STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 15, 2015
v	No. 322022 Oakland Circuit Court
ANTWAN RAYSHON WILLIAMS, Defendant-Appellant.	LC No. 2013-248352-FC

Before: MURRAY, P.J., and METER and OWENS, JJ.

PER CURIAM.

Defendant, Antwan Rayshon Williams, appeals as of right his April 21, 2014 jury trial convictions of first-degree, premeditated murder, MCL 750.316(1)(a), felonious assault, MCL 750.82, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On May 14, 2014, defendant was sentenced to prison terms of natural life for the first-degree murder conviction, 23 months to 4 years for the felonious assault conviction, and two years for each felony-firearm conviction.[1] We affirm.

Defendant's two issues on appeal are: (1) the sufficiency of the evidence for a conviction of first-degree, premeditated murder; and (2) the voluntariness of his waiver of his constitutional rights.

The case arises out of the shooting death of Thomas Carr in the city of Oak Park in the late evening of August 27, 2013. While at home with his friend, Justin Echols, Carr received a phone call from defendant who indicated he needed a ride. Shortly after, Carr and Echols left the home to pick up defendant. Carr and Echols drove toward Oak Park, with Carr regularly receiving directions by phone from defendant to his location. Upon arriving at defendant's location, defendant entered the car with a backpack and sat in the back passenger side. Defendant proceeded to give Carr directions to the final destination, and after driving numerous blocks, instructed him to stop behind a blue van where a school and apartments were located.

[1] The sentences for the murder and felonious assault convictions are to be served concurrently, but the sentences for the felony-firearm convictions are to be served consecutively to their respective underlying felonies.

Once stopped, defendant shot Carr in the back of the head with a gun. Echols escaped after a struggle with defendant. Defendant also fled the scene, leaving the deceased's body and gun.

I. SUFFICIENCY OF THE EVIDENCE

With respect to the first issue on appeal, this Court reviews de novo a defendant's challenge to the sufficiency of the evidence. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). "Due process requires that, to sustain a conviction, the evidence must show guilt beyond a reasonable doubt." *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). "The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000), citing *Jackson v Virginia*, 443 US 307, 319; 99 S Ct 2781; 61 L Ed 2d 560 (1979); *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial." *Nowack*, 462 Mich at 400; *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 440 Mich 508 (1992).

As he did in his motion for a directed verdict, defendant argues on appeal that the prosecution did not present any evidence of planning, deliberation, premeditation, or a preconceived design by defendant to kill the victim.

Sufficient evidence exists to support defendant's conviction of first-degree, premeditated murder. The Michigan Penal Code describes first-degree murder as the "willful, deliberate, and premeditated killing" of another person. MCL 750.316(1)(a). "The elements of premeditated murder are (1) an intentional killing of a human being (2) with premeditation and deliberation." *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009), citing MCL 750.316(1)(a); *People v Unger*, 278 Mich App 210, 223, 229; 749 NW2d 272 (2008); *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998). Premeditation and deliberation require sufficient time to allow the defendant to take a second look. *People v Gonzalez*, 178 Mich App 526, 531; 444 NW2d 228 (1989). "The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing." *People v Saunders*, 189 Mich App 494, 496; 473 NW2d 755 (1991). The prosecution may establish premeditation through evidence of the following factors: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and, (4) the defendant's conduct after the homicide. *People v Johnson*, 93 Mich App 667, 673-674; 287 NW2d 311 (1979), rejected in part on other grounds by *People v Williams*, 422 Mich 381; 373 NW2d 567 (1985); *Gonzalez*, 178 Mich App at 532.

Defendant's sole argument is that the prosecution failed to prove premeditation and deliberation because it did not provide any evidence that defendant had sufficient time to take a second look. More specifically, defendant argues that the interval of time between the initial thought of killing the victim and the ultimate action is unknown and so the prosecution failed in its burden of proof. However, evidence presented at trial, which included defendant's oral and written confession, as well as evidence of his actions, would allow a reasonable jury to infer defendant's premeditation and deliberation. In particular, defendant admitted that his friend,

Quinton Sharp, offered him $1,000 in exchange for killing Carr. This offer stemmed from a dispute that Sharp had with Carr. Although defendant was not personally involved in this dispute, he had met Carr in the past, and had contact with him prior to the day of the shooting.

In addition to defendant's statements, his actions also demonstrate that killing Carr was deliberate and premediated.[2] Evidence presented at trial showed that: (1) defendant text-messaged Carr one day before the shooting indicating that he needed help delivering a package;[3] (2) defendant followed up with Carr to ask for a ride at nighttime from Canton to Oak Park;[4] and, (3) defendant entered Carr's vehicle with a loaded gun[5], concealed in a backpack. Thereafter, according to Echols, defendant then asked Carr to pull over in an obscure, secluded location and then shot the victim.[6] Echols further testified that there was no physical or verbal argument prior to the shooting, and that defendant shot the victim in the back of the head at a close range. Furthermore, defendant then forced Echols to help him hide the deceased's body, and completed this task after Echols had escaped.[7] Defendant also hid the murder weapon in nearby shrubs. Lastly, evidence was presented that defendant took the cell phones of the victim as well as Echols before fleeing the crime scene[8] and changing his clothes.[9]

---

[2] See *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995) (indicating that elements of premeditation and deliberation for the purpose of this crime may be inferred from circumstances surrounding the killing).

[3] See *Gayheart*, 285 Mich App at 217 (indicating that prior planning is evidence of premeditation or deliberation).

[4] *Id.*

[5] See *People v Waters*, 118 Mich App 178, 186; 324 NW2d 564 (1982) (indicating that "[p]ossession of a deadly weapon in advance of a slaying is a fact from which premeditation and deliberation can be inferred.")

[6] See *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999) (indicating that moving the victim to a more secluded location is evidence of premeditating or deliberating a killing); see also *People v Jackson*, 292 Mich App 583, 589-590; 808 NW2d 541 (2011) (indicating that enticing the victim to a location under a pretext is evidence of premeditation or deliberation).

[7] See *Gonzalez*, 178 Mich App at 534; *Johnson*, 460 Mich at 733 (indicating that a defendant's attempt to conceal his involvement in the killing, including hiding the body, is evidence of his premeditation or deliberation).

[8] See *Gonzalez,* 178 Mich App at 534 (indicating that a defendant's attempted flight is evidence of his premeditation or deliberation).

[9] *Id.* at 534; *Johnson*, 460 Mich at 733 (indicating that defendant's attempt to conceal his involvement in the killing, including hiding the body, is evidence of his premeditation or deliberation).

Consequently, we conclude that the evidence submitted at trial would allow a reasonable jury to conclude that defendant's shooting of Carr was deliberate and premeditated. Defendant's argument to the contrary is simply without merit.

We now turn to defendant's argument that he did not knowingly, intelligently, and voluntarily waive his constitutional rights.

II. WAIVER

This Court reviews de novo the trial court's legal determination of whether defendant's waiver of his Fifth Amendment right to remain silent was knowing, intelligent, and voluntary. *People v Gipson*, 287 Mich App 261, 264; 787 NW2d 126 (2010). However, the court's factual findings are reviewed for clear error meaning that they will not be overturned "unless that ruling is found to be clearly erroneous." *People v Williams*, 470 Mich 634, 640; 683 NW2d 597 (2004), citing *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). Deference is given to the circuit court's assessment of the weight of the evidence and credibility of the witnesses. *People v Sexton* (*After Remand*), 461 Mich 746, 752; 609 NW2d 822 (2000); *Gipson*, 287 Mich App at 264.

In the trial court, defendant's argument did not touch upon the voluntariness of the waiver, so this Court's review is for plain error that affected the defendant's substantial rights. Plain error occurs when the error affected the outcome of the proceedings, and it resulted in the conviction of an innocent defendant or it "seriously affected the fairness, integrity, or public reputation of judicial proceedings." *People v Borgne*, 483 Mich 178, 196-197; 768 NW2d 290 (2009).

Defendant has failed to prove that he did not knowingly, intelligently, and voluntarily waive his constitutional rights, nor has he proved that his statements were involuntary. Thus, the circuit court properly admitted defendant's statements into evidence.

A waiver is voluntary when it is the product of a free and deliberate choice, rather than a choice that was made due to intimidation, coercion or deception. *People v Tanner*, 496 Mich 199, 209; 853 NW2d 653 (2014); *Gipson*, 287 Mich App at 264-265. To determine whether a right is knowingly, intelligently, and voluntarily waived, the Court reviews the totality of the circumstances surrounding the making of the incriminating statements. *Id*. at 265. Factors that the court can look to in making this determination include: (1) the age of the accused; (2) his lack of education or his intelligence level; (3) the extent of his previous experience with the police; (4) the repeated and prolonged nature of the questioning; (5) the length of the detention of the accused before he gave the statement in question; (6) the lack of any advice to the accused of his constitutional rights; (7) whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; (8) whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; (9) whether the accused was deprived of food, sleep, or medical attention; (10) whether the accused was physical abused; and, (11) whether the suspect was threatened with abuse. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). "The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and

voluntarily made." *Sexton (After Remand)*, 461 Mich at 753 (citation and quotation marks omitted).

Defendant's argument regarding the involuntariness of his waiver relies on the first, third, fourth, fifth, sixth, and ninth *Cipriano* factors. To summarize, defendant argues he was young; completely inexperienced with the police; interrogated twice for lengthy periods where he was pressured to confess; detained for an excessive period of time between the initial and final interrogation, where he was held incommunicado; operated under the misbelief that he would have to contact an attorney, not that one would be provided; and, was deprived of food prior to the first interrogation. Defendant's position is not supported by the record.

As the circuit court noted, although defendant was relatively young (age 18), he was reasonably intelligent and educated. The record supports that he knew how to read and write, and was scheduled to receive his high school diploma one month after he was arrested. Furthermore, although defendant had never been arrested or convicted of a crime, he had extensive experience working with government officials throughout his adolescence because he had been in foster care since age 11, and maintained regular contact with a social worker.

With respect to the duration of defendant's interrogations, both were relatively short: the first one lasted approximately two hours, and the second one for one hour and thirty-five minutes. Additionally, the circuit court did not err in finding that defendant's detention between the first and second interviews was not excessively long. Nothing in the record showed that defendant was being mistreated or deprived of food and water while in custody.

The record likewise does not support defendant's contention that he was improperly advised of his constitutional rights. Prior to the first interrogation, Detective Taylor explained to defendant that even if he waived his right to an attorney, he could stop talking at any point during the interrogation. After his constitutional rights were read and explained to him, defendant asked how long it would take for an attorney to come to the police station, and Detective Taylor answered that he would have to call one first. Detective Taylor testified at trial that he meant he (Detective Taylor) would have to call an attorney for defendant as none was present at the station. Defendant interpreted this answer to mean that he (defendant) was responsible for calling to get an attorney.

Defendant's argument, however, is not supported by the record. The audiotape and the transcript of the interrogation demonstrate that: (1) defendant's constitutional rights were explained and re-explained to him; (2) defendant understood them and signed a waiver confirming he understood his rights; and, (3) he voluntarily waived his rights to remain silent and to consult an attorney prior to cooperating with the police.[10] Overall, Detective Taylor's warnings to defendant, in their totality, satisfied *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[10] See *People v Cheatham*, 453 Mich 1, 28, 36; 551 NW2d 355 (1996) (indicating that in order to establish a valid waiver of the right to remain silent, the prosecution need only prove that the defendant was aware of his available options.)

Lastly, the circuit court did not clearly err in finding that defendant was not deprived of food or sleep. "As the United States Supreme Court has held, a deficiency in the defendant that is not exploited by the police cannot annul the voluntariness of a confession unless there is evidence of police coercion." *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998), citing *Colorado v Connelly*, 479 US 157, 164-165; 107 S Ct 515; 93 L Ed 2d 473 (1986). Although defendant had not eaten the morning before the first interrogation, which occurred in the early afternoon, defendant never informed the police that he was hungry. Additionally, Detective Taylor asked defendant during both interrogations whether he had slept the nights prior. Although defendant answered that he hadn't slept the night before the first interrogation, the audiotape and transcripts of both interrogations do not suggest that defendant was unable to understand or answer the officers' questions due to food or sleep deprivation.

After considering the *Cipriano* factors as a whole, the circuit court correctly held that defendant knowingly, intelligently, and voluntarily waived his rights. Defendant's statements were therefore properly admitted.[11]

To conclude: (1) sufficient evidence existed to support defendant's conviction of premeditated, first degree murder; (2) defendant failed to prove that he did not knowingly, intelligently, and voluntarily waive his constitutional rights, and that his statements to the police were involuntary.

Affirmed.

/s/ Christopher M. Murray
/s/ Patrick M. Meter
/s/ Donald S. Owens

[11] Defendant also contends that Detective Taylor improperly informed him of his constitutional rights, and that he volunteered his confession under the misbelief that he would have to contact an attorney, not that one would be provided to him. Determining whether defendant's statements were voluntary involves considering the same aforementioned factors when determining the voluntariness of a waiver. *People v Daoud*, 462 Mich 621, 635; 614 NW2d 152 (2000). Therefore, considering the same factors identified in the sections above, defendant failed to show that his statements were involuntary. As such, the circuit court properly admitted them into evidence.