

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

SEQUOIA KENNEDY,

Defendant-Appellant

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UNPUBLISHED  
February 22, 2005

No. 251372  
Macomb Circuit Court  
LC No. 2003-001284-FC

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

A jury convicted defendant Sequoia Kennedy of one count each of first-degree felony murder and breaking and entering. The trial court sentenced defendant to life imprisonment for the felony murder conviction and to 30 to 120 months in prison for breaking and entering. Defendant appeals his convictions and sentences, and we affirm.

I

Defendant stole a snow blower from the garage of Michael Janjanin, an Eastpointe resident. Defendant drove his car into the garage door, crawled under the damaged door, took the snow blower, and loaded it into his car. When defendant saw the Eastpointe police, who had been notified of the breaking and entering by a neighbor, he sped away.

On nearby Eight Mile Road, defendant drove his car into that of an elderly man, Robert Merritt. Defendant opened Merritt's door, punched him a minimum of four times in the face, threw him to the ground, and sped away in Merritt's car. Merritt's feet had become entangled in the seatbelt, and he was dragged by the car. Merritt died ten days later of multiple organ failure and pneumonia caused by the loss of skin from a large portion of his body due to being dragged.

After defendant was taken into custody, Eastpointe police detectives James Baker and David Ernatt interrogated him. At trial, Ernatt testified that defendant confessed to the breaking and entering and to the carjacking. Defendant told them that he did not mean to harm Merritt. He did not hear Merritt because the vehicle's radio was playing. Detective Baker testified that he agreed with Ernatt's testimony.

II

Defendant argues that the trial court erroneously denied his motion to suppress his confession because the confession was made after questioning continued despite his alleged request for counsel, in violation of his Fifth Amendment right to counsel. When reviewing a trial court's ruling on a motion to suppress evidence, we give the trial court's findings deference. We review the record de novo, but we will not disturb the trial court's factual findings unless the findings are clearly erroneous. *People v Kowalski*, 230 Mich App 464, 471-472; 584 NW2d 613 (1998). The trial court did not err in denying defendant's motion.

The Supreme Court of the United States ruled that the *Miranda*<sup>1</sup> right to counsel must be invoked by an unequivocal request for counsel. *Davis v United States*, 512 US 452, 459; 114 S Ct 2530; 129 L Ed 2d (1994). “[A suspect] must articulate his desire to have counsel present sufficiently clearly so that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.” *Id.*, 512 US at 459. If the statement fails to meet the requisite level of clarity, the police are not required to stop questioning the suspect. *Id.* The *Davis* Court held that defendant Davis' statement, “Maybe I should talk to a lawyer,” was equivocal, and thus, did not invoke defendant's *Miranda* right to counsel. *Id.* at 462. This Court similarly held that an equivocal request for counsel does not require an end to the interrogation. *People v Adams*, 245 Mich App 226, 239; 627 NW2d 623 (2001).

Defendant's interrogation was videotaped. Detective Baker read defendant his *Miranda* rights and asked him to initial the *Miranda* card next to each right as it was read. He then asked defendant to sign the bottom of the card. Defendant refused, and made a comment regarding a desire to have a lawyer. This comment, however, is largely inaudible. Defendant testified that he told the detectives he wanted an attorney. The detectives testified that defendant said he “may” want an attorney. After defendant's request for counsel, Detective Ernatt asked him, “Do you want to talk to an attorney?” and “You have expressed an interest saying you want to talk to an attorney?” Both detectives testified that these questions were asked to ascertain whether defendant actually wanted an attorney. They also testified that they would have promptly concluded the interrogation if defendant's request had been unequivocal.

Because defendant's request for counsel was unintelligible on the videotape, the trial court had to rely on the testimony of defendant and the detectives to determine whether defendant's request was unequivocal. The court's decision, thus, hinged on which witnesses provided the most credible testimony. The court gave great weight to the detectives' testimony because (1) the officers sat only a few feet from defendant during the interrogation and could hear his words, (2) they unequivocally testified that defendant said he “may” want an attorney, and (3) the court itself questioned Detective Ernatt. From the detectives' testimony, the court found that Ernatt's questions following defendant's request for counsel were an attempt to clarify whether defendant really wanted an attorney.

The court also found it significant that there was no evidence that the detectives were aware that defendant's videotaped statement regarding an attorney would be unintelligible. Thus, their continued questioning of defendant indicates that defendant's statement was

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

equivocal. The court reasoned that the detectives would not have continued to question defendant after an unequivocal request for an attorney was captured on videotape, because the confession would be inadmissible.

Ultimately, the trial court's determination that defendant's request for counsel was equivocal was based on its finding that the detectives' testimony was more credible than defendants. "Because the demeanor of witnesses and credibility are so vitally important to a trial court's determination,' this Court gives deference to the trial court's credibility determination at a *Walker*<sup>2</sup> hearing." *People v Kimble*, 252 Mich App 269, 273; 651 NW2d 798 (2002), quoting *People v Snider*, 239 Mich App 393, 418; 608 NW2d 502 (2000). Defendant offered no reason to second-guess the trial court's credibility determination. The court gave a thorough explanation of the law and of the court's reasoning in finding the detectives' testimony more credible. We hold that the trial court did not clearly err in denying defendant's motion to suppress.

### III

Defendant maintains that the prosecution failed to present sufficient evidence from which the jury could conclude beyond a reasonable doubt that defendant was guilty of felony murder.<sup>3</sup>

The elements of felony murder are (1) the killing of a human being, (2) with malice, (3) while committing, attempting to commit, or assisting in any of the felonies specifically enumerated in MCL 750.316(b). *People v Dumas*, 454 Mich 390, 396-397; 563 NW2d 31 (1997). Malice is defined as (1) the intent to kill, (2) the intent to cause great bodily harm, or (3) a wanton and willful disregard of the likelihood that the natural tendency of the defendant's act is to cause death or great bodily harm. *Id.* at 396. Carjacking and breaking and entering are among the felonies specifically enumerated in MCL 750.316(b).

The prosecution conclusively proved the first element of felony murder. Numerous witnesses, including an off-duty police officer, testified to defendant's assault of the victim, pulling the victim from his car, and speeding away in the victim's car while the victim was entangled in his seatbelt and dragged. The Macomb County medical examiner ruled the victim's death a homicide and testified that the cause of his death was multiple organ failure and pneumonia resulting from a major loss of skin caused by being dragged by the vehicle.

The prosecution also proved the third element of felony murder. Witnesses observed the breaking and entering and carjacking. Michael Janjanin's neighbor saw defendant drive his car into Janjanin's garage door, crawl under it, take the snow blower from the garage, and load it

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<sup>2</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

<sup>3</sup> We review a challenge to the sufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376, 404 (2001). We view the evidence presented in the light most favorable to the prosecution to determine whether a reasonable trier of fact could have found defendant guilty of the charged crime beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

into the car, and speed away. The off-duty police officer testified that she observed defendant strike Merritt in the face at least five times, pull him out of the car, get in the driver's seat, and speed away, dragging Merritt whose feet were caught in the seatbelt. In addition to this witness, the prosecution offered the testimony of four eyewitnesses to the accident and dragging. The witnesses' testimony was consistent with the off-duty officer's testimony. Most importantly, Detectives Baker and Ernatt testified that defendant confessed to the breaking and entering and carjacking, both enumerated felonies.

The prosecution also presented evidence from which the jury could conclude, beyond a reasonable doubt, that defendant acted with malice. The evidence supports a conclusion that defendant (1) intended to cause great bodily harm or (2) acted with a wanton and willful disregard of the likelihood that the natural tendency of the defendant's act is to cause death or great bodily harm. Several witnesses testified that defendant punched Merritt, an eighty-year-old man, in the face a minimum of four times. Repeatedly punching an elderly man in and of itself can certainly result in great bodily harm. However, defendant also pulled Merritt from his car and sped away without verifying that Merritt was free of entanglement in his seat belt, leaving Merritt in a busy street, in Detroit, at rush hour, injured after being punched repeatedly by a much younger man. Defendant's actions clearly placed Merritt in danger of death or great bodily harm. The prosecution offered sufficient evidence from which a jury could conclude beyond a reasonable doubt that defendant committed felony murder.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Henry William Saad  
/s/ Michael R. Smolenski