STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 12, 2004
v	No. 250003 Oakland Circuit Court
MICHAEL LANCE KIRKSEY, Defendant-Appellant.	LC No. 2002-186915-FC

Before: Cavanagh, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment for the murder conviction and to a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from the shooting death of Dominique Wade, also known as Dawud El-Ami, in the city of Pontiac. Testimony indicated that defendant approached a vehicle occupied by Wade and two others, Tamika Roberson and her five-year-old nephew. Defendant made an inquiry regarding "weed" and regarding whether Wade and Roberson knew "Dawud." Defendant then pulled out a gun and shot Wade, shooting him twice in the back, and fled the area while firing more shots in the air.

Three days later, the sixteen-year-old defendant was arrested in Dearborn Heights on an unrelated matter. Defendant gave a false name and a false birth date, which indicated that he was seventeen years old, but later gave his true name and age. While in the booking area of the Dearborn Heights Police Department, defendant showed a newspaper article about the shooting to Officer Thomas Marinkovich. He also stated that he "did it." Officer Marinkovich then questioned defendant further about the shooting. Defendant provided additional verbal and written statements to Detective Paul McNeil-McDougal after being transported to the Pontiac Police Department. Defendant was later identified at trial by witnesses, including Roberson, as the person who shot the victim. At trial, defendant did not dispute that he shot the victim, but claimed that it was not his intent to kill and that he therefore should be found guilty only of second-degree murder, rather than first-degree premeditated murder.

On appeal, defendant first challenges the admissibility of his statements to the police. Defendant has not properly presented this issue because he does not support his argument with citations to the evidentiary bases for his argument. *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990); MCR 7.212(C)(7). In any event, limiting our review to the evidence presented at the hearing on defendant's motion to suppress, we find no basis for disturbing the trial court's decision to allow the evidence of defendant's statements to Officer Marinkovich.

We review the trial court's findings of fact at a suppression hearing for clear error. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). Questions of law are reviewed de novo. *Id.* at 629-630. When evaluating the voluntariness of a defendant's statement, an appellate court must make an independent determination of the issue of voluntariness, but will not disturb the trial court's factual findings absent clear error. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000); *People v Shipley*, 256 Mich App 367, 372-373; 662 NW2d 856 (2003).

The trial court did not squarely resolve the conflict in the testimony regarding whether defendant was advised of *Miranda*[1] rights before making the initial statement that he "did it."[2] Rather, the court found that this statement was volunteered and that, therefore, *Miranda* warnings were not necessary. We uphold the trial court's decision because, regardless of whether defendant was advised of his *Miranda* rights before the statement, as defendant claimed, the evidence demonstrates that the statement was not the result of custodial interrogation. Rather, defendant initiated the conversation by spontaneously showing a newspaper article to Officer Marinkovich. We conclude that Officer Marinkovich's question, "You did what?" was a natural response to defendant's vague remark, "I did it;" it was not a statement designed to elicit an incriminating response and, therefore, did not constitute interrogation. See *United States v Martin*, 238 F Supp 2d 714, 719 (D Md, 2003), *People v Rowen*, 111 Mich App 76, 81; 314 NW2d 526 (1981), and *People v Nard*, 78 Mich App 365, 378; 260 NW2d 98 (1977).

Also, we find no basis for disturbing the trial court's findings regarding the voluntariness of defendant's statements to Officer Marinkovich, or to Detective McDougal,[3] made after this initial statement. Defendant has not established that MCL 764.27 applies to a sixteen-year-old juvenile, like defendant, who is charged as an adult with murder. *People v Spearman*, 195 Mich App 434, 444-445; 491 NW2d 606 (1992), rev'd in part on other grounds 443 Mich 870 (1993), and overruled in part on other grounds by *People v Veling*, 443 Mich 23, 42-43; 504 NW2d 456 (1993); *People v Brooks*, 184 Mich App 793, 797-798; 459 NW2d 313 (1990). Further, even if the Dearborn Heights or Pontiac police officers were required to comply with MCL 767.27, the totality of the circumstances demonstrated that defendant's statements were voluntary. *Daoud, supra* at 635, *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997).

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

[2] Defendant stated that he was advised of his *Miranda* rights before the initial statement. Officer Marinkovich testified that he advised defendant of his *Miranda* rights after the initial statement and then ceased interrogation when he discovered that defendant was a juvenile.

[3] Although the prosecutor's brief suggests otherwise, it does not appear to us that defendant even challenges the admissibility of the statements he made to Detective McDougal.

Also, we are not persuaded that defendant has established any basis for disturbing the trial court's denial of his motion for a new trial based on evidence offered by defense counsel after his review of a videotape of the activity in the booking area at the Dearborn Heights Police Department. MCR 6.431(B); *People v Cress*, 468 Mich 678, 691-692; 664 NW2d 174 (2003).

Defendant next argues that the trial court erred by limiting his cross-examination of prosecution witnesses. We have limited our review of this issue to the trial court's limitations on defense counsel's cross-examination of the victim's wife, Leslie Wade, and Pontiac Police Officer Brian Wood; defendant refers to these two witnesses in his argument on appeal.

Defendant has not established that the trial court abused its discretion in sustaining the prosecutor's objections to defense counsel's cross-examination of Leslie Wade. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). First, defendant did not establish an adequate foundation for cross-examining Leslie Wade about an alleged shooting incident at the home of Jay Lee's mother. The trial court sustained the prosecutor's objection because defense counsel's question assumed facts not in evidence. Also, we conclude that the court's ruling did not wholly deprive defendant of a reasonable opportunity to test the truthfulness of Leslie Wade's testimony about the victim on direct examination by the prosecution. See *People v Hackett*, 421 Mich 338, 347; 365 NW2d 120 (1984), and *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). Further, the trial court's ruling did not indicate that defendant was prohibited from recalling Leslie Wade later as a witness; defense counsel indicated that he would likely recall her later as a witness but did not end up doing so.

The trial court similarly did not abuse its discretion in sustaining the prosecutor's objection to defense counsel's cross-examination of Leslie Wade about street etiquette on the basis that defense counsel's question was argumentative. A trial court may place reasonable limits on cross-examination. *Adamski, supra* at 138.

Nor did the trial court abuse its discretion in failing to allow defense counsel to cross-examine Leslie Wade about the victim's alleged tattoos. Indeed, because Wade did not provide any testimony about tattoos on direct examination by the prosecutor, and because defense counsel failed to make an adequate offer of proof concerning the relevance of the tattoo evidence, we find no basis for reversal. See MRE 103(a)(2) and (c), MRE 402, MRE 611(b), *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001), and *Hackett, supra* at 351-352.

Nor has defendant established a basis for reversal with regard to the trial court's disallowance of defense counsel's attempts to elicit Officer Wood's opinions regarding whether the "type of behavior" that he investigated was consistent with drug turf wars or whether, based on his investigation, a random shooting occurred. Defense counsel did not make an offer of proof at trial establishing the admissibility and relevance of the opinion evidence. *Hackett, supra* at 351-352. Also, defendant's failure to cite any authority in support of his position on appeal that the opinion testimony was admissible precludes further appellate consideration of this claim. This Court need not address an issue that is given only cursory treatment in an appeal brief, with little or no citation to supporting authority. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Next, defendant argues that the trial court abused its discretion by excluding evidence that, after the shooting, he told Heather Luttman that he was seeing the victim's ghost.

Defendant asserts that this evidence was nonhearsay evidence and was supportive of his claim that he did not intend to kill the victim. Because defendant did not identify this purpose for allowing the evidence in his offer of proof at trial, this issue is not properly preserved. *Hackett, supra* at 352. Therefore, we review the issue for plain error affecting defendant's substantial rights. MRE 103(d); *People v Jones,* 468 Mich 345, 355; 662 NW2d 376 (2003); *People v Carines,* 460 Mich 750, 763; 597 NW2d 130 (1999). Although state of mind evidence is not hearsay, it must nonetheless have logical relevance. MRE 401; *Layher, supra* at 761; *People v Fisher,* 449 Mich 441, 449-453; 537 NW2d 577 (1995). An intent to kill must exist at the time the homicidal act was committed. *People v Mendoza,* 468 Mich 527, 539; 664 NW2d 685 (2003). Because it is not clear or obvious that defendant's proffered evidence was probative of whether defendant entertained an intent to kill, or some other intent, at the time he shot the victim, defendant has not established a plain error stemming from the exclusion of the evidence. *Carines, supra* at 763 (a plain error is one that is "clear" or "obvious"). It follows that defendant has not shown that he was deprived of his due process right to present a defense. See, generally, *People v Toma,* 462 Mich 281, 294; 613 NW2d 694 (2000).

Affirmed.

/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter