

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYANT LORENZO WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
October 24, 1997

No. 191867
Recorder's Court
LC No. 95-005417-FC

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant, who was sixteen years old at the time of his arrest, was prosecuted as an adult under the automatic juvenile waiver rule, MCL 600.606; MSA 27A.606. Defendant was sentenced to fifteen to thirty years' imprisonment for the second-degree murder conviction, to be served consecutively to a two-year sentence for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court erred in denying his motion to suppress his statement made to the police on the basis that the statement was involuntary. Specifically, defendant argues that his statement should have been suppressed because it was made while he was detained prior to his arraignment and because he was handcuffed to a table during the interview. We disagree. The issue of the voluntariness of a statement is a question of law for a court to determine. *People v Jobson*, 205 Mich App 708, 710; 518 NW2d 526 (1994). On appeal, this Court examines the entire record and makes an independent determination of voluntariness. *Id.* However, this Court gives deference to the trial court's findings unless they are clearly erroneous. *Id.* A finding is clearly erroneous if, although evidence supports the finding, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* A confession is deemed voluntary when, considering the totality of the circumstances, it is the product of an essentially free and unconstrained choice. See *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781(1988).

Here, the evidence supported the trial court's finding of voluntariness. The officer who interviewed defendant testified that defendant did not appear to be suffering any physical distress and did not request any food or water, that the entire interview took less than an hour, and that no repeated or prolonged questioning occurred. Defendant testified that he decided to give his statement after seeing the statements of the other witnesses, and that he was advised of his *Miranda* rights. Further, at the top of his signed and written statement defendant indicated that he understood his constitutional rights and was willing to make his statement without any inducement by way of threats or promises. In the statement, defendant offered a partially exculpatory explanation for why he shot the victim. See *People v Johnson*, 65 Mich App 290, 293; 237 NW2d 295 (1975). In addition, although defendant was in custody for over a week prior to giving his statement, for most of that time he was either in transit from Mississippi or being held in Mississippi awaiting transport to Michigan. After arriving in Michigan he gave his statement after a short period of interrogation. Therefore, we conclude that the fact that defendant's statement was given before he was arraigned and that he was handcuffed were insufficient to render clearly erroneous the trial court's determination that defendant's statement was made voluntarily.

Defendant also argues that the trial court erred when it refused to instruct the jury on defendant's theory of imperfect self-defense. We disagree. A trial court is required to instruct the jury concerning the law applicable to the case and to fully and fairly present the case to the jury in an understandable manner. MCL 768.29; MSA 28.1052; *People v Mills*, 450 Mich 61, 80; 537 NW2d 909, modified on other grounds, 450 Mich 1212; 539 NW2d 504 (1995). When a jury instruction is requested on any theory or defense that is supported by the evidence, it must be given to the jury. *Mills*, *supra* at 81. Because defendant requested an instruction on imperfect self-defense, the trial court was required to give the instruction if it was supported by the evidence. *Id.*

The killing of another in self-defense is justifiable homicide if the defendant honestly and reasonably believes his life to be in imminent danger or that there is a threat of serious bodily harm. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). However, the defense is not available when the defendant is the aggressor, unless he withdraws from any further encounter with the victim and communicates his withdrawal to the victim. *Id.* at 323. This Court has applied the doctrine of "imperfect self defense" in situations in which a defendant who would otherwise be entitled to claim self-defense is foreclosed from doing so because he was the initial aggressor. See *id.*; *People v Deason*, 148 Mich App 27, 31-32; 384 NW2d 72 (1985). Imperfect self-defense can mitigate an act of second-degree murder to voluntary manslaughter. *Kemp*, *supra* at 323.

Here, although there was evidence to support defendant's claim that he was the initial aggressor, there was no evidence to support defendant's theory that he would have been entitled to claim the killing was justified as self-defense had it not been for his role as the initial aggressor. The only evidence that the victim took any threatening action toward defendant came from defendant's statement in which he claimed that the victim displayed a gun. However, defendant also stated that during the melee, "the gun fell on the floor, and I picked it up and shot one guy." There was no evidence to suggest that the victim had a gun or any other weapon when he was shot by defendant. If defendant had the gun (as his statement indicates) and the victim was unarmed, defendant could not have honestly and reasonably

believed that the victim posed a threat of imminent danger. Therefore, the shooting could not be justified as an act of self-defense. Because the evidence did not support defendant's theory that he would have been entitled to invoke a theory of self-defense, regardless of which party was the initial aggressor, the trial court did not err when it denied defendant's request for an instruction on imperfect self-defense.

Affirmed.

/s/ Maura D. Corrigan

/s/ Richard A. Griffin

/s/ Joel P. Hoekstra