

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 8, 2005

V

DEON PATRICK DAWSON, a/k/a SAMUEL
JACKSON, a/k/a KURTIS DIALS, a/k/a
RONALD WRIGHT, a/k/a DION JACKSON,

No. 248650
Wayne Circuit Court
LC No. 03-000809-01

Defendant-Appellant.

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316, possession of a firearm by person convicted of felony, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to life without parole for first-degree murder and 76 to 150 months imprisonment for the felon in possession conviction, MCL 769.12. Defendant's two-year sentence for felony-firearm runs consecutively to the other two convictions. We affirm.

Defendant first argues that the trial court improperly interjected itself into the trial by making the following comments to the jury at the beginning of the second day of trial:

And then we ended the day yesterday with Officer Kurtiss Staples who, when we concluded yesterday, read the statement made by the defendant into the record, which was Exhibit 6[,] which had been admitted.

Defendant asserts that the comments by the trial judge undermined the credibility of defendant and influenced the jury in their determination of whether defendant actually made the statement to police. We disagree. To preserve the argument that the trial court made improper comments in the presence of the jury, a defendant must object at trial. *People v Sardy*, 216 Mich App 111, 117-118; 549 NW2d 23 (1996). In this case, defendant failed to object and has not preserved the issue. Unpreserved constitutional error is reviewed for plain error that affects the substantial rights of the defendant. *People v Carines*, 460 Mich 750, 761-765; 597 NW2d 130 (1999).

It is well established that a trial court has wide, but not unlimited, discretion and power in the matter of trial conduct. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995),

citing *People v Collier*, 168 Mich App 687, 697; 425 NW2d 118 (1988). On appeal, portions of the record should not be taken out of context in order to show trial court bias against defendant; rather, the record should be reviewed as a whole. *Id.* “A trial court’s conduct pierces the veil of judicial impartiality where its conduct or comments unduly influence the jury and thereby deprive the defendant of a fair and impartial trial.” *Id.*

In this case, defendant has taken the trial court’s comments out of context, and when these comments are reviewed within the record as a whole, no error has occurred. The trial court plainly instructed the jury in regards to how it should determine the veracity of defendant’s alleged statements to police:

Now, the prosecution has introduced evidence of a statement that it claims the defendant made. Before you may consider such an out of court statement against the defendant, you must find that the defendant actually made the statement as it was given to you. If you find that the defendant did make the statement, *you may give the statement whatever weight you think it deserves.* [Emphasis added.]

Thus, contrary to defendant’s assertion, the trial court never asserted, as fact, that defendant actually made a statement to police, and we find no plain error.

Defendant next argues the trial court improperly interjected itself into the proceedings by pointing out, in the presence of the jury, that certain questions by defense counsel were questions defendant had written out and directed defense counsel to ask. We disagree.

At the conclusion of cross-examination of a prosecution witness, defense counsel informed the court that defendant was insisting that certain questions be posed to the witness. The trial court then allowed the witness to be recalled, and allowed defendant to direct defense counsel to ask certain questions that defendant had written out on paper. However, the trial court was concerned with establishing the propriety of defense counsel’s questions:

All right. I’ll let you do it this one time and – but you need to give – before he’s done, you need to give whatever questions you want your attorney to ask.

Now, I know there might be some conflict here, one, between questions that the defendant demands that you ask, Mr. Harris, and your exercise of professional judgment as to whether those questions ought to be asked and there’s tension there. Obviously, however, and I want to make it perfectly clear, that the questions you are about to – about to ask are questions that the defendant demanded that you ask, not questions that you would have asked, at least exercising your professional judgment. All right.

Defendant simply asserts that there was “no reasonable need” for the trial court’s comments. This conclusory argument fails to establish how the trial court’s comments “pierced the veil of judicial impartiality,” *Paquette, supra*, at 340, and we find no error in the trial court’s comments.

Defendant further contends that when the trial court asked defendant whether the name “Old Boy” was actually that of another defense witness, Frederick Dixon, the trial court committed its “most egregious” error by arousing suspicion in the jury as to defendant’s

credibility and bolstering Officer Staples' testimony about what defendant confessed to him during interrogation. We disagree.

A defendant is entitled to a "neutral and detached" trial judge. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). A trial court is free to question witnesses to clarify testimony or elicit additional relevant information; however, the court must exercise caution and restraint to insure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial. *Id.* "The test is whether the judge's questions and comments may have unjustifiably aroused suspicion in the mind of the jury concerning a witness' credibility and whether partiality quite possibly could have influenced the jury to the detriment of defendant's case." *Id.*

Again, defendant fails to articulate in his brief, how the trial court's questions were improperly "argumentative, prejudicial, unfair, or partial," *Cheeks, supra* at 480, and we find no plain error. Moreover, since defendant's alleged statement to the police contained the only reference in the trial to the names Darnell and Old Boy, the trial court's questions to clarify whether Frederick was referred to by any other names was well within its discretion. MRE 614(b).

Defendant next argues that the trial court erred in determining that the prosecutor and police exercised "due diligence" in locating Ava Williams for her testimony at trial. We disagree. A trial court's determination of due diligence is reviewed for an abuse of discretion. *People v Eccles*, 260 Mich App 379, 388; 676 NW2d 76 (2004), citing *People v Bean*, 457 Mich 684; 580 NW2d 390 (1998). Under MCL 767.40a(3), the prosecution must provide a definitive list of witnesses it will produce to testify at trial:

Not less than 30 days before the trial, the prosecuting attorney shall send to the defendant or his or her attorney a list of the witnesses the prosecution attorney intends to produce at trial.

A prosecutor is obliged to exercise due diligence to produce at trial those witnesses endorsed pursuant to MCL 767.40a(3). *Eccles, supra* at 388. Due diligence is the attempt to do everything "reasonable, not everything possible," to secure the presence of a witness at trial. *People v DeMeyers*, 183 Mich App 286, 291; 454 NW2d 202 (1990). The prosecution is "not required to exhaust all avenues for locating [witnesses], but has a duty only to exercise a reasonable, good-faith effort in locating [them]." *People v Briseno*, 211 Mich App 11, 16; 535 NW2d 559 (1995).

The trial court conducted a due diligence hearing on the second day of trial, during which the prosecution presented evidence that the police unsuccessfully searched for the witness at three separate addresses. The police also attempted to contact the witness by telephone, attempted to contact relatives and associates of the witness, and searched for the witness at the county morgue and jail. Finally, police also checked the witness' credit history for her contact information. Based on the evidence presented, the trial court concluded that the prosecutor and police exercised due diligence in seeking to find and produce the witness, and we find no abuse of discretion in this ruling.

Defendant next argues that the prosecutor committed misconduct by commenting during closing argument about the fact that defendant had physically attacked defense counsel during

the trial. We disagree. The issue is unpreserved because defendant made no objection to the prosecutor's remarks. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). Therefore, we review for plain, outcome-determinative error. *Carines, supra* at 761-765. The test of prosecutorial misconduct is, viewing the alleged misconduct in context, whether the defendant was denied a fair and impartial trial. *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003). Moreover, in analyzing a prosecutor's closing arguments for misconduct, the comments must be considered in light of defense counsel's closing remarks. *People v Watson*, 245 Mich App 572, 593; 629 NW2d 411 (2001).

Here, the prosecutor's remarks about defendant's outburst in court were in direct response to defense counsel's closing argument which attempted to explain defendant's assaultive conduct in a manner favorable to defendant. Thus, viewed in context we find no error in the prosecutor's closing argument, plain or otherwise.

Defendant also contends that the prosecution impermissibly introduced evidence that threats had been made against a prosecution witness, without establishing that the threats were made at the instigation of defendant. *People v Salsbury*, 134 Mich 537, 569-570; 96 NW 936 (1903)[such evidence is admissible to show consciousness of guilt, but only if there is evidence that the threat "was made at the instigation of the defendant, or with his consent or approval, or at least with the knowledge or expectation that it had been or would be made;" see also *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996)]. We disagree.

In the instant case, the witness testified that he was threatened and then shot for testifying against defendant at the preliminary examination by defendant's brothers. While this a close evidentiary question, since the inference that defendant knew of the threats merely because they were made by his brothers is not particularly strong, we find no error because a trial court's decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). Even assuming that the evidence of threats against the witness was permitted by the trial court in error, however, this evidentiary error does not merit reversal in a criminal case because it does not affirmatively appear that it is more probable than not that such an error was outcome determinative in light of the other substantial evidence of defendant's guilt. *People v Smith*, 243 Mich App 657, 680; 625 NW2d 46 (2000).

Finally, we address the seven issues raised by defendant in his standard 11 brief on appeal. First, defendant argues that the trial court erred by denying the motion for mistrial made by his trial counsel after defendant assaulted his attorney in front of the jury. We disagree. A mistrial should be granted only because of an irregularity which is prejudicial to the rights of the defendant and impairs his ability to get a fair trial. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). The power to declare a mistrial is to be used with the greatest of caution and only under urgent circumstances and for very plain and obvious reasons. *People v Siler*, 171 Mich App 246, 256; 429 NW2d 865 (1988). The *Siler* panel further stated:

Defendant himself created the debacle at his trial. We find that the trial court was correct in denying defense counsel's motions for a mistrial and instructing the jury to disregard defendant's actions. 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. We hold that the trial court did not abuse its discretion in denying defendant's motions for mistrial. [*Id.* at 256-257.]

Because defendant's own actions gave rise to the mistrial motion, there was no basis for a mistrial. Error mandating reversal must be that of the trial court, and not error to which the aggrieved party contributed by plan or negligence. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999).

Next, defendant argues he was denied his right to confront his accusers and be physically present during the trial after the trial judge removed him from the courtroom and placed him in a holding cell. We disagree. A defendant has the right to be present in the courtroom during every stage of trial pursuant to the Confrontation Clause of the Sixth Amendment to the United States Constitution, which is made applicable in state prosecutions through the Due Process Clause of the Fourteenth Amendment. *Illinois v Allen*, 397 US 337, 338; 90 S Ct 1057; 25 L Ed 2d 353 (1970). This right is also established by statute, MCL 768.3, which provides that "no person indicted for a felony shall be tried unless personally present during the trial[.]" "When a defendant is physically removed from the courtroom during trial, he is not personally present as required by MCL 768.3." *People v Krueger*, 466 Mich 50, 53-54; 643 NW2d 223 (2002). However, a defendant may waive his right to be present in the courtroom during trial if he engages in improper and disruptive behavior in the courtroom. *People v Gross*, 118 Mich App 161, 164; 324 NW2d 557 (1982), citing *Allen, supra*.

In this case, the trial court gave defendant the opportunity to modify his behavior without success after defendant had made several outbursts and physically assaulted his attorney. Defendant was eventually removed from the courtroom and provided audio speakers in the holding cell so he could hear what occurred in the courtroom. Also, defense counsel was able to confer with defendant before cross-examination of a witness. In light of the accommodations made, and in light of defendant's disruptive behavior and attack on his defense attorney, the trial court did not commit error by removing defendant from the courtroom for the duration of the trial.

Additionally, defendant argues that he reclaimed his right to return to the courtroom after providing his testimony without making an outburst or interruption. However, there is a distinction between being permitted to testify in one's own defense and otherwise being physically present in the courtroom during trial. Defendant's right to testify in his own defense stems from the Sixth and Fourteenth amendments of the United States Constitution. *People v Boyd*, 470 Mich 363, 373; 682 NW2d 459 (2004). If the defendant expresses a wish to testify he must be permitted to do so. *People v Simmons*, 140 Mich App 681, 685; 364 NW2d 783 (1985). However, as discussed above, defendant's constitutional right to be present during trial is not absolute and can be waived. *Gross, supra* at 164. Whether a defendant is removed from the courtroom for disruptive behavior is discretionary matter for the trial judge. *People v Harris*, 80 Mich App 228, 230; 263 NW2d 40 (1977). In this case, the trial court ruled before defendant's testimony that although he would be permitted to testify, he would remain shackled and would be removed from the courtroom after his testimony because of "the violent nature of the assault upon counsel." In light of defendant's earlier verbal and physical outbursts, we find no abuse of discretion by the trial court.

Defendant next argues that during the trial, there was a substantial breakdown in the relationship between defendant and defense counsel such that the trial court committed error by not appointing defendant substitute counsel or allowing defendant to represent himself. We disagree. A trial court's decision affecting a defendant's right to counsel of choice, whether to

appoint substitute counsel for a defendant, and whether to allow a defendant to represent himself at trial are all reviewed for an abuse of discretion. *People v Akins*, 259 Mich App 545, 556-557; 675 NW2d 863 (2003). Appointment of substitute counsel is warranted only on good cause shown and where substitution of counsel will not unreasonably disrupt the judicial process. *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988). Good cause exists where a legitimate difference of opinion develops between defendant and appointed counsel regarding a fundamental trial tactic. *People v Williams*, 386 Mich 565, 574; 194 NW2d 337 (1972).

Here, defendant's concern that defense counsel was unprepared does not constitute a legitimate difference of opinion regarding a fundamental trial tactic. Moreover, defendant's loss of confidence in his attorney because of perceived inattentiveness is not good cause to substitute counsel. *People v Traylor*, 245 Mich App 460, 463; 628 NW2d 120 (2001). The record further reflects that defendant waited until the day of trial to seek to replace his defense attorney or represent himself. Because he made alternative requests, defendant's request to represent himself was necessarily equivocal. A trial court does not err in denying an equivocal request for self-representation. *People v Dennany*, 445 Mich 412, 432, 439; 519 NW2d 128 (1994).

Defendant next alleges multiple commissions of error by defense counsel amounting to ineffective assistance of counsel. Whether considered individually or together, the ineffective assistance of counsel claims raised by defendant in his standard 11 appellate brief are wholly without merit.

In order to preserve the issue of effective assistance of counsel for appellate review, the defendant must move for a new trial or an evidentiary hearing in the trial court. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000). Here, defendant failed to move for an evidentiary hearing or a new trial. Therefore, review is limited to facts existing in the record. *People v Rodriguez*, 251 Mich App 10, 29-30; 650 NW2d 96 (2002). To establish ineffective assistance of counsel, the defendant must first show that the performance of his counsel was below an objective standard of reasonableness under the prevailing professional norms. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). The reviewing court indulges a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance, and defendant bears the heavy burden of proving otherwise. *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

Defendant first contends that defense counsel should have called "Jerry" as a witness to testify that defendant did not commit the shooting. A failure to call a witness who may have made a difference in the outcome of the trial can constitute ineffective assistance of counsel. *People v Johnson*, 451 Mich 115; 545 NW2d 637 (1996). The "defendant has the burden of establishing the factual predicate for his claim," and "to the extent his claim depends on facts not of record, it is incumbent on him to make a testimonial record" that supports the claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). In this case, it is impossible to determine from the record whether counsel was ineffective for failing to call "Jerry" because defendant never states who "Jerry" is, and never provides sufficient documentary evidence specifying exactly what Jerry would have testified about.

Defendant next argues that defense counsel was ineffective in failing to conduct an investigation into a statement made by Ava Williams, to determine whether Williams might have been able to offer testimony to impeach Katrina Slater on the question whether Slater saw a body

loaded into the trunk of a car after the shooting. We disagree. A defendant is entitled to have his counsel prepare, investigate, and present all substantial defenses.” *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). However, the failure to interview witnesses alone does not establish inadequate preparation. *People v Caballero*, 184 Mich App 636, 642; 459 NW2d 80 (1990). Instead, the defendant must show that the failure resulted in counsel’s ignorance of important evidence that would have substantially helped the defendant. *Id.* Additionally, the decision whether to call witnesses is presumed to be a matter of trial strategy, and to overcome the presumption of sound strategy, the defendant must show that counsel’s failure to call a witness deprived him of a substantial defense. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). “A substantial defense is one that might have made a difference in the outcome.” *Kelly, supra* at 526.

The record does not support defendant’s assertions. First, there is no evidence Williams could even be located, as the police made unsuccessful efforts to secure Williams’ attendance at trial as a prosecution witness. In addition, even if Williams could have contradicted some portion of Slater’s testimony, Slater also testified that she heard Smith talking to a person, whose voice she recognized as defendant’s, and that shortly after Smith had talked with defendant she heard a gunshot and then Smith told her: “he done blown her damn head off.” Thus, neither interviewing Williams nor calling Williams to testify as a witness would have contributed to a substantial, outcome-determinative defense.

Next, defendant argues defense counsel was ineffective for failing to have a biased juror removed during voir dire. We disagree. Counsel’s decisions relating to the selection of jurors is generally a matter of trial strategy. *People v Johnson*, 245 Mich App 243, 259; 631 NW2d 1 (2001). The juror in question stated to the trial court that while it would be difficult for her to be fair to both sides since both her niece and nephew were incarcerated, she would make her best effort to be unbiased and the trial court accepted these assurances. Because the juror made and the trial court accepted these assurances, the record reveals no obvious cause for the juror’s removal. Thus, defendant has failed to show prejudice or to overcome the presumption that defense counsel’s method of jury selection was sound trial strategy, and defendant was not denied effective assistance of counsel on this basis.

Defendant next argues that defense counsel’s performance fell below an objective standard of reasonableness when he failed to properly cross-examine a key prosecution witness. We disagree. Defendant argues that in his statement to police, Eddie Smith never stated that he saw the victim’s body loaded into the trunk by defendant. However, defendant considers only a part of Smith’s statement to police to make this assertion. While Smith’s trial testimony does reveal some inconsistency on this point, we conclude that additional cross-examination by trial counsel on the point would not have changed the outcome of the trial. Therefore, defendant has failed to demonstrate that defense counsel was ineffective.

Defendant also argues that defense counsel was ineffective for failing to properly cross-examine Smith about his “destruction of evidence” and “inaccurate description of the complainant.” We disagree. “[D]ecisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy.” *People v Davis (On Reh)*, 250 Mich App 357, 368; 649 NW2d 94 (2002). First, defendant makes no citation to anything in the record indicating that Smith ever destroyed evidence relevant to this case.

Second, defendant fails to articulate how impeaching Smith's description of Weatherspoon would have affected the outcome of his trial. Thus, defendant has failed to overcome the presumption accorded trial counsel on matters of trial strategy.

Next, defendant argues defense counsel erred by refusing to file a motion for new trial on his behalf. However, defendant's brief on appeal does not specify why, when, or the basis on which defense counsel should have moved for a new trial. A party may not merely announce his position or assert an error and leave it to the appellate court to discover and rationalize the basis for his claims or unravel and elaborate for him his arguments. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Defendant also claims that trial counsel did not meet with him enough times before trial, resulting in trial counsel's failure to produce witnesses essential to his defense. However, the only witness defendant indicates should have been called is Ava Williams, and we have already rejected defendant's claim of error regarding Williams' failure to testify at trial. We find no basis for concluding that defense counsel's preparation for trial fell below an objective standard of reasonableness.

Defendant next argues that the prosecutor committed misconduct when she introduced the testimony of Eddie Smith and Katrina Slater because both witnesses gave false testimony and the prosecutor knew the testimony was false. Defendant failed to object, and therefore we review this allegedly improper conduct by the prosecutor for plain error. *People v Barber*, 255 Mich App 288, 298; 659 NW2d 674 (2003).

As we noted above, there were some minor inconsistencies in Smith's testimony. However, defendant fails to establish that Smith provided false testimony or that if it was false, the prosecutor knew it was false. Therefore, defendant has failed to demonstrate plain error in the prosecutor's examination of Smith.

Additionally, defendant argues that Katrina Slater gave false testimony when she stated that she heard defendant say, "who is that" at the back door. Again, defendant has not established that the testimony was false or that if it was false, the prosecutor knew that the testimony was false.

Defendant next argues that he was seized in violation of his Fourth Amendment rights when Officer Staples stopped defendant in his vehicle and arrested him. We disagree. The determination whether a violation of the federal constitutional prohibition against unreasonable searches and seizures requires exclusion of the evidence is a question of law which is reviewed de novo on appeal. *Ornelas v United States*, 517 US 690; 116 S Ct 1657, 1663; 134 L Ed 2d 911, 920 (1996).

The right against unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1, sec 11; *Illinois v McArthur*, 531 US 326; 121 S Ct 946, 949; 148 L Ed 2d 838, 847 (2001); *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). Moreover, "Police officers may make a valid investigatory stop if they possess 'reasonable suspicion' that crime is afoot." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). Reasonable suspicion "entails something more than an

inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause.” *Id.* at 98.

The record establishes that based on the totality of the circumstances, the arresting officer had a reasonable articulable suspicion for making an investigatory stop of defendant’s vehicle. The officer had a description of, and had been directed to be on the lookout for, both a shooting suspect meeting the physical description of the defendant and a vehicle matching the description of the vehicle being driven by the defendant. The trial court did not err in finding no Fourth Amendment violation.

Finally, defendant argues his statement to police was improperly admitted into evidence because it was involuntarily made in violation of defendant’s Fifth Amendment rights. We disagree. On appeal from a ruling on a motion to suppress evidence of a confession, we review the record de novo but give deference to the trial court’s findings and do not disturb those findings unless they are clearly erroneous. *People v Kowalski*, 230 Mich App 464, 471-472; 584 NW2d 613 (1998). A finding is clearly erroneous if the finding leaves this Court with a definite and firm conviction that a mistake was made. *People v Hall*, 249 Mich App 262, 267-268; 643 NW2d 253 (2002).

In determining whether a statement was made voluntarily, the court should consider all the circumstances, including: the duration of the defendant’s detention and questioning; the age, education, intelligence and experience of the defendant; whether there was unnecessary delay of arraignment; the defendant’s mental and physical state; whether the defendant was threatened or abused. *People v Sexton*, 458 Mich 43, 66; 580 NW2d 404 (1998).

In this case, Officer Staples testified that defendant voluntarily made a statement after he was advised of his rights and had signed a waiver of rights form. Staples also testified that defendant never requested an attorney, never appeared injured, never requested any medication, never indicated he desired food or water, and was never threatened. Staples further stated that defendant told him he could read and write and that he had gone through the tenth grade in school. Defendant testified that before he was interrogated by Staples, he was well aware of his right to remain silent and his right to counsel being present during questioning, but nevertheless, his statement was not voluntary because he was denied food, water and sleep for three days while he was in custody. Defendant also testified that he was assaulted with a gun, threatened with a knife and denied his right to counsel during the interrogation.

The trial court found that defendant voluntarily signed the waiver of rights form although he was fully aware from previous convictions and interrogations of his right to an attorney, and that accordingly, defendant’s statement to police was voluntary. In light of the totality of the circumstances and the deference this Court accords a trial court findings of fact, we conclude that the trial court’s decision was not clearly erroneous.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Donald S. Owens