) testimony by Sergeant Goralski that defendant stated he did not want a lawyer and wanted to talk to Sergeant Goralski about the murders; (8) testimony by Officer Crawford that defendant was coherent while giving his statement; (9) testimony by Sergeant

Goralski that defendant indicated that he was warm enough; (10) testimony by Officer Szczepanski that prison records indicated defendant was fed on the evening of July 11th and three or four times on July 12th; and (11) testimony by Officer Crawford that defendant received a cup of water and a “can of Coke” during the second interview. In applying the *Cipriano* factors, we hold that no clear error existed in the trial court’s ruling that defendant’s statement was free and voluntary and was admissible at trial.

Defendant’s second claim on appeal is that he was denied the opportunity to present evidence in support of his defense. Defendant contends that the trial court erred in denying admission of Natalie Anderson’s testimony regarding statements she heard defendant make while they were both incarcerated in jail, and further erred in not permitting defense counsel to elicit testimony from Anderson that she had been threatened with life in prison if she committed perjury. We disagree. The evidence in the *Walker* hearing established that Anderson was defendant’s girlfriend at the time of defendant’s arrest, and that Anderson was arrested along with defendant and placed in a jail cell near defendant’s cell. Anderson testified that she heard defendant ask to use the telephone to contact an attorney, to see his wife, and to get some water and a blanket. Prior to trial, the prosecutor brought a motion in limine to prohibit Anderson from testifying about what she heard defendant say while they were both in jail. Defense counsel responded that he had no objection to the motion as long as the prosecutor was also precluded from commenting during the trial on the absence of testimony about any demands defendant made while he was in custody in jail. The trial court granted the motion regarding Anderson’s testimony on the basis suggested by defense counsel. When a party specifically approves an action by the trial court, the party waives its right to appeal the issue. *People v Carter*, 462 Mich 206, 220; 612 NW2d 144 (2000); *People v Lowery*, 258 Mich App 167, 173; 673 NW2d 107 (2003). Because defendant through his counsel approved the trial court’s exclusion of Anderson’s testimony concerning defendant’s statements in jail, defendant’s right to appeal the trial court’s ruling was waived and there is no error for this Court to review. See *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001).

We next address defendant’s claim that the trial court improperly limited evidence by precluding defense counsel from eliciting testimony from Anderson that she had been threatened with life in prison if she committed perjury. The trial court has discretion to limit the scope of cross-examination, and that decision is reversed only upon a showing of abuse. *People v Blunt*, 189 Mich App 643, 651; 473 NW2d 792 (1991). An abuse of discretion exists “when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling.” *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

During his opening statement, defense counsel advised the jury that the evidence would show that the police threatened Anderson and coerced her into testifying against defendant by telling her that, if she failed to tell the truth, she would face life imprisonment as an accomplice to defendant. The prosecution objected to defense counsel’s statement to the extent that it referred specifically to life in prison as the possible penalty faced by Anderson. The prosecution further asserted that Anderson had been merely advised that perjury charges and criminal penalties might apply if she failed to tell the truth. In reply, defense counsel modified his argument to assert that in any event, in a criminal trial, the possible penalties a witness might face are relevant to show a witness’ motivation to testify, and that, therefore, he should be

permitted to cross-examine the witness accordingly. The trial court ruled that questions regarding criminal penalties could lead the jury to make inferences about what defendant's possible penalty would be if he were to be convicted of the charges against him, that penalty was a concern of the trial court and not the jury, and that, as such, counsel's questions would only be permitted to reference the possible penalties suggested to Anderson by use of the phrase "confinement and/or fine." The trial court's ruling expressly prohibited defense counsel from articulating that the possible penalty Anderson was threatened with was life in prison.

A defendant has a constitutional right to confront a witness through the method of cross-examination. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993); see also US Const, Am VI; Const 1963, art 1, § 20. However, the right to cross-examine a witness is not absolute in scope. *Id.* A trial court has discretion to determine the scope of cross-examination. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). A trial court has broad discretion "to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Adamski, supra* at 138, quoting *Delaware v Van Arsdall*, 475 US 673, 679; 106 S Ct 1431; 89 L Ed 2d 674 (1986). Moreover, to prevent a jury from rendering a verdict based on facts unrelated to a defendant's guilt or innocence, a jury is not permitted to consider a defendant's possible penalty for the crime charged. *People v Spears (In re Spears)*, 250 Mich App 349, 352; 645 NW2d 718 (2002); see also CJI2d 2.23. "Under this general rule, references to the disposition of the accused after the verdict are proscribed throughout the entire trial process, including voir dire, arguments of counsel, and jury instructions." *Id.* (citation omitted).

In *People v Bell*, 88 Mich App 345, 347-349; 276 NW2d 605 (1979), this Court held that the trial court abused its discretion by precluding the defendant from cross-examining the defendant's accomplice regarding the possible penalty he faced prior to entering into a plea bargain. Likewise, in *People v Mumford*, 183 Mich App 149, 150-151, 153-154; 455 NW2d 51 (1990), where the witness was the defendant's former codefendant and entered into a plea agreement, this Court held that strict adherence to the general rule that prohibits informing the jury of a defendant's possible penalty upon conviction would deprive the defendant of an opportunity to present the details of the witness' plea agreement, including the "sentencing consideration" the witness received in exchange for his testimony. However, in *People v Holliday*, 144 Mich App 560, 564-570; 376 NW2d 154 (1985), where no evidence existed that a witness who testified against the defendant had taken part in the crime, this Court held that the trial court did not abuse its discretion by prohibiting the defendant from inquiring of the witness about the penalty he might have avoided by testifying.

Here, Anderson did not enter into a plea agreement, and there was no indication that she was an accomplice to or participated in the murders. The trial court afforded defense counsel broad latitude in his cross-examination of Anderson, allowing him to fully develop his theory that Anderson was coerced into giving a statement against defendant, and that her statement was unreliable. In fact, defense counsel questioned Anderson extensively regarding the circumstances surrounding her prior statement at the investigative subpoena hearing and defense counsel asserted that police officers warned Anderson of the possibility of a period of confinement for falsely testifying. We conclude under these facts, therefore, that the trial court did not abuse its discretion, and that defendant's constitutional right of confrontation was not

violated, when the trial court limited defense counsel's examination to preclude reference on the record to Anderson allegedly being told that she could face life in prison as a possible penalty for perjury.

Affirmed.

/s/ Michael J. Talbot
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder