

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMON LAMAR WARD,

Defendant-Appellant.

UNPUBLISHED

June 19, 1998

No. 184517

Recorder's Court

LC No. 94-004942

Before: Markman, P.J., and McDonald and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), 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). The trial court sentenced defendant to life imprisonment for the first-degree murder conviction, forty to sixty years' imprisonment for the second-degree murder conviction, and two years' imprisonment for the felony-firearm conviction. The sentences were ordered to run consecutively. Defendant now appeals as of right. We remand to the trial court for further proceedings consistent with this opinion.

Defendant first argues his statement to police should have been suppressed as the product of a warrantless arrest effectuated without probable cause. A confession that results from an illegal arrest is inadmissible. *People v Richardson*, 204 Mich App 71, 78; 514 NW2d 503 (1994). A person may be arrested without a warrant if the arresting officer possesses information demonstrating probable cause to believe that an offense has occurred and that the person being arrested committed it. MCL 764.15; MSA 28.874. Probable cause to arrest exists if the facts and circumstances within an officer's knowledge at the time of the arrest and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe the suspected person has committed a felony. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996); *Richardson*, *supra* at 79.

In this case, Officer Monica Childs ordered the arrest of defendant, and defendant was arrested on April 20, 1994. We have reviewed the entire record of this matter, including the transcript of the

hearing held on defendant's motion to suppress, the preliminary examination transcript, and the transcript of the trial. Aside from Officer Childs' testimony that defendant had been named as the one who committed the murders during a statement by his cousin, we are unable to ascertain the specific facts and circumstances that were within Officer Childs' knowledge at the time of defendant's arrest. On this sparse record, we are unable to determine whether defendant's arrest was illegal. Accordingly, we remand this matter for the trial court to conduct a hearing on this issue within twenty-eight days. We also direct the trial court to ascertain specific facts and circumstances relevant to a determination by this Court whether, even if defendant's arrest was illegal, his statement was the fruit of the illegal arrest or whether the causal chain between the illegal arrest and the statement was broken. See *People v Spinks*, 206 Mich App 488, 496; 522 NW2d 875 (1994); *Brown v Illinois*, 422 US 590, 602-603; 95 S Ct 2254; 45 L Ed 2d 416 (1975).

Defendant also argues his arrest was illegal because the police arrested him without a warrant on the front steps of his home, in violation of his Fourth Amendment rights. Defendant contends his arrest on the front steps of his home is akin to a warrantless entry into his home which, absent consent or exigent circumstances, is unlawful. We disagree. The police did not enter defendant's home, but instead they arrested defendant in a public place, the front steps, after he voluntarily exited the home. See *People v Adams*, 150 Mich App 181, 184; 388 NW2d 254 (1986). Accordingly, the police did not need a warrant to arrest defendant in this location.

Next, defendant argues his statements should have been suppressed because they were not voluntarily made in light of the five-day delay between his arrest and arraignment, the alleged coercive tactics used by the police, and the alleged denial of his request for counsel. We disagree. Initially, we note the trial court did not determine whether defendant's statements were voluntary because defendant denied making the statement. Defendant does not argue this was error, and we do not decide whether the trial court should have assumed defendant made the statement and determined whether it was voluntary. See *People v Neal*, 182 Mich App 368, 372; 451 NW2d 639 (1990). After our independent review of the record, we find defendant's statements were voluntarily made under the totality of the circumstances. *People v Haywood*, 209 Mich App 217, 226; 530 NW2d 497 (1995). The record clearly reveals the trial court found defendant's testimony at the *Walker*¹ hearing was not credible. We defer to the trial court's credibility assessment. *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). Accordingly, we reject defendant's claims that Officer Childs coerced him to make the statements by threats and promises of leniency and that he made a request for counsel. Although the unexplained five-day delay between defendant's arrest and arraignment gives us pause, we find that, despite the delay, defendant's statements were freely and voluntarily made.² *People v Cipriano*, 431 Mich 315, 334-335; 429 NW2d 781 (1988).

Defendant further argues he was denied a fair trial because the prosecutor made several improper remarks during closing argument. We disagree.

Although the prosecutor did refer to facts not in evidence during the rebuttal portion of closing argument, the remarks did not deny defendant a fair trial. Defense counsel drew the court's attention to the prosecutor's error, and the trial court agreed with counsel's statement that the prosecutor was referring to facts not in evidence. Moreover, the trial court properly instructed the jury that the

attorneys' arguments were not evidence. Accordingly, any possible prejudice from the prosecutor's comments was eliminated. *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995).

Next, defendant challenges comments that he claims improperly appealed to the jury to sympathize with the victims. Defendant failed to object to these comments. We find reversal is not required because any prejudice could have been eliminated by a timely instruction to the jury. *People v Ullah*, 216 Mich App 669, 679; 550 NW2d 568 (1996). The remaining comments defendant cites also do not require reversal because they were made in response to defense counsel's arguments. *People v Simon*, 174 Mich App 649, 655; 436 NW2d 695 (1989).

Next, defendant argues the trial court improperly instructed the jury on several issues. We disagree. Jury instructions are reviewed as a whole to determine whether the trial court committed reversible error. *Ullah, supra* at 677. Even if somewhat imperfect, reversal is not required if the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Id.*

First, defendant challenges the trial court's inclusion of the phrases "moral certainty" and "hesitate before making an important decision" in its instruction on reasonable doubt. Defendant did not object to the instruction at trial. Accordingly, relief is precluded absent manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). Manifest injustice is not present here. The trial court's instruction adequately conveyed to the jury the prosecution's burden and what constituted a reasonable doubt. *People v Hubbard*, 217 Mich App 459, 487; 552 NW2d 493 (1996).

Next, defendant argues the trial court reversibly erred by omitting CJI 2d 5.11, which states the jury should judge the testimony of police witnesses by the same standards they use to evaluate the testimony of any other witness. Defendant has abandoned this issue on appeal by failing to cite authority for his position. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995). In any event, the instructions, when read as a whole, adequately informed the jury of its responsibilities regarding the manner in which credibility of the witnesses should be determined.

Defendant also challenges the trial court's instruction on the underlying felony of larceny. Defendant argues the trial court's instruction did not adequately address the elements of the offense, improperly allowed the jury to consider attempted larceny as the underlying felony, and that the trial court's supplemental instruction vouched for the allegation that a larceny was committed. Although defendant objected to the trial court's initial instruction, he did not object to the supplemental instruction on this issue. Accordingly, relief is precluded absent manifest injustice. *Van Dorsten, supra* at 544-545. Again, we find a lack of manifest injustice.

Defendant further challenges the trial court's instruction on felony-firearm. Again, relief on this basis is precluded absent manifest injustice because defendant failed to object to this instruction at trial. *Van Dorsten, supra* at 544-545. The trial court's instruction accurately set forth the elements of felony-firearm; therefore, manifest injustice is not present.

Finally, defendant argues the trial court erred in imposing consecutive sentences for his first and second-degree murder convictions. The prosecution correctly concedes the trial court was without statutory authority to impose consecutive sentences. Accordingly, the judgment of sentence should be corrected to indicate the sentences are to run concurrent.

Remanded for proceedings consistent with this opinion. We retain jurisdiction.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ Mark J. Cavanagh

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

² Although Officer Childs testified the police attempted to have defendant arraigned earlier, she did know when and could not say exactly what had happened to prevent earlier arraignment.