

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRILL LAWRENCE JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

May 20, 2004

No. 246160

Wayne Circuit Court

LC No. 02-008079-01

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to mandatory life imprisonment for the first-degree premeditated murder conviction and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's first issue on appeal is defendant's claim that the introduction of testimony regarding his codefendant's guilty plea denied him a fair trial. Defendant failed to preserve this issue with an appropriate objection below; thus, this Court may grant relief only for plain error affecting defendant's substantial rights. Reversal is warranted only when the error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant contends he was denied a fair trial through elicitation of testimony by the prosecutor informing the jury of his codefendant's guilty plea as an accessory after the fact in disposing of the weapon used in this crime. Defendant argues information pertaining to his codefendant's plea was used as substantive evidence to prove defendant's guilt. The general rule is that the conviction of another person involved in a criminal incident is not admissible at defendant's separate trial. *People v Barber*, 255 Mich App 288, 297; 659 NW2d 674 (2003). Had the codefendant's plea been used as substantive evidence of defendant's guilt, reversal would be required. *People v Eldridge*, 17 Mich App 306, 316-317; 169 NW2d 497 (1969). However, that is not the situation presented under the facts of this case. Defendant admits to the shooting. Reference to codefendant's guilty plea was consistent with defendant's trial testimony. The testimony pertaining to codefendant's plea regarding disposal of the weapon went not towards defendant's guilt, which was already acknowledged, but rather, served to dispute

defendant's contention regarding the accuracy of his recorded statement to police. Viewed from the perspective that defendant is alleging that this issue is one of prosecutorial misconduct, the same conclusion is inevitable. "Appellate review of allegedly improper conduct by the prosecutor is precluded where the defendant fails to timely and specifically object; this Court will only review the defendant's claim for plain error." *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). Defendant confessed to the shooting. As such defendant has failed to demonstrate that admission of this testimony resulted in any prejudice to defendant given his confession to the crime.

Defendant's second issue on appeal is that the trial court abused its discretion in admitting defendant's written confession, as it was not a voluntary and knowing waiver of his rights. When reviewing a trial court's determination of the voluntariness of a confession, an appellate court engages in de novo review of the entire record, but will not disturb a trial court's factual findings regarding a knowing and intelligent waiver of *Miranda* rights unless that ruling is found to be clearly erroneous. See *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000).

Defendant asserts the trial court erred in determining his confession was voluntary based on the alleged "threat" of an unnamed officer that defendant would be charged with first-degree premeditated murder if he failed to make a statement. "In general, statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Snider*, 239 Mich App 393, 417; 608 NW2d 502 (2000), citing *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). The Michigan Supreme Court has delineated a nonexhaustive list of factors that a trial court should consider when determining whether a statement is voluntary. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). The standard set by the Supreme Court includes, in relevant part:

[T]he determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel. [*Fare v Michael C*, 442 US 707, 724-725; 99 S Ct 2560; 61 L Ed 2d 197 (1979), quoted with approval by *Daoud, supra*, 462 Mich 652.]

When reviewing the totality of the circumstances, defendant denies any abuse, mistreatment, or misunderstanding of his rights. Defendant does not assert he did not comprehend his rights. He only contends that the "threat" of being charged with first-degree premeditated murder intimidated him into making a statement and that the attitude of the police, during his interrogation, caused him to omit relevant facts. To determine what constitutes an effective waiver of *Miranda* rights, the government must prove from the totality of the circumstances that (1) the relinquishment of the defendant's *Miranda* rights was voluntary, and (2) that the defendant had a full understanding of the right being waived and the consequences of waiving that right. *Daoud, supra*, 462 Mich 633. Thus, determining whether a waiver of *Miranda* is voluntary is dependent upon the absence of police coercion. *Daoud, supra*, 462 Mich 635. Promises of leniency, without more, do not invalidate a *Miranda* waiver. *People v Margo*, 141 Mich App 220, 223; 366 NW2d 254 (1985).

Defendant acknowledged that the officer recording the statement that was admitted into evidence did not threaten or coerce him into making a statement. Testimony of the officers involved disputes defendant's claims that he either requested an attorney or that he had been threatened or coerced into making a statement through a promise of leniency in the charges. As such, the issue is one of credibility. In resolving such issues, this Court defers to the trial court, "which had a superior opportunity to evaluate these matters." *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). Thus, giving deference to the trial court's findings, there is no basis for reversing the determination of voluntariness, as it cannot be said that the factual findings of the trial court were clearly erroneous.

Defendant's third issue on appeal is the claim that he was denied a fair trial due to revelation to the jury that defendant was incarcerated pending trial in this matter. Defendant failed to preserve this issue with an appropriate objection below; thus, this Court may grant relief only for plain error affecting defendant's substantial rights. Reversal is warranted only when the error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity or public reputation of judicial proceedings. *Carines, supra*, 460 Mich 763-764.

Defendant contends the prosecutor improperly elicited testimony that revealed defendant's incarceration for the crimes charged and being tried. Defendants' own witnesses revealed that defendant was in jail. Defendant's location in jail was volunteered and, arguably, not anticipated by the prosecutor. Questioning of the witnesses was an attempt by the prosecutor to weaken their credibility and demonstrate their opportunity for collusion with defendant to provide support for defendant's claim of self-defense. No further references were made throughout the proceedings pertaining to defendant's incarceration while awaiting trial in this matter. Contrary to defendant's assertion, an unresponsive answer from a lay witness is not grounds for reversal of a conviction. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). In order to warrant reversal, " 'it is necessary to show some prejudice or pattern of eliciting inadmissible testimony.' " *People v Watson*, 245 Mich App 572, 588; 629 NW2d 411 (2001), quoting *People v White*, 53 Mich App 51, 58; 218 NW2d 403 (1974). The brief mention of defendant's incarceration did not prejudice defendant's ability to receive a fair trial. *People v Griffin*, 235 Mich App 27, 36-37; 597 NW2d 176 (1999). Defendant admitted his guilt. The only true issue at trial was whether defendant's actions were justified pursuant to his theory of self-defense. As such, a brief reference to defendant's incarceration for a crime he admitted to committing did not affect defendant's substantial rights.

Defendant's statement of the issue suggests the trial court improperly informed the jury that defendant was incarcerated. A thorough review of the transcripts in this matter reveals no comment by the court concerning defendant's incarceration for this or any other crime. If defendant is implying the court should have *sua sponte* instructed the jury to disregard the witness' comments regarding defendant's incarceration, despite the failure of defendant's trial counsel to object to either the line of questioning or the witness' responses, he fails to cite any supporting authority. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation to supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). The court's failure to provide a curative instruction to the

jury is not a ground for setting aside the jury's verdict when the defendant did not request the instruction. *Griffin, supra*, 235 Mich App 37.

Defendant's final issue on appeal is that the court erred in admitting a morgue photograph of the victim. The decision to admit photographs is within the trial court's discretion. *People v Mills*, 450 Mich 61, 76; 537 NW2d 909 (1995), modified 450 Mich 1212; 539 NW2d 504 (1995). "The proper inquiry is always whether the probative value of the photographs is substantially outweighed by unfair prejudice." *Id.* The photograph was admitted to attack the credibility of a defense witness that alleged the occupant of the backseat of the vehicle, consistently identified as the victim, had "wild" hair and appeared "rough." The photograph merely served to contradict this testimony as it demonstrated the clean, neat and styled appearance of the victim's hair. As such, sufficient justification exists for the court's ruling of admissibility regarding the photograph. *Gore v Rains & Block*, 189 Mich App 729, 737; 473 NW2d 813 (1991).

Affirmed.

/s/ Henry William Saad  
/s/ David H. Sawyer  
/s/ Karen M. Fort Hood