

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUANRICO PELE O'NEAL,

Defendant-Appellant.

UNPUBLISHED

November 23, 2004

No. 248639

Wayne Circuit Court

LC No. 02-010580-01

Before: Cavanagh, P.J., and Kelly and H. Hood*, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for second-degree murder, MCL 750.317, for which he was sentenced to life in prison. We affirm.

Defendant first contends that the trial court erred in determining that his statement to the police was voluntary. "Voluntariness of a confession is a question of law for the trial court's determination." *People v Johnson*, 202 Mich App 281, 287; 508 NW2d 509 (1993). In reviewing the trial court's determination of voluntariness, this Court examines the record and reaches an independent determination on the issue. *Id.* at 287-288. But this Court defers to "the trial court's superior ability to view the evidence and the demeanor of the witnesses and will not disturb the trial court's findings unless they are clearly erroneous." *Id.* at 288. The factors considered in determining voluntariness are: age of the accused; lack of education or intelligence level; extent of his previous experience with police; repeated and prolonged nature of the questioning; length of the detention before the statement was given; lack of advice of constitutional rights; unnecessary delay in bringing him before a magistrate before he gave the confession; whether he was injured, intoxicated, drugged, or in ill health; whether he was deprived of food, sleep, or medical attention; whether he was physically abused; and whether he was threatened with abuse. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

Based on the evidence presented at the *Walker*¹ hearing, it is evident that defendant was of sufficient age and education to understand his rights, had at least four prior contacts with the

¹ *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

legal system, including having signed two prior rights forms, was detained for less than two hours, was not deprived of food, water, or use of the restroom, was not promised leniency, and was not under the influence of drugs. Despite defendant's testimony that he was assaulted by a police officer, defendant's medical records and the style and substance of defendant's testimony support the trial court's finding that the beating did not occur. According to this evidence and giving deference to the trial court's assessment of credibility, we conclude that the trial court did not err in determining that defendant's statement was voluntary.

Defendant also contends that the trial court violated his constitutional right to be present at his trial by removing him from the courtroom. Constitutional issues are reviewed de novo. *People v Beasley*, 239 Mich App 548, 557; 609 NW2d 581 (2000). This Court reviews a trial court's decision to remove a defendant from the courtroom during his trial for an abuse of discretion. See *People v Reginald Harris*, 80 Mich App 228, 230; 263 NW2d 40 (1977). A defendant can lose his right to be present in the courtroom when he continues disruptive behavior after being warned to refrain and the behavior is so disorderly and disrespectful that his trial cannot be carried on with him in the courtroom. *Illinois v Allen*, 397 US 337, 338-343; 90 S Ct 1057; 25 L Ed 2d 353 (1970).

The trial court had ample reason to remove defendant from the courtroom. The trial court's statements on the record indicate that defendant made threats of physical violence. On the first day of trial, defendant exclaimed before his newly selected jury that he was being railroaded by his attorney and that he did not "do this." The trial court warned defendant that if he chose to be disruptive and disrespectful to the court on the following day, he would be removed to a cell from which he would monitor the remainder of the trial. The following day, defendant interrupted his mother's testimony, turned over a table, knocked items off a table, and approached the jury, ignoring the court officer's orders to sit and not to move. Defendant's failure to obey the officer forced the officer to take him to the floor and handcuff him in view of at least some of the jury. Defendant physically assaulted an officer when the handcuffs were later removed. Defendant's threats, his assaultive behavior, and his refusal to obey the trial court's orders demonstrate that defendant posed a threat to the safety of those present in the courtroom. Defendant's conduct was egregious and disruptive to the point where the trial court was unable to carry on with the trial while defendant was in the courtroom.

When defendant was removed from the courtroom, the trial court took the appropriate and necessary steps of providing a cell from which defendant could monitor the proceedings. The trial court instructed the court officers to check every few minutes to make sure that the wiring was working properly. The trial court also gave permission for defendant's attorney, at any time, to indicate his need to consult with defendant. Defendant also was given the option of remaining in the courtroom, in shackles, to ensure the safety of the judge and jury, but defendant chose to remain in the cell. The trial court renewed this offer at the beginning of trial on the third day. Defendant again opted to remain in the wired cell. On this record, we conclude that the trial court took every step necessary to preserve defendant's right to participate in his trial. When a defendant waives his right to be present by behaving in a disruptive and egregious manner, there is no requirement that the trial court obtain a waiver on the record before the defendant is removed from the courtroom. *Allen, supra* at 343.

Defendant also argues that the trial court erred in failing to grant his motion for a mistrial made after defendant interrupted his mother's testimony. A motion for mistrial should be

granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant's ability to get a fair trial." *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995). A trial court does not abuse its discretion in denying a motion for mistrial where the defendant created the disruption that formed the reason for the motion. *People v Siler*, 171 Mich App 246, 256-257; 429 NW2d 865 (1988). "We will not condone or allow a defendant to perpetrate chaos at his own trial and then obtain a mistrial on the basis of prejudice." *Id.* at 256. The trial court did not err in denying defendant's motion for a mistrial.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Harold Hood