

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-468

DALE ROSLYN BROOKS,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered OCTOBER 22, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR2006-1924]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

SAM BIRD, Judge

Dale Roslyn Brooks was tried by a jury on charges of second-degree murder and theft of property. She was found guilty and was sentenced to respective terms of thirty years' and ten years' imprisonment, to be served consecutively. She raises two points on appeal from the circuit court's judgment and commitment order of November 15, 2007, challenging the sufficiency of the evidence to support the murder conviction and contending that the court erred in denying her motion to suppress statements she gave to police. We affirm, holding that the evidence was sufficient to support the conviction and that the denial of the motion to suppress was not clearly against the preponderance of the evidence.

Sufficiency of the Evidence

Brooks does not deny that she stabbed Jon Harcourt, whose death resulted from the stab wounds. She contends that the State failed to provide sufficient proof of second-degree

murder because it did not prove that she knowingly caused the death of Harcourt under circumstances manifesting extreme indifference to the value of human life. She asserts that no reasonable jury could find that she knowingly caused the death after considering the “single shallow wound,” which was fatal; the circumstances; and her diagnosis of mental disease and psychotic disorder. Her arguments are without merit.

The elements to be proven in a case of second-degree murder are set forth at Ark. Code Ann. § 5-10-103(a) (Repl. 2006):

(a) A person commits murder in the second degree if:

- (1) The person knowingly causes the death of another person under circumstances manifesting extreme indifference to the value of human life; or
- (2) With the purpose of causing serious physical injury to another person, the person causes the death of any person.

Here, the State alleged in its felony information that Brooks had committed the elements of subsection 5-10-103(a)(2). The case was tried under this subsection, the jury was instructed accordingly, and the basis of Brooks’s motions for a directed verdict was the lack of substantial evidence that, “with the purpose to cause serious physical injury to another person,” she had caused Harcourt’s death.

When reviewing the sufficiency of the evidence, the appellate court does not reweigh the evidence but determines instead whether the evidence was substantial. *Wyles v. State*, 368 Ark. 646, 249 S.W.3d 782 (2007). Substantial evidence is evidence, direct or circumstantial, that is forceful enough to compel reasonable minds to reach a conclusion one way or another and that goes beyond mere speculation or conjecture. *Id.* In determining

whether there is substantial evidence, the appellate court reviews the evidence in the light most favorable to the State and considers only evidence supporting the verdict *Id.*

Serious physical injury is a physical injury “that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.” Ark. Code Ann. § 5-1-102(21) (Repl. 2006). A person acts purposefully with respect to her conduct or the result of her conduct “when it is [her] conscious object to engage in conduct of that nature or to cause the result.” Ark. Code Ann. § 5-2-202(1) (Repl. 2006).

Although intent or state of mind is seldom apparent at the time an offense is committed, a person is presumed to intend the natural and probable consequences of his or her actions. *Wyles, supra*. Intent can be inferred from the type of weapon used, the manner of use, and the nature, extent, and location of the trauma suffered by the victim. *Id.*

The following evidence was presented at trial. Detective Mark Knowles testified regarding a statement that Brooks made about going to Harcourt’s home to offer her services as a prostitute on March 21, 2006. Brooks stated that she later cleaned up the house, a dispute arose over payment, and she stabbed Harcourt with a box cutter and a knife. She said that she shoved him into the bathroom, shut the door, left him bleeding, and departed in his van after taking his cell phone, bottles of cologne, and a bag of clothes. A transcript of this statement was made a part of the evidence.

Jamie Hoffman, the landlord’s son, testified that on March 22 he investigated neighbors’ complaints of a possible plumbing problem. He discovered Harcourt’s body in

the bathtub, where water was running and overflowing into the floor. Hoffman turned off the water, called his father and 911, and waited for police. Officer James Nellis, responding to the call, found blood on the floor and Harcourt's body in the empty tub. Neighbors told Nellis that they had heard noises during the night. Stan Wilhite, who was responsible for the crime scene, observed blood in the bathroom and the body in wet clothes; a box cutter was on the bedroom dresser nearby, and knives were collected from the scene.

Forensic pathologist Dr. Frank Peretti, who performed the autopsy, opined that the cause of death was multiple stab and cutting wounds. He testified that Harcourt had cutting wounds and bruises consistent with defensive wounds, and that there were four stabbing marks. The horizontal, inch-and-three-quarters wound on the back of the right thigh was the fatal wound: it was eight-and-one-half-inches deep, and it completely transected the right femoral artery. Dr. Peretti stated that the blood on the floor was consistent with the stabbing and that small splatters under the commode were consistent with the victim's being on the floor when he was stabbed.

As for Brooks's defense that she lacked capacity because of a mental disease or defect, psychologist Dr. Ed Stafford testified that Brooks knew the difference between right and wrong, was able to appreciate the wrongfulness of the action at the time of the crime, and could conform her conduct to the requirements of the law at the time of the homicide. Dr. Stafford said that he did not know if Brooks had a mental defect or not; he said that Dr. Shea "basically punted and gave her psychotic disorder, NOS diagnosis, which is basically a sort of . . . wastebasket diagnosis " used when diagnosis is uncertain. Dr. Stafford stated that,

even with a mental defect, Brooks was “still able to conform and be competent and responsible.”

The State was required to prove that Brooks purposely caused serious physical injury to Harcourt that resulted in his death. From the evidence summarized above, the jury could have reasonably inferred that it was Brooks’s conscious object to engage in the stabbing and that the stab wounds constituted serious physical injury leading to Harcourt’s death. Thus, there was substantial evidence to support her conviction for second-degree murder.

Motion to Suppress

In her second point on appeal, Brooks contends that the circuit court erred by denying her motion to suppress statements that violated *Miranda v. Arizona*, 384 U. S. 436 (1966), and her Fifth Amendment rights against self-incrimination. She contends that the initial violation tainted her later statements to police and should have been excluded as well. We hold that no *Miranda* or procedural violations occurred in the taking of the first statement; therefore, the subsequent statements were not tainted.

In reviewing a circuit court’s denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause. *Omar v. State*, 99 Ark. App. 436, --- S.W.3d ---- (2007). Due weight is given to inferences drawn by the trial court, whose ruling is reversed only if it is clearly against the preponderance of the evidence. *Id.* A statement made in custody is presumptively involuntary, and the burden is on the State to prove by a preponderance of the evidence that

a custodial statement was given voluntarily and was knowingly and intelligently made. *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003). To determine whether a waiver of *Miranda* rights is voluntary, the appellate court looks to see if the confession was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Id.*

A policeman's unarticulated plan has no bearing on the question of whether a suspect was in custody at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation. *Shelton v. State*, 287 Ark. 322, 329, 699 S.W.2d 728, 731 (1985) (quoting *Berkemer v. McCarty*, 468 U.S. 420 (1984)). Moreover, there is no requirement that police give *Miranda* warnings if the questioning is simply investigatory in nature. *Bohanan v. State*, 72 Ark. App. 422, 38 S.W.3d 902 (2001).

Detective John White testified that he and another detective went to Brooks's home eight days after the murder because of police information that she had been seen in Harcourt's van and was a suspect. They stood on the porch and knocked on the door, which Brooks opened. She initially told them that she was "Mary Williams," but she admitted her true identity after White retrieved a copy of her driver's license from his car and showed her the license photo. White asked her when she had last seen Harcourt and told her that the officers "wanted to talk to her downtown" about his homicide. He further testified:

She started into what exactly happened with Mr. Harcourt, that she was there when it happened and so-forth. She knew where the van was.... She denied killing him and we stopped her from talking and advised her of her rights because we knew she was involved.

Detective White said that he read the *Miranda* rights form to Brooks: she indicated that she understood, she seemed to be coherent, and she signed the form. He said that he informed her that she could waive her rights, that she indicated that she would do so and would give the officers a statement, and that she never requested an attorney. White stated that there were no threats or coercion, and that Brooks was not handcuffed. He said that the officers talked with her more while still at the house; she told them that she knew the location of Harcourt's missing van and said that the keys were at her father's house.

The officers then transported Brooks in the back of the patrol car to the home of her father, who consented to a search of his home and curtilage. They found a knife, two sets of keys, and a piece of cloth; the van was found at a nearby location where she had said it would be. White testified that Brooks told them two men were involved. She also said that she went to the residence to clean house, saw Harcourt dead in the bathtub, "got scared and freaked out," grabbed his keys and cell phone, and left. After obtaining this statement and the physical evidence, the officers transported her to the police department and handed her over to Detective Mark Knowles, the lead investigator on the case.

White testified under cross-examination that there was a previous warrant for Brooks from district court. He said that the officers were not going to arrest her on the homicide charge but "she was in custody."

Under the totality of the circumstances, we hold that the trial court's denial of the motion to suppress Brooks's statements is not clearly against the preponderance of the evidence. Although Detective White testified that Brooks was in custody, the evidence

shows that she was unrestrained in her own home and that officers did not indicate to her that she was not free to leave. Furthermore, the nature of the officer's questioning was initially investigatory. Officers told her they wanted to question her about his homicide and asked when she had last seen him. Brooks began speaking about what she had seen in Harcourt's home, as well as the location of his van and keys: White stopped at this point, and she was given her *Miranda* rights. Thus, her initial responses did not result from interrogation in a custodial setting.

Brooks was given the *Miranda* rights at her home but waived those rights, continued speaking with officers, and led them to the location of the victim's van. She then was turned over to Detective Knowles. He testified that he read her *Miranda* rights to her again, she indicated she understood them, she waived them, and she gave another statement without ever asking for an attorney. Brooks's statement to Knowles was tape-recorded and introduced into evidence at trial. Because no *Miranda* or Fifth Amendment violations occurred in the taking of Brooks's first statement, there was no taint of this subsequent evidence.

Affirmed.

GRIFFEN and GLOVER, JJ., agree.