STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES FLAGG, JR.,

Defendant-Appellant.

UNPUBLISHED
December 30, 1997

No. 193329
Recorder's Court
LC No. 94-008060

Before: Hoekstra, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of first-degree murder, MCL 750.316; MSA 28.548, seven counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to life imprisonment for the murder conviction and twenty-five to sixty years' imprisonment on the assault convictions, to be served consecutive to a two-year sentence for felony-firearm. Defendant appeals as of right. We affirm.

Defendant argues that his statement to police should have been suppressed as involuntary due to prearraignment delay. We disagree.

In reviewing a trial court's ruling on the voluntariness issue, this Court examines the entire record to make an independent determination of the voluntariness of a defendant's statement to the police. *People v Haywood*, 209 Mich App 217, 225; 530 NW2d 497 (1995). Unless the trial court's findings are clearly erroneous, this Court will not reverse unless it has a definite and firm conviction that the lower court made a mistake. *People v Spinks*, 184 Mich App 559, 563; 458 NW2d 899 (1990). A determination regarding the voluntariness, and therefore admissibility, of a statement must be made after a review of the totality of the circumstances surrounding the making of the statement. *Haywood*, *supra* at 226.

There are several factors that a court should consider when evaluating a statement for voluntariness. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). One of these factors is unnecessary delay of a defendant's arraignment. *Id.* at 333. The ultimate test of admissibility is

whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made, and therefore it is not only the length of the delay in arraignment that must be considered, but also what occurred during that delay and how it affected the defendant. *Id.* at 333-334. Where a statement is otherwise voluntary, it should not be suppressed solely because there was a delay in the defendant's arraignment. *Id.* at 335.

Defendant was arrested at approximately 3:00 a.m. on June 29, 1994, and he began to give his statement at 9:20 a.m. on June 30, 1994. Defendant fails to argue that the other circumstances were such to render his statement involuntary. He relies solely on the assertion that his statement was coerced by prearraignment delay. Although the interviewing officer testified that he wanted to obtain a statement, defendant points to no facts suggesting any sort of coercive conduct by this or other officers. Defendant has failed to otherwise establish that his statement was coerced. It was not coerced merely because of the lapse of time between defendant's arrest and arraignment.

Defendant also argues that his trial counsel was ineffective for failing to raise the prearraignment delay issue in the original motion for suppression of his statement. We disagree.

By failing to move in the trial court for a new trial or an evidentiary hearing regarding the claim of ineffective assistance of counsel, defendant has not preserved this issue for appeal unless the record is sufficient to support his claim. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996). Our review is therefore limited to the record. *Id*. To establish that counsel was ineffective, defendant must demonstrate, through the record, that his counsel's performance fell below an objective standard of reasonableness and the representation prejudiced him to the extent that he was denied a fair trial. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995), citing *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994).

Defendant has failed to establish that his statement was involuntary due to prearraignment delay. Therefore, he has failed to demonstrate that he was prejudiced by his counsel's representation. Defendant was not denied the effective assistance of counsel.

Defendant also argues that he was denied the effective assistance of counsel through his trial counsel's failure to move to suppress a prosecution witness' testimony. He asserts that this testimony was the product of police coercion and therefore should have been suppressed. We disagree.

Again, our review is limited to the record because defendant failed to move for a new trial or an evidentiary hearing. *Maleski, supra*. Prosecutorial intimidation of witnesses, if successful, constitutes a violation of the defendant's constitutional right to due process of law. *People v Canter*, 197 Mich App 550, 569; 496 NW2d 336 (1992); *People v Stacy*, 193 Mich App 19, 25; 484 NW2d 675 (1992). Threats made by police officers may be attributed to the prosecution. *Canter, supra* at 570; *Stacy, supra* at 25.

There is no indication that the witness' statement was coerced. The witness resisted arguably intimidating conduct by one officer, but gave a statement to a second officer, which the witness indicated was true. The witness testified that he had a "cool conversation" with the second officer and otherwise

gave no testimony supporting a theory that his statement to police, and thus his testimony, were coerced. Because we find no coercion surrounding this witness' statement and testimony, defendant has failed to establish that his counsel was ineffective for failing to move to suppress the witness' statement and testimony.

Next, defendant argues that the trial court improperly coerced the jury's verdict. We disagree.

By failing to object to the court's comments to the jury, defendant has not preserved this issue for appellate review. *People v Perry*, 218 Mich App 520, 530; 554 NW2d 362 (1996). This Court will review the issue only to determine whether relief is necessary to avoid manifest injustice. *Id.* Claims of coerced verdicts are reviewed case by case, and all the facts and circumstances, as well as the particular language used by the trial court, must be considered to determine whether the defendant was denied a fair trial. *People v Turner*, 213 Mich App 558, 583; 540 NW2d 728 (1995).

The trial court's comments regarding the cost of trial and its request that the jurors arrive on time so that the case could be tried in as little time as possible did not coerce the verdict. These comments were made during voir dire and after the first day of trial testimony. There was no suggestion that the jury was pressed to deliberate for a short amount of time and arrive at a hasty verdict. We find no manifest injustice.

Defendant next argues that the trial court abused its discretion and violated his due process rights by refusing to allow defense counsel to recross-examine a witness concerning possible police compulsion of the witness' testimony. We disagree.

The trial court's limitation of cross-examination is reviewed for an abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995). Witnesses may be cross-examined on any relevant matter. MRE 611(B). The trial court is permitted to limit cross-examination with respect to matters not testified to on direct examination. MRE 611(B). Defendant's right to cross-examination is not unlimited and the trial court has wide latitude to limit cross-examination. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993).

Here, defendant was allowed full cross-examination. Defense counsel's recross-examination exceeded the scope of redirect-examination, and the court did not allow it. There was no evidence to support the theory that the witness' statement to police was coerced, and defendant offers none. The trial court did not abuse its discretion in limiting the scope of defense counsel's recross-examination of the witness.

Finally, defendant argues that the trial court improperly denied his motion for mistrial after the prosecutor elicited testimony from its witness that the witness felt threatened by defendant's family. We find no error.

A trial court's decision on a motion for mistrial is reviewed for an abuse of discretion. *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995). The trial court should grant a motion for mistrial only where there is an irregularity that is prejudicial to the defendant's rights and impairs the

ability of the defendant to get a fair trial. *Id.* "[T]he interest or bias of a witness or his relationship toward the parties to an action is a proper factor to consider on the issue of credibility." *People v Johnson*, 174 Mich App 108, 112; 435 NW2d 465 (1989).

The comment by the witness that he felt threatened by defendant's family was relevant as to the witness' motivation for testifying in a particular way. Even if this testimony was improper, it did not so impair defendant's rights as to prevent him from receiving a fair trial. There was no suggestion to the jury that the witness was threatened, and the subject was never again discussed. The trial court did not abuse its discretion in denying defendant's motion for mistrial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Myron H. Wahls
/s/ Roman S. Gribbs