STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES DESHAWN HENDERSON,

Defendant-Appellant.

UNPUBLISHED
March 4, 1997

No. 179496
Detroit Recorder's Court
LC No. 93-010746

Before: Gribbs, P.J., and Holbrook, Jr., and J. L. Martlew,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of involuntary manslaughter, MCL 750.329; MSA 28.561, attempted armed robbery, MCL 750.92; MSA 28.287; MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to eight to fifteen years for the manslaughter conviction, two to five years for the attempted armed robbery conviction and two years for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that the informant's tip was not sufficient to justify his warrantless arrest, and that the statements defendant made to the police should have been suppressed as the fruit of an illegal arrest. We disagree.

We review a trial court's decision whether to grant or deny a motion to suppress under the clearly erroneous standard. *People v Massey*, 215 Mich App 639, 641; 546 NW2d 711 (1996). A decision is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992). Probable cause to conduct a warrantless arrest on the basis of an informant's tip exists provided that under the totality of the circumstances, including the informant's "veracity" and "basis of knowledge," there is a fair probability that a crime has been committed and the suspect committed that crime. *Illinois v Gates*, 462 US 213, 238; 103 S Ct 2317; 76 L Ed 2d 527 (1983).

* Circuit judge, sitting on the Court of Appeals by assignment.

Mere rumor linking a person to a crime will not, however, establish probable cause to arrest that person without a warrant. *People v Thomas*, 191 Mich App 576, 580; 478 NW2d 712 (1991). Rather, there must be sufficient facts to permit an independent determination that the person supplying the information is reliable and that the information is based on something more substantial than casual rumor. *Id*. (citing *People v Oliver*, 417 Mich 366, 374; 338 NW2d 167 (1983)).

In this case, we conclude that under the totality of the circumstances, the informant's tip carried with it sufficient indicia of reliability to support the trial court's finding that the Inkster police had probable cause to arrest defendant without a warrant. One of the police officers testified that the informant's services had been utilized by the Inkster police one time prior to his giving the police information concerning the shooting of the victim. The informant's prior tip helped the police clear up a murder investigation. The informant also had a sufficient basis of knowledge in this case because he was present when defendant admitted to having shot the victim. Furthermore, the informant's specific and detailed description of the alleged assailant matched the description of defendant as known by two officers prior to the tip. Therefore, despite the absence of an independent investigation into the informant's allegations prior to defendant's arrest, there was probable cause to make the arrest without a warrant. *Gates*, *supra*, 462 US 238; *Thomas*, *supra*, 191 Mich App 580. Accordingly, we conclude the trial court's decision not to suppress defendant's statements on the basis that they were inadmissible as evidence obtained as a result of an alleged illegal arrest was not clearly erroneous.

Defendant next argues that his Fifth Amendment right against self-incrimination was violated when the trial court failed to suppress his August 31, 1993, statement. Defendant argues that the statement should have been suppressed because it was made as a result of defendant's detention by the police for six days before he was arraigned, repeated interrogation and the use of other coercive tactics. We disagree.

We review a trial court's findings as to whether a defendant's statement was voluntarily made by reviewing the entire record and making an independent determination. *People v Jobson*, 205 Mich App 708, 710; 518 NW2d 526 (1994). Deference should be given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and we will not reverse its findings unless they are clearly erroneous. *Id*. Whether a defendant's statement was knowing, intelligent and voluntary is a question of law which the court must determine under the totality of the circumstances. *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1994). Several factors may be considered in making that determination, including: (1) the duration of the defendant's detention and questioning, (2) the age, education, intelligence and experience of the defendant, (3) whether there was any unnecessary delay in arraigning the defendant, (4) the defendant's mental and physical state, and (5) whether the defendant was threatened or abused. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). A presumption of unreasonableness arises if an arrestee does not receive a probable cause determination within forty-eight hours of his arrest. *Riverside Co v McLaughlin*, 500 US 44, 56-57; 111 S Ct 1661; 114 L Ed 2d 49 (1991). However, a confession or other incriminating evidence should be suppressed as a result of an unduly long delay in arraignment only where the delay was used to extract the confession or evidence. *Cipriano*, *supra*, 431 Mich 334-335; *People v Lumsden*, 168 Mich App 286; 423 NW2d 645 (1988).

Our review of the record has not left us with a definite and firm conviction that the trial court made a mistake in denying defendant's motion to suppress his August 31, 1993, statement. Rather, under the totality of the circumstances, we conclude that defendant's statement was voluntarily made. Two of the officers who interviewed defendant testified that prior to the commencement of defendant's August 31, 1993, polygraph test, he was advised of his *Miranda*[1] rights and he never expressed an unwillingness to talk with the officers or a desire to talk to an attorney. Rather, defendant voluntarily signed a waiver of his rights and then proceeded to give the officers an oral statement that he later wrote and signed. In addition, contrary to defendant's assertions, he was not subjected to any repeated interrogation or other coercive tactics that compelled him to make a statement against his will. Further, the six day delay in bringing defendant before a magistrate for a probable cause determination can be attributed to the time required by the police to verify defendant's August 25, 1993, statement and the contradictory August 30, 1993, statement made by his codefendant, Lorenzo Rhea, after turning himself into the police. Accordingly, the trial court's finding that defendant's statement was voluntarily made was not clearly erroneous.

Finally, defendant contends that the trial court abused its discretion when it denied his motion to quash his bindover on the charge of attempted armed robbery because there was no evidence, independent of his statements, to establish the corpus delicti of that offense. We agree, but find the error harmless beyond a reasonable doubt. Errors in the sufficiency of proofs at the preliminary examination must be considered harmless if sufficient evidence is presented at trial to convict the defendant of the charges. *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989). See also *People v Hall*, 435 Mich 599, 610-615; 460 NW2d 520 (1990). Here, the jury found sufficient evidence to convict defendant of the crime of attempted robbery and defendant does not raise any claim of error with regard to his trial. Reversal of defendant's conviction is not warranted on the grounds of any error in the preliminary examination.

Affirmed.

/s/ Roman S. Gribbs
/s/ Donald E. Holbrook, Jr.
/s/ Jeffrey L. Martlew

[1] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).