

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER LEE PELTIER,

Defendant-Appellant.

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UNPUBLISHED

August 25, 1998

No. 199552

Kent Circuit Court

LC No. 96-001857

Before: White, P.J., and Hood and Gage, JJ.

PER CURIAM.

Defendant was charged with felony murder, MCL 750.316(b); MSA 28.548(b) and conspiracy to commit felony murder, MCL 750.157a; MSA 28.354(1), armed robbery, MCL 750.529; MSA 28.797, conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The charge of conspiracy to commit felony murder was dismissed by stipulation and a jury convicted defendant as charged of the remaining counts. He was sentenced to life imprisonment, consecutive to the mandatory two year sentence for felony firearm, and appeals as of right. We affirm.

The case arises out of a shooting death during an armed robbery, in which defendant entered the Westside Beer Cooler in Grand Rapids with codefendant Robert Maze. Maze shot and killed the store's clerk, and defendant then grabbed the cash register. The two juveniles left the store and got into a black Chevrolet Corsica which Maze had stolen and in which codefendant Saulo Montalvo was waiting. The three men went to another friend's apartment where they divided the cash from the register. They were arrested the next day, February 2, 1996, at a shopping mall. Defendant and Montalvo were tried together, although they had separate juries.

I.

Defendant argues first that his statements to police made after his arrest should have been suppressed. Defendant contends that his statements were involuntary because defendant was unable to understand the *Miranda*<sup>1</sup> warnings. We disagree.

The voluntariness of a juvenile's confession is tested by the totality of the circumstances, but with consideration of additional safeguards. *People v Jackson*, 171 Mich App 191, 197; 429 NW2d 849 (1988). The trial court's determination of voluntariness will not be disturbed unless the findings are clearly erroneous. *People v Givans*, 227 Mich App 113, 119; \_\_\_ NW2d \_\_\_ (1997). In *Givans, Id* at 121 this Court noted that the factors that must be considered in applying the totality of the circumstances test to determine the admissibility of a juvenile's confession include the following:

(1) whether the requirements of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), have been met and the defendant clearly understands and waives those rights, (2) the degree of police compliance with MCL 764.27; MSA 28.886 and the juvenile court rules, (3) the presence of an adult parent, custodian, or guardian, (4) the juvenile defendant's personal background, (5) the accused's age, education and intelligence level, (6) the extent of the defendant's prior experience with the police, (7) the length of detention before the statement was made, (8) the repeated and prolonged nature of the questioning, and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention.

In this case, the trial court did not err in determining that *Miranda* requirements were met and defendant knowingly waived those rights. Grand Rapids police officer Philip Betz read the *Miranda* warnings to defendant and defendant signed a written waiver of those rights. Defendant does not claim a violation of the juvenile court rules. Defendant concedes that he was not "injured, intoxicated, in ill health, physically abused, threatened or deprived of food, water, sleep or medical attention" during the course of the interrogation. Although neither of defendant's parents was present at the interview, defendant did not request their presence. *Givans, supra* Although defendant testified that he had never before used the services of an attorney, defendant had seventeen prior contacts with the juvenile court system. Therefore, defendant had significant prior experience with the police. Defendant was detained for only two hours at the juvenile center before talking with Betz and the questioning lasted a total of fifteen to twenty minutes.

At the time of the interview, defendant was fifteen years old and had completed the seventh grade. The testimony at the hearing revealed that defendant had difficulties learning and was not good at reading or spelling. Defendant stated that when Betz read the *Miranda* warnings to him, he understood "a little." When asked whether he understood that he did not have to talk to Betz, defendant responded "Yeah, sort of." Betz testified that defendant had informed him that he did not read or write very well. Betz then asked defendant specifically whether he understood the rights Betz had read to him and if he had any problem understanding those rights. Defendant indicated that he understood. Consideration of the factors listed in *Givans, supra*, reveals that defendant understood the *Miranda* rights and knowingly waived those rights before making a statement to Betz. Therefore, the trial court's finding that defendant's statements were admissible at trial was not clearly erroneous.

## II.

Next, defendant contends that the trial court erred in admitting out-of-court statements made by codefendant Maze through the testimony of a youth worker at the Kent County juvenile detention center. The youth worker testified that Maze said "I shot his [the victim's] ass in the chest" after telling the youth worker that he had been arrested for felony murder. The trial court found the testimony admissible pursuant to MRE 804(b)(3), statement against interest.

MRE 804(b)(3) states as follows:

(b) The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

\* \* \*

(3) A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Maze was being prosecuted for the same offenses as defendant, and the statement at issue related to those charges. Therefore, the trial court did not err in ruling that the prosecutor was unable to call Maze as a witness and that Maze was unavailable as required by MRE 804(b)(3). *People v Poole*, 444 Mich 151, 163; 506 NW2d 505 (1993).

Maze's statement that he "shot [the victim's] ass in the chest" also satisfies the criteria of MRE 804(b)(3) as being against Maze's penal interest. Maze had been arrested for the armed robbery of the Westside Beer Cooler and the murder of the victim. Maze's statements can be seen as an admission to his involvement in those offenses and do not directly serve to inculcate any other party or to exculpate Maze. Although MRE 804(b)(3) requires additional corroborating evidence where an incriminating statement is offered to exculpate the accused, the rule does not require that a statement specifically inculcate or exculpate either the defendant or the declarant or any other party. The statement must either have been contrary to the declarant's interest, tended to subject the declarant to liability, or render invalid a claim by the declarant against another. MRE 804(b)(3). Maze had been arrested for the victim's murder and for armed robbery, yet seemed to be bragging to the youth worker regarding his shooting of the victim. A reasonable person would not have made such a statement, under these circumstances, unless believing it to be true. Therefore, Maze's statements were against his penal interest as contemplated by MRE 804(b)(3) at the time they were made.

Our review of the circumstances surrounding Maze's statements also satisfies us that no confrontation clause complications are indicated. *Poole, supra* at 163, 165. Maze's statements to the

youth worker were sufficiently reliable to be admitted as substantive evidence against defendant. No evidence was presented to indicate that the statement was not voluntarily made. Maze was not subject to interrogation but, rather, the statements were made during friendly conversation with the youth worker. The youth worker testified that he asked Maze what he was "in for" and that without any prompting or further questions by the youth worker, Maze admitted that he shot the victim. Maze's statement did not serve to minimize his role in the offenses or shift blame to any other party. Further, the record reveals no possible motive for Maze to lie about shooting the victim. Maze was in custody when the statement was made and his admission seems to have been made in response to the youth worker's statement of disbelief when Maze said he was in custody for felony murder. Consideration of the circumstances under which Maze's statement to the youth worker was made reveals that Maze's statement was sufficiently reliable to be admitted as substantive evidence against defendant.

Defendant argues that Maze's statement should not have been admitted because Maze had not been given the *Miranda* warnings before the youth worker began questioning Maze. The right against self-incrimination is personal and cannot be asserted on behalf of another. *People v Safiedine*, 152 Mich App 208, 212; 394 NW2d 22 (1986). Defendant cannot raise Maze's Fifth Amendment rights on Maze's behalf. *Id.* Therefore, defendant's argument fails.

Finally, defendant argues that if Maze's statements did not inculcate defendant they were not relevant as to him. MRE 402 requires that evidence be relevant to admissible. Relevant evidence is any evidence that has a tendency to make the existence of a fact at issue more probable or less probable than it would be without the evidence. MRE 401. Defendant was charged with felony murder, armed robbery and conspiracy to commit armed robbery. Felony murder requires proof of a killing during the commission of a felony. *People v Turner*, 213 Mich App 558, 566; 540 NW2d 728 (1995). Proof of the victim's murder during the robbery of the Westside Beer Cooler was required to establish defendant's guilt at least on the charge of felony murder. Therefore, Maze's statement was relevant to defendant's case.

We also note that even were we to hold that the trial court erred in admitting the evidence, the error would be harmless given the overwhelming evidence of defendant's guilt. *People v Belanger*, 454 Mich App 571, 576; 563 NW2d 665 (1997). During his opening statement, defense counsel conceded that defendant and the codefendant robbed the store, and that the clerk was killed. Defendant's argument was that he lacked the intent to be convicted of the murder. However, defendant admitted that he knew Maze was in possession the shotgun when they entered the store, and there was also testimony that defendant and Maze had discussed who would use the gun during the robbery. Also, the videotape which caught the robbery shows defendant entering the store first, and then proceeding to remove the cash register after the shooting.

### III.

Finally, defendant argues that the trial court abused its discretion in sentencing defendant as an adult. Specifically, defendant submits that the trial court failed to make any factual findings in support of its decision to sentence defendant as an adult as required by MCR 6.931(E)(3) and (4). Defendant further contends that proper evaluation of those factors requires defendant to be sentenced as a juvenile.

MCR 6.931(E)(3) lists several criteria which the court must consider in determining whether to sentence a juvenile as an adult. Those factors are as follows:

- (a) the juvenile's prior record and character, physical and mental maturity, and pattern of living;
- (b) the seriousness and circumstances of the offense;
- (c) whether the offense is part of a repetitive pattern of offenses which would lead to the determination:
  - (i) that the juvenile is not amenable to treatment, or
  - (ii) that, despite the juvenile's potential for treatment, owing to the nature of the delinquent behavior, the juvenile is likely to disrupt the rehabilitation of others in the treatment program owing to the nature of the delinquent behavior;
- (d) whether, despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to render the juvenile dangerous to the public when released at age 21;
- (e) whether the juvenile is more likely to be rehabilitated by the services and facilities available in the adult programs and procedures than in the juvenile programs and procedures; and
- (f) what is in the best interests of the public welfare and the protection of the public security.

The court must make findings of fact and conclusions of law forming the basis of the court's decision. MCL 6.931(E)(4). The findings and conclusions may be incorporated in a written opinion or stated on the record. MCL 6.931(E)(4).

A juvenile hearing was conducted on October 23, 1996 before defendant was sentenced. In holding that defendant should be sentenced as an adult, the trial court found that defendant knowingly and willingly participated in a "planned execution" which was part of a planned armed robbery. The trial court found that defendant knew the victim would be shot, and that defendant "simply decid[ed] that he wasn't going to be the one that pulled the trigger." The trial court also found that defendant's record revealed "persistent serious criminal behavior," noting fifteen previous adjudications, including five adjudications for breaking and entering and home invasion, and seven or eight adjudications for thefts. The trial court stated "[t]he Juvenile Court tried for four-and-a-half years to deal with [defendant] and the only reward was this history of persistent misbehavior . . . and that demonstrates that whatever Juvenile Court has to offer, whatever flaws it might have, is not likely to be successful again." The trial court also noted defendant's admitted participation in a gang and that defendant had been involved, at least on one occasion, in assaultive behavior in that gang which involved use of a firearm. The trial court

then concluded that defendant's record reveals "a very deep-seated problem here leading to great risk to the community."

After making the above findings, the trial court made the following conclusions:

Serious, very serious criminal behavior has occurred, behavior which, in and of itself, establishes significant risk of serious harm to others for a prolonged period of time. The crime here, when added to the persistent pattern of misbehavior that preceded it is what demonstrates the very real risk that what's happened several times in Mr. Peltier's background will happen again.

\* \* \*

Of course, danger can be avoided by treatment, but the history of treatment here demonstrates absolutely no reason to believe it will work any better than it has in the past. In fact, it demonstrates that it won't work.

Accordingly, looking at all those factors, I can't possibly conclude other than that Mr. Peltier can't be said to be amenable to treatment which will correct him by the age of 21 such that release at that particular point would be the least bit safe to anyone involved.

I'm not ignoring Mr. Peltier's physical size and mental maturity. Having watched him at these trials, and as well as watched him today. I'm satisfied that, while only 16, he is of a size and street wisdom sufficient to enable him to handle himself in the adult prison system.

The above findings and conclusions as stated on the record reveal that the trial court considered and discussed every one of the factors listed in MCR 6.931(E)(3).

The record satisfies us that the trial court properly concluded that defendant should be sentenced as an adult. Evidence presented at the hearing supports the conclusion that defendant possessed adequate mental maturity to be placed in the adult prison system. Further, defendant had previously participated in the programs available in the juvenile system, and such programs had not proved successful. The findings of fact were supported by the record and were not clearly erroneous. The trial court did not abuse its discretion in sentencing defendant as an adult.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Hilda R. Gage

<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).