STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 24, 2008
v	No. 277652 Wayne Circuit Court
SHELLY ANDRE BROOKS, Defendant-Appellant.	LC No. 06-010881-01

Before: Whitbeck, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316, and second-degree murder, MCL 750.317. Defendant was sentenced to life imprisonment for the first-degree murder conviction, and the second-degree murder conviction was vacated at sentencing. Defendant appeals as of right. We affirm.

I. Basic Facts and Proceedings

In an abandoned apartment building in Detroit, police discovered the naked body of a woman lying on her back. The victim died of blunt force trauma to her head, and sperm found in the victim's body contained defendant's deoxyribonucleic acid (DNA). During questioning, defendant admitted to police that he had given the victim money in exchange for sex and, during a dispute over money, defendant hit the victim in the head with a stick. Defendant also admitted to various police officers that he had given money or drugs to six other women in exchange for sex. Defendant explained that, following a dispute with each of these women over payment, he struck them in the head. Five of these women died of blunt force trauma to the head, and their bodies were found lying face up either nude or partially nude. All their bodies were found in remote locations in Detroit: an abandoned apartment building, a vacant garage, an alley, a vacant field, and a vacant house. Defendant's DNA was found in the bodies or belongings of three of these women. One woman survived being beaten in the head with a brick and sexually assaulted in an abandoned home. She identified defendant as the perpetrator and testified at trial.

Before trial, the prosecution moved pursuant to MRE 404(b) to admit evidence regarding defendant's attack of these six women and another who was strangled to death. The trial court granted the prosecution's motion with respect to the six women, but precluded admission of evidence regarding the woman who had been strangled. Defendant moved to suppress his

statements to the police, arguing that the statements were not voluntary. Following a *Walker*[1] hearing, the trial court denied defendant's motion.

II. Admissibility of Other Acts Evidence

Defendant argues that the trial court abused its discretion in granting the prosecution's motion to admit the evidence regarding the six other women pursuant to MRE 404(b). We disagree. The decision to admit certain other acts evidence under MRE 404(b) "is within the trial court's discretion and will only be reversed where there has been a clear abuse of discretion." *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). An abuse of discretion occurs when the trial court chooses an outcome that falls outside the permissible principled range of outcomes. *People v Babcock*, 469 Mich 247, 265-266; 666 NW2d 231 (2003).

A prosecutor may not introduce evidence of other crimes, wrongs, or acts in order to prove a defendant's character or propensity for criminal behavior. MRE 404(b); *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), mod 445 Mich 1205 (1994). However, the evidence may be admissible for another purpose, including "proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case." MRE 404(b)(1). To be admissible, the other acts evidence must be offered under a theory other than character or propensity, it must be relevant, and its probative value may not be substantially outweighed by unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004); *VanderVliet*, *supra* at 74-75. Upon request, the trial court may provide a limiting instruction to the jury. *Knox*, *supra* at 509; *VanderVliet*, *supra* at 75.

In its motion, the prosecution offered the evidence to show defendant's intent to kill, motive, or scheme, which are proper purposes that do not "'risk impermissible inferences of character to conduct.'" *People v Watson*, 245 Mich App 572, 576; 629 NW2d 411 (2001), quoting *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998). Because defendant pleaded not guilty to the charges against him, all elements of the offenses were "in issue." *Crawford*, *supra* at 389. Relevant evidence must be related to a fact that is of consequence to the action. *People v Sabin* (*After Remand*), 463 Mich 43, 57; 614 NW2d 888 (2000). Evidence of the prior attacks constitutes similar misconduct, which "'is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system.'" *Knox*, *supra* at 510, quoting *Sabin*, *supra* at 63. Because the evidence that defendant struck six other prostitutes in the head after engaging in sex and having a dispute over payment makes it more likely that he killed the victim in the instant case by hitting her in the head after engaging in sex and having a dispute over payment, we therefore conclude that the evidence regarding the six other women was relevant. MRE 401; MRE 402.

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

We further conclude that the probative value of the evidence is not outweighed by the danger of unfair prejudice under MRE 403. Unfair prejudice occurs "when there is a tendency that the evidence will be given undue or preemptive weight by the jury, or when it would be inequitable to allow use of the evidence." *People v Taylor*, 252 Mich App 519, 521-522; 652 NW2d 526 (2002). The victim's naked body was found in an abandoned apartment building, lying on her back, and she died of blunt force trauma to her head. The evidence showed that the victim and the six other women engaged in sexual acts with defendant in exchange for money or drugs and that defendant hit each woman in the head during a dispute regarding payment. The five women who died were found in remote locations in Detroit (one in the same abandoned apartment building as the victim), and the woman who survived was attacked in an abandoned house. The bodies of the five women who died were found naked or nearly naked, lying on their backs. Defendant's DNA was found at many of the crime scenes, and defendant confessed to each and every attack. There is no indication that the evidence regarding the six other women would be given undue or preemptive weight by the jury or that its introduction would be inequitable, but its probative value was substantial.

To ensure that the jury did not improperly consider the MRE 404(b) evidence, the trial court gave a limiting instruction cautioning the jury not to use the other acts evidence as evidence of character or propensity. Accordingly, we conclude that the trial court did not abuse its discretion in granting the prosecution's motion to admit the evidence concerning the other six women.

III. Admissibility of Defendant's Statements

Defendant contends that the trial court erred in denying his motion to suppress his ten statements to police, claiming that they were not voluntary. We disagree. We review de novo a trial court's decision regarding a motion to suppress, *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002), but we will not disturb a trial court's findings of fact following a suppression hearing absent clear error, *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). A factual finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *Id.* at 651.

It is undisputed that defendant was in police custody when the statements were procured. An individual in police custody must be informed specifically of his "right to remain silent and to have an attorney present before being questioned." *People v Kowalski*, 230 Mich App 464, 472; 584 NW2d 613 (1998). When an accused expresses a desire to deal with police only through counsel, the interrogation must cease until counsel is made available, "unless the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards v Arizona*, 451 US 477, 484-485; 101 S Ct 1880; 68 L Ed 2d 378 (1981); *People v McRae*, 469 Mich 704, 715; 678 NW2d 425 (2004). "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." *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003), applying *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). Defendant only contests the voluntariness of his statements in this appeal.

Voluntariness is decided by viewing the totality of the circumstances surrounding the confession. *People v Snider*, 239 Mich App 393, 417-418; 608 NW2d 502 (2000). In determining whether a statement is voluntary, the trial court should consider the following: the

defendant's age, intelligence level, or lack of education; the extent of defendant's previous experience with police; the repeated and prolonged nature of questioning; the length of detention before giving of the statement; the lack of any advice of constitutional rights; whether there was unnecessary delay in bringing the defendant before the magistrate before he gave the confession; whether the defendant was in ill health, injured, intoxicated, or drugged when he gave the statement; whether the defendant was deprived of food, sleep, or medical attention; and whether defendant was physically abused or threatened with abuse. *Id*.; see also *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

Defendant claims that his statements were not voluntary because he was interrogated repeatedly and because two officers threatened him with violence if he did not provide statements. Defendant signed an advice of constitutional rights form before each interrogation and statement. Although the officers wrote the statements, defendant signed each one of them, making corrections as needed. Defendant understands English, was able to communicate with the police, and was very cooperative. At the time of these interrogations, defendant was in custody on another charge, which shows that he had at least some prior experience with police. There is no evidence that defendant was injured, in poor health, under the influence of alcohol or drugs, or in need of medical intention. There is no evidence that defendant was deprived of food or sleep; rather, the officers frequently provided defendant with food, even eating with him. Defendant was not physically abused, although he claims that two officers threatened him. Defendant claimed that he was taken out of jail for interrogation every day for at least a month, sometimes for 12 or more hours at a time, but the jail records do not support this assertion. The trial court did not find defendant credible; in fact, it specifically rejected his contention that he had requested an attorney and found the statements voluntary. Great deference is given to the trial court's opportunity to view the witnesses' demeanors and its ability to make credibility determinations. *Daoud, supra* at 629. The trial court's findings were not clearly erroneous, and we affirm its determination that the statements were voluntary.

IV. Sufficiency of the Evidence

Defendant asserts that there was insufficient evidence to convict him of first- and second-degree murder. Given that defendant's second-degree murder conviction was vacated at sentencing, we will only address his challenge to his first-degree murder conviction. We conclude that there was sufficient evidence to support his premeditated first-degree murder conviction.

When a criminal defendant challenges the sufficiency of the evidence, we review the evidence in a light most favorable to the prosecution "to determine whether any trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). The elements of premeditated first-degree murder are that the defendant killed the victim and that the killing was "willful, deliberate, and premeditated[.]" MCL 750.316(1)(a); *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002).

> To show first-degree premeditated murder, "'some time span between [the] initial homicidal intent and ultimate action is necessary to establish premeditation and deliberation.'" The interval between the initial thought and ultimate action should be long enough to afford a reasonable person time to take a

"second look." [*People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003) (internal citations omitted).]

Defendant's DNA was found in the victim's body, and he acknowledged that he had paid her to have sex with him. Defendant told police that, before he was finished with sex, the victim demanded more money and tried to walk away. Defendant indicated that he chased her and hit her over the head with a stick two or three times. Defendant stated that after the victim fell to the ground, he retrieved his money, dragged the victim into the bedroom, and covered her up with carpeting. Although her eyes were closed, defendant thought the victim was still breathing when he left. The victim's naked body was found in an abandoned apartment building, and she had died of blunt force trauma to the head from at least four blows. A bloody brick was found next to her body. Defendant testified at trial and denied killing the victim or any of the other five women.

Given that defendant chased the victim and struck her repeatedly, there was sufficient evidence that he had enough time to take a second look. Although there was a discrepancy regarding the murder weapon and defendant denied killing the victim, absent exceptional circumstances, issues of witness credibility are for the jury. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Accordingly, after reviewing the evidence in a light most favorable to the prosecution, we conclude that any trier of fact could find beyond a reasonable doubt that the prosecution proved that defendant killed the victim and that the killing was premeditated.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly