

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARREN WADE,

Defendant-Appellant.

UNPUBLISHED

December 23, 1997

No. 195993

Recorder's Court

LC No. 94-010027

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

Defendant appeals as of right from his bench trial conviction of second degree murder. MCL 750.317; MSA 28.549. He first contends that the trial court erred in finding that his statement to police, provided after arrest, was admissible. In reviewing such a question, this Court must accept the trial court's findings of fact unless they are clearly erroneous. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). Here, the trial court found that defendant's testimony was not credible and that, before defendant provided a statement, he was given proper *Miranda* warnings and he was not mistreated in any way. The trial court also found that the sixteen-hour delay between defendant's arrest and his statement was not an attempt to extort a confession nor did it represent an unreasonable delay in arraigning defendant before a magistrate. These findings were based on conflicting evidence and the trial court was required to assess the credibility of opposing witnesses. The trial court was in the best position to make such an assessment. *People v Williams*, 171 Mich App 234, 237; 429 NW2d 649 (1988). Under these circumstances, the trial court's findings are not clearly erroneous. Based on the trial court's findings of fact, the totality of the circumstances surrounding the making of the confession indicate that it was freely and voluntarily made. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

Defendant's remaining argument is that the trial court erred in asserting that it would give no heed to the sentencing guidelines in determining his punishment. However, defendant's sentence is within the guidelines' range and is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-

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

355; 408 NW2d 789 (1987). Defendant has failed to present sufficient evidence to overcome this presumption. *People v Price*, 214 Mich App 538, 548; 543 NW2d 49 (1995).

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber