

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN JOSEPH WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

May 26, 1998

No. 195996

Recorder's Court

LC No. 93-014472

Before: Whitbeck, P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

A jury convicted defendant of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), arising out of the shooting death of his ex-girlfriend, sixteen-year-old Rochelle Ebrahimi. The trial court sentenced defendant to time served for his felony-firearm conviction, followed by a life sentence of imprisonment without parole for his first-degree murder conviction. Defendant appeals his convictions as of right. We affirm.

Defendant first claims that the trial court erred by admitting his inculpatory statements to police when those statements were obtained involuntarily through the use of physical abuse and threats. Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Garwood*, 205 Mich App 553, 555-556; 517 NW2d 843 (1994). Whether the defendant's statement was voluntary is a question of law which the court must determine under the totality of the circumstances. *People v Haywood*, 209 Mich App 217, 226; 530 NW2d 497 (1995). The voluntariness requirement is determined by examining police conduct. *People v Howard*, 226 Mich App 528, 538; ___ NW2d ___ (1997). It is the prosecutor's burden to show that the defendant knowingly, intelligently, and voluntarily waived his Fifth Amendment rights by a preponderance of the evidence. *People v Cheatham*, 453 Mich 1, 29-30; 551 NW2d 355 (Boyle, J.) (1996).

At a *Walker*¹ hearing held on defendant's motion to suppress, the parties stipulated that defendant was taken into custody on December 11, 1993, at 10:45 p.m. Officer Monica Childs testified that she interviewed defendant on December 12, 1993, at 10:45 a.m. Childs testified that she advised defendant of his constitutional rights using the standard police department *Miranda* form. Afterward, defendant agreed to give Childs a statement. According to Childs, she and defendant were alone when she took the statement. Childs recalled that someone walked into the room briefly during the interview, but did not have any contact with defendant. Childs testified that she did not observe anyone physically abusing defendant. Sergeant William Peterson testified that he advised defendant of his constitutional rights before he took a second statement from defendant on December 13, 1993. According to Peterson, defendant expressed his desire to clarify portions of his earlier statement because he wanted to clear his friend, A.J. Funari. Peterson stated that he and defendant were alone while defendant gave his statement. Peterson testified that he did not use any threats or physical force to obtain the statement from defendant.

Defendant testified at the hearing that he told Officer Childs that he did not do anything and wanted to go home. Defendant claimed that Childs left the room and that two male officers came into the room, where he was handcuffed to the table, and began to hit him in the face and chest. Defendant stated that this pattern of physical abuse occurred as many as three times over an eight-hour period. According to defendant, there were marks left on his body from the blows; however, defendant testified that he never had the opportunity to show anyone the bruises. Defendant claimed that he gave the statement to Childs because if he did not, they would continue to beat him. Defendant claimed that while he was with Sergeant Peterson the following day, a female "Lieutenant" and a male "Commander" came into the room and told him that if he did not cooperate, "there's gonna be some trouble." Defendant took that to mean that they would come back and beat him. Although defendant admitted that his initials and signature appeared on the *Miranda* forms, defendant maintained that his rights were never read to him. Defendant claimed that most of the facts contained in the police statements were not accurate representations of what he told police. Defendant denied that he shot the victim.

The trial court found that the officers' testimony was credible and that the conduct of the police was above reproach; therefore, the trial court concluded that the statements were voluntarily given. When reviewing a trial court's determination of voluntariness, this Court must examine the entire record and make an independent determination. *Howard, supra* at 543. However, we give deference to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and we will not reverse the trial court's findings unless they are clearly erroneous. *Cheatham, supra* at 29-30, 44. The trial court's determination that defendant gave his statements voluntarily was not clearly erroneous. Defendant failed to produce any evidence to support his claims of physical abuse and threats. Defendant did not present any witnesses to corroborate the threats or beatings by police, or the bruises that were left on his body. In addition, defendant gave only vague descriptions of the officers who allegedly threatened and beat him and failed to call any of those officers at the *Walker* hearing. This case presented a credibility contest concerning the issue of voluntariness and there is nothing on the record to call into question the trial court's assessment of the police officers' credibility.

Next, defendant claims that there was insufficient evidence of premeditation and deliberation to support the jury's verdict of first-degree murder. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

In order to convict defendant of first-degree murder, the prosecution must prove that defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). For purposes of first-degree murder, premeditation, and deliberation requires sufficient time to take a second look. *Id.* The length of time required to measure and evaluate a choice before it is made is incapable of precise determination; there need only be some interval in which a "second look" can be contemplated. *People v Coddington*, 188 Mich App 584, 599-600; 470 NW2d 478 (1991). The elements of premeditation and deliberation may be inferred from all of the circumstances surrounding the killing. *Anderson, supra* at 537. The prosecutor may establish premeditation through evidence of the following factors: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide. *Id.*

In his second statement to police, defendant claimed that he borrowed the gun from A.J. Funari because he intended to shoot the victim's new boyfriend, Eric Tyner. Defendant claimed that he found the victim walking on Tireman, but took her over by the train tracks because he did not want to be seen with the gun. Defendant and the victim began to argue, and when he threatened to kill Tyner, the victim slapped him. Defendant took the gun out to show the victim that he had it. When the victim became "hysterical," defendant pointed the gun at her and told her to stop "walking up on [him]." Defendant stated that she did not stop, so he shot her. Defendant indicated in his statement that he held the gun up "for a while" before he fired. Based upon defendant's statement, the jurors could have reasonably concluded that there was an interval while defendant was pointing the gun at the victim in which a "second look" could have occurred. *Coddington, supra* at 599-600.

The jurors could also have inferred premeditation and deliberation from defendant's conduct following the killing. Defendant told police that he took measures to conceal the gun and returned to the victim's body in an attempt to create the appearance of a robbery. Although the evidence of premeditation was not overwhelming in this case, minimal circumstantial evidence is sufficient to prove an actor's state of mind. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). Therefore, there was sufficient evidence of premeditation and deliberation to support defendant's conviction of first-degree murder.

Affirmed.

/s/ William C. Whitbeck
/s/ Barbara B. MacKenzie
/s/ William B. Murphy

¹ *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).