STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 14, 2009
v	No. 282698 Kalamazoo Circuit Court
CHRISTOPHER STEVEN HOLDER, Defendant-Appellant.	LC No. 07-000625-FC

Before: Saad, C.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of first-degree premeditated murder, MCL 750.316(1)(a). Because the trial court did not abuse its discretion in excluding the testimony of defendant's expert witness and because defendant's statements to the police were not obtained in violation of his constitutional rights, we affirm.

Defendant claims that he was denied his right to present a defense when the trial court excluded the proffered testimony of Dr. Ellen Garver, the psychologist who performed his competency evaluation. Defendant proposed that Garver would testify that, based on the results of his psychological testing, he has a personality trait to act irresponsibly and on impulse, and that when persons who have this personality trait commit crimes, the crimes are committed without planning. According to defendant, Garver's proffered testimony would help the jury determine whether he had the "necessary thought process" to commit first-degree murder. We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Dobek*, 274 Mich App 58, 93; 732 NW2d 546 (2007). An abuse of discretion exists if the trial court's decision is outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). We review de novo the question whether a defendant was denied his constitutional right to present a defense. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

A criminal defendant has a federal and state constitutional right to present a defense. *People v Hayes*, 421 Mich 271, 278; 364 NW2d 635 (1984); *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). "The right to offer the testimony of witnesses . . . is in plain terms, the right to present a defense . . . ." *Washington v Texas*, 388 US 14, 19; 87 S Ct 1920; 18 L Ed 2d 1019 (1967). However, this right is not absolute. *Hayes*, *supra* at 279. "The accused must still comply with 'established rules of procedure and evidence designed to assure both fairness

and reliability in the ascertainment of guilt and innocence.'" *Id.*, quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973).

The admission of expert testimony is governed by MRE 702, which provides that "[i]f the court determines that scientific, technical, or other specialized knowledge *will assist the trier of fact to understand the evidence or to determine a fact in issue*, a witness qualified as an expert . . . may testify . . . ." (emphasis added). In addition, MRE 403 provides that, "[a]lthough relevant, evidence may excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ."

In order to prove premeditated first-degree murder, a prosecution must show that a defendant committed an intentional killing with premeditation and deliberation. *People v Wofford*, 196 Mich App 275, 278; 492 NW2d 747 (1992). "The elements of premeditation and deliberation may be inferred from all the facts and circumstances surrounding the incident . . . including the parties' prior relationship, the actions of the accused both before and after the crime, and the circumstances of the killing itself." *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995) (internal citations omitted). Garver's proffered testimony that defendant tends to act on impulse, or that his thought process in committing a crime would not normally involve forethought, would simply distract the jury from focusing on the facts and circumstances surrounding the actual crime. This is especially true where Garver's proffered testimony that defendant was not predisposed to committing a crime with premeditation would come close to vouching for defendant's veracity and to suggesting a lack of guilt on defendant's part. See *People v Peterson*, 450 Mich 349, 352; 537 NW2d 857 (1995); *Dobek*, *supra* at 96-101. For this reason, we agree with the trial court that Garver's proffered testimony would not have aided the jury in determining whether defendant was guilty of premeditated murder, MRE 702, and would have led to confusion of the issues, MRE 403.

Further, defendant sought to introduce Garver's testimony to negate the specific intent element of premeditated murder. Therefore, defendant essentially attempted to present a diminished capacity defense. Because this defense is no longer a viable defense in Michigan, *People v Carpenter*, 464 Mich 223, 241; 627 NW2d 276 (2001), the proffered testimony was not admissible for this purpose, *id.*; *Yost*, *supra* at 355.

For these reasons, the trial court did not abuse its discretion when it excluded the testimony of Garver. Because the trial court properly excluded the testimony, defendant was not denied his constitutional right to present a defense. *Hayes*, *supra* at 279.

Defendant next claims that the trial court erred in finding that his statements to police were voluntary. We review a trial court's decision whether a statement was voluntarily made by conducting an independent analysis of the record to determine whether the trial court's ruling was clearly erroneous. *People v Cipriano*, 431 Mich 315, 339; 429 NW2d 781 (1988); *People v Robinson*, 386 Mich 551, 558; 194 NW2d 709 (1972). We will reverse a trial court's finding on the voluntary nature of a defendant's statements only if we are left with a definite and firm conviction that a mistake has been made. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). "We give deference to the trial court's findings, especially where the demeanor of the witnesses is important, as where credibility is a major factor." *Cipriano*, *supra* at 339 (quotation omitted).

An involuntary statement made by a defendant and introduced in a criminal trial for any purpose violates the defendant's due process rights. *Id.* at 331. When determining whether a statement was voluntarily made, the question is "whether, considering the totality of all the surrounding circumstances, the confession is 'the product of an essentially free and unconstrained choice by its maker' or whether the accused's 'will has been overborne and his capacity for self-determination critically impaired . . . .'" *Id.* at 333-334, quoting *Culombe v Connecticut*, 367 US 568, 602; 81 S Ct 1860; 6 L Ed 2d 1037 (1961). In making this determination, a trial court should consider such factors as:

> the 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.* at 334.]

The presence or absence of one of these factors is not dispositive. *Id*. Instead, whether a statement is voluntary depends on the totality of the circumstances surrounding the statement. *Id*.

The record shows that defendant was 23 years of age, had a 10th grade education level, appeared of average intelligence, and had at least 10 prior contacts with the police. While defendant's interviews with the police lasted approximately eight hours, the police questioned defendant intermittently for three hours, before questioning defendant for approximately five straight hours at the police department. Defendant voluntarily let police into his apartment and agreed to accompany them to the police station. Moreover, defendant was informed on several occasions that he was free to leave. Defendant admitted that he was free to move about the room at the police station, and that he was given access to a restroom. In addition, defendant did not request to take a break during his time at the police station, and he was offered refreshments. Although defendant claimed that he was intoxicated, five law enforcement officials testified that defendant did not appear intoxicated, and defendant informed two officers that he was not intoxicated. Both detectives who interviewed defendant at the police station denied defendant's accusations that threats or intimidation were used against defendant. The trial court found the law enforcement officers credible and defendant lacking in credibility. We generally defer to the trial court's finding of witness credibility because the trial court has a superior opportunity to evaluate the witnesses. *People v Marshall*, 204 Mich App 584, 587; 517 NW2d 554 (1994). Viewing the totality of the circumstances, we are not left with a definite and firm conviction that

the trial court erred when it found that defendant's statements were voluntarily made.[1] *Sexton, supra*.

Defendant also claims that his Fifth Amendment rights were violated when the police and the CPS worker failed to advise him of his *Miranda*[2] rights before questioning him. Defendant failed to preserve this issue by not raising it before the trial court. We therefore review this issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

"Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Harris*, 261 Mich App 44, 55; 680 NW2d 17 (2004). Custodial interrogation involves, "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). A determination of whether an accused is in "custody" or has been "deprived of his freedom of action in any significant way" is not dependant upon the subjective view of either the law enforcement officials or the accused. *Stansbury v California*, 511 US 318, 323; 114 S Ct 1526; 128 L Ed 2d 293 (1994). Instead, the proper inquiry looks at the objective circumstances surrounding the interrogation. *Id*.

> Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, *would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave*. . . . [T]he court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. [*Thompson v Keohane*, 516 US 99, 112; 116 S Ct 457; 133 L Ed 2d 383 (1995) (quotation and alternation omitted) (emphasis added).]

In the instant case, the evidence found credible by the trial court established that defendant allowed the police officers to enter his apartment to speak with him, that defendant voluntarily accompanied the police officers to the police station, and that defendant was advised that he was free to leave at any time. Under these circumstances, a reasonable person would have believed that he or she was at liberty to terminate the questioning by police and to leave. See *People v Coomer*, 245 Mich App 206, 220; 627 NW2d 612 (2001); *People v Marbury*, 151 Mich App 159, 162-163; 390 NW2d 659 (1986). Accordingly, defendant was not in custody when he made his first confession to police at the police station, and his statements to the police were not obtained in violation of his *Miranda* rights.

We need not decide whether defendant's statement to the CPS worker was obtained in violation of his *Miranda* rights, because the CPS worker's testimony concerning defendant's

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[1] We find no merit in defendant's claim that his statement made to the CPS worker after he had confessed to police, and while he was in jail, was involuntary because defendant admitted at the *Walker* hearing that he was not intoxicated and the CPS worker did not threaten him.

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

statement to her mirrored the content of defendant's admissible confession to the police. Thus, any error with respect to the admission of defendant's statement to the CPS worker did not affect defendant's substantial rights. *Carines, supra*.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra