STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 8, 2011
v	No. 298357 Wayne Circuit Court
TERRY BAILEY, Defendant-Appellant.	LC No. 09-031241-FC

Before: K.F. KELLY, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), stemming from the June 2009 beating death of Gloria Paramore inside her Detroit residence. The trial court sentenced defendant to life imprisonment without parole.[1] Defendant appeals as of right. We affirm.

I. BASIC FACTS

On June 13, 2009, Paramore was found in her kitchen laying on her back bleeding heavily from the head. There were no signs of forced entry. An autopsy revealed at least 19 blunt force impacts to her head, which were consistent with being struck with both the head and claw of a hammer. Paramore had also suffered defensive wounds, including underlying palpable fractures of the hand bones.

During their investigation, police learned that Paramore hired defendant to do concrete work at her home. A search warrant was executed on defendant's home, where officers discovered a pair of blood-stained work boots matching deoxyribonucleic acid (DNA) from the victim. Officers also found papers inside defendant's house and van bearing the Paramore's address, and discovered inside the victim's house a paper on which someone had written defendant's name and phone number.

[1] Defendant was also convicted and sentenced for a number of probation violations not at issue on this appeal.

In a statement to police, defendant admitted that he killed Paramore. The questions and answers were memorialized in writing:

> *Question*, "Mr. Bailey, do you know a woman by the name of Gloria Paramore?" Answer, "Yes."
>
> *Question*, "How long have you known her?" Answer, "Since Wednesday, June 10th."
>
> *Question*, "[H]ow is it that you came to know her?" Answer, "Through a lodge brother."
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> * * *
>
> . . . "He called me on the phone and referred me for a concrete job for Ms. Paramore."
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> * * *
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> *Question*, "Did you speak with Ms. Paramore on Friday, June 12th?" Answer, "Yes, I called her."
>
> *Question*, "What was the discussion about?" Answer, "When I was going to pour it. . . . She wasn't happy."
>
> *Question*, "How so?" Answer, "She wanted to pour it right away but I told her it rained Thursday, so then I went over there [alone]. . . . [I]t had to be earlier than [4:30 p.m.]."
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> * * *
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> *Question*, "Did Ms. Paramore invite you in?" Answer, "Yes, in the back she unlocked the door."
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> * * *
>
> *Question*, "Did you have a discussion with her?" Answer, "Yes, it was about when I could pour the cement because I had to pay my crew and my rent."
>
> *Question*, "What did she say?" Answer, "She said she wouldn't have the money till [sic] the 16th and wasn't going to give me no more money until then. . . . I told her that wasn't in the contract."
>
> *Question*, "Was she supposed to pay you on Friday?" Answer, "Yes."
>
> *Question*, "Did you become angry?" Answer, "Yes, I had been drinking, and she said if I didn't like it, she would get someone else to do it and she wasn't satisfied with what I had done already. . . . [I] [g]ot angry. It wasn't fair or right. My mind just snapped and I hit her."

Question, "What did you hit her with?" Answer, "It was marble-like . . . . It was grayish like with flowers on it. There was felt on the bottom of it."

Question, "Where did you get it from?" Answer, "Off the kitchen counter. . . . She was by the sink, the water was on and she was talking sharp towards me. I see the solid marble ball on the counter to her right. I was standing by the door entrance back. I grabbed the ball and swung at her. She looked right at me and I hit her on the side of the head with the ball."

* * *

Question, "Did you hit her again?" Answer, "Yes, but then I dropped the ball [and left]."

* * *

Question, "Is there anything you would like to add to the statement?" Answer, "Yes, I just went to get my money so I could finish the job and pay my bills. There was no intent to kill her and I'm sorry to the family."

Defendant's motion to suppress the statement had been previously denied. The trial court, as finder of fact, rejected defendant's claim that there insufficient evidence of premeditation or deliberation and convicted defendant of first-degree murder. Defendant now appeals as of right.

II. SUFFICIENCY OF THE EVIDENCE

Defendant initially challenges the sufficiency of the evidence that he premeditated and deliberated the killing of the victim. When reviewing a criminal defendant's challenge to the sufficiency of the evidence, this Court considers all the evidence presented in the light most favorable to the prosecution to determine whether a rational fact-finder could have found the essential elements of the crime charged against the defendant proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). This Court must draw all reasonable inferences and make credibility choices in support of the trier of fact's verdict; the Court should not interfere with the fact-finder's role in determining witness credibility or the weight of the evidence. *Nowack*, 462 Mich at 400; *People v Elkhoja*, 251 Mich App 417, 442; 651 NW2d 408 (2002), vacated in part on other grounds 467 Mich 916 (2003); *Kanaan*, 278 Mich App at 619.

To convict a defendant of first-degree premeditated murder, the prosecution must prove beyond a reasonable doubt that the defendant intentionally killed the victim, and that the act of killing was premeditated and deliberate. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001). Premeditation and deliberation require sufficient time to permit the defendant to "take a second look." *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999); *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation and deliberation may be established by evidence of: (1) the prior relationship between the defendant and the victim; (2) the defendant's actions before the murder; (3) the circumstances of the killing itself, including the type of weapon used and the location of the wounds inflicted; and, (4) the defendant's conduct after the offense. *Abraham*, 234 Mich App at 656; *People v Berry (On*

Remand), 198 Mich App 123, 128; 497 NW2d 202 (1993). Circumstantial evidence and the reasonable inferences arising therefrom may suffice to prove the elements of a crime, and "[m]inimal circumstantial evidence is sufficient to prove an actor's state of mind." *Ortiz*, 249 Mich App at 301; *Abraham*, 234 Mich App at 656.

In finding defendant guilty of first-degree murder, the trial court explained:

> So this is more than simplistically analyzing a 19-blow case of rage, continuous frenzy. You have obviously the multiple blows, you have movement from one—from the living room to the kitchen and then you have the . . . flipping of the weapon of choice from the hammer end to the claw end, all of which give the opportunity . . . —this may have . . . started out as a Murder 2.
>
> However, the evidence supports that there was an opportunity to reflect during the commission of this particular case through the movement . . . of Ms. Paramore from the dining room to the living room—from the dining room or living room there to the kitchen and also opportunity to reflect in flipping the weapon from the hammer end, which, according to Dr. Hlavaty in Exhibit 6 and her testimony, resulted in numerous fractures in a circular . . . pattern consistent with [a] hammer, but also numerous other lacerations, injuries, inflicted with the claw end.
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> * * *
>
> [B]ased upon the fact that it appears as though from the evidence or deduced from the evidence that the defendant had an opportunity to think twice about his intent to kill and proceeded or gave himself an opportunity to think twice through the movement of Ms. Paramore from one area to another, albeit a short distance in this particular case, the Court finds that the evidence supports the charge of First Degree Premeditated Murder. The Court finds the defendant guilty as charged

There is sufficient evidence in the record to support the trial court's verdict. Defendant admitted assaulting the victim. The forensic examiner's testimony and report detailed that the victim was struck at least 19 times in different areas of her head and face, which broke open the victim's skull in multiple locations. The victim also had defensive wounds to her right hand in the form of bruises and fractures of the hand. According to the examiner, the victim's wounds were consistent with having been struck with different ends of a hammer. Police photographs supported an inference that the attack of the victim began in one room of the victim's house and progressed into another area of the house. The photographs illustrated the presence of blood and brain matter in the kitchen and the dining or living room.

The evidence supports the trial court's finding beyond a reasonable doubt that defendant premeditated and deliberated his killing of the victim. The testimony, photographs, and other evidence allowed the court to find that defendant struck the victim at least 19 times with opposite ends of a hammer, to different areas of the victim's head and face, all of which occurred in different areas of the victim's house. The circumstances concerning the nature of the killing

suffice to establish that defendant had an opportunity to reconsider his actions in the course of his assault of the victim, and thus that he premeditated and deliberated the killing. *People v Coy*, 243 Mich App 283, 315-316; 620 NW2d 888 (2000) (finding premeditation and deliberation, in part, because the victim suffered 25 to 30 stab wounds, including several defensive wounds); *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998) (explaining that between different methods of assaulting the victim, "the killer had the opportunity to reflect upon his actions"); *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995) (observing that the defendant's infliction of a beating with two different items gave the "defendant the time to take a second look and reconsider his decision").

In summary, the trial court accurately recited the evidence presented at trial, and the evidence supports the court's finding that defendant killed the victim in a premeditated and deliberated fashion.

III. MOTION TO SUPPRESS CUSTODIAL STATEMENTS

Defendant next criticizes on several grounds the trial court's denial of his motion to suppress the custodial statements he made in the course of two police interviews.

> We review de novo a trial court's determination that a waiver was knowing, intelligent, and voluntary. When reviewing a trial court's determination of voluntariness, we examine the entire record and make an independent determination. But we review a trial court's factual findings for clear error and will affirm the trial court's findings unless left with a definite and firm conviction that a mistake was made. Deference is given to a trial court's assessment of the weight of the evidence and the credibility of the witnesses. [*People v Gipson*, 287 Mich App 261, 264; 787 NW2d 126 (2010) (citations omitted).]

A. REQUESTS FOR COUNSEL

Defendant maintains that the police disregarded three requests for an attorney: one request at the time of his booking, a second request during his interview with United States Secret Service Special Agent Matthew Gunnarson, and a third request near the beginning of his second interview with Detroit Police Sergeant Gary Diaz. The rights of an accused in police custody include the right to counsel during custodial interrogation. *People v Paintman*, 412 Mich 518, 524-525; 315 NW2d 418 (1982). When an accused invokes this right, further interrogation must cease until counsel is made available, unless the accused subsequently initiates communications, conversations, or exchanges with the police. *Paintman*, 412 Mich at 525.

Defendant testified that he asked for an attorney when the police booked him on June 14, 2009. Both defendant and Agent Gunnarson testified that on the evening of June 15, 2009, defendant agreed to speak with Gunnarson and submit to a polygraph test after Gunnarson advised defendant of his right to counsel. See *People v Slocum (On Remand)*, 219 Mich App 695, 704-705; 558 NW2d 4 (1996) (finding that officers scrupulously honored the defendant's constitutional rights, after her invocation of the right against self-incrimination during their first attempted interview, when the officers ceased questioning, waited about 22 hours to reinitiate

questioning, and advised the defendant of her constitutional rights at the outset of the second interview). Gunnarson and defendant also consistently recounted at the suppression hearing that after Gunnarson administered a polygraph examination, defendant invoked his right to counsel and Gunnarson immediately halted the interview and had defendant returned to his jail cell.

After returning defendant to his jail cell, Detroit Police Officer Moises Jimenez left defendant, who was crying, alone for approximately half an hour, and when Jimenez came back to check on defendant, defendant declared, "I'm ready to talk now." While Jimenez attended to other matters, he placed defendant with Sergeant Diaz, who conducted a second interview with defendant. Defendant avers that he invoked his right to counsel at the outset of this second interview, as reflected by the following inquiry by Sergeant Diaz:

> Well, do I want an attorney here? It doesn't matter what I want. What matters is what you want. If you want an attorney here, . . . I'm done talking to you.

Defendant responded, "That's what I'm saying."

With regard to the clarity necessary to invoke a defendant's constitutional right to counsel during a custodial interview, this Court has explained:

> [C]ourts must determine whether the accused actually invoked the right to counsel and . . . this constitutes an objective inquiry. Thus, invocation of the *Miranda*[2] right to counsel requires a statement that can reasonably be construed to be an expression of a desire for the assistance of counsel. *If the accused makes a reference to an attorney and the reference is ambiguous or equivocal in that a reasonable police officer in light of the circumstances would have understood only that the accused might be invoking the right to counsel, the cessation of questioning is not required. . . .*
>
> The question here is whether defendant's statement, "Can I talk to him [a lawyer] right now?" constitutes a clear request for an attorney. We hold that this utterance was not sufficient to invoke the right to counsel and cut off all further questioning under the specific circumstances of this case. . . .
>
> This colloquy makes clear that *defendant knew of his right to counsel and knew that requesting an attorney would stop the interview. Nevertheless, defendant chose to continue the interview.* In this context, we think it plain that the words defendant now cites in isolation do not constitute an unambiguous invocation of the right to counsel. [*People v Adams*, 245 Mich App 226, 237-239; 627 NW2d 623 (2001) (Emphasis added).]

[2] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

A reasonable interpretation of defendant's remark, "That's what I'm saying," is that the comment amounts to a confirmation of defendant's understanding of Sergeant Diaz's preceding explanation. Because (1) the remark at best only equivocally invoked the right to counsel, (2) the transcription of the interview with Diaz revealed that he repeatedly advised defendant of his right to counsel, and (3) defendant nonetheless "chose to continue the interview" without further reference to a desire to have an attorney, *Adams*, 245 Mich App 239, we conclude that defendant did not actually invoke his right to counsel in the course of his interview with Diaz.

B. REQUEST TO STOP INTERVIEW

Defendant also argues that Sergeant Diaz neglected to heed a request that he halt the second interview. Defendant suggests that his desire to stop the interview is reflected by his answer, "Yeah," in response to Sergeant Diaz's statement, "[I]f you want me to stop, we'll stop. I'm done." Defendant's "[y]eah" response again seems to represent his affirmative acknowledgment of the content of Diaz's immediately preceding statement, especially when considered together with the short, prior context of their conversation that defendant provides in his brief. Two of defendant's four quoted responses to Diaz consist of the one word reply, "Yeah," and a third response elaborated slightly, "Yes, you know." Furthermore, Diaz clearly and thoroughly went on to discuss defendant's constitutional rights with him before eliciting his statement, and defendant continued speaking with Diaz, without any subsequent elaboration concerning his purported desire to stop the interview. We discern no error, plain or otherwise, relating to defendant's claim that Diaz ignored his request to halt the interview.

C. VOLUNTARINESS

A statement of an accused made during a custodial interrogation is inadmissible unless the prosecution establishes by a preponderance of the evidence that the accused voluntarily, knowingly, and intelligently waived his *Miranda* rights. *People v Daoud*, 462 Mich 621, 633-634; 614 NW2d 152 (2000). To determine whether a suspect has volunteered a legally admissible statement, a court must review the totality of the surrounding circumstances to ascertain if the statement is "the product of an essentially free and unconstrained choice by its maker." *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988) (internal quotation and citation omitted). An inquiry regarding voluntariness "is determined by examining the conduct of the police," with consideration given to whether the police made promises of leniency to induce the statement, *People v Shipley*, 256 Mich App 367, 373; 662 NW2d 856 (2003), as well as the following relevant factors:

> In determining whether a statement is voluntary, the trial court should consider, among other things, the following factors: the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food,

> sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.
>
> 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. Unnecessary delay is one factor to consider in reaching this conclusion, the focus being not just on the length of delay, but rather on what occurred during the delay and its effect on the accused. [*Cipriano*, 431 Mich at 334-335.]

Defendant insinuates that his statements to Agent Gunnarson and Sergeant Diaz qualified as involuntary because he felt severe emotional strain when he submitted to the interviews. Gunnarson recounted that defendant had started crying during the first interview, and Officer Jimenez similarly described that defendant had cried and seemed despondent on returning to his jail cell. About 30 minutes later, Jimenez went to defendant's cell to check on him, and defendant apprised Jimenez, "I'm ready to talk now." When an emergency demanded Jimenez's attention, he left defendant with Diaz, who recalled that at the time of his first contact with defendant in a hallway of the police homicide division, defendant "was clearly . . . upset." Ten or 15 minutes later, however, when defendant seemed calmer, Diaz escorted him to an interview room. Diaz denied that defendant had ever mentioned any complaints whatsoever during the second interview. At the suppression hearing, defendant testified that he felt fine during the interview by Gunnarson, except for some concern for the victim. In short, nothing in the record substantiates defendant's suggestion that any emotional issue impacted the voluntariness of his statements.[3]

Defendant further avers that Agent Gunnarson and Sergeant Diaz "represented . . . that making a statement would benefit him." "[A] confession will be considered the product of a promise of leniency if the defendant is likely to have reasonably understood the statements as a promise of leniency and if the defendant relied upon the promise in making his confession." *People v Butler*, 193 Mich App 63, 69; 483 NW2d 430 (1992). Defendant does not identify with any greater specificity what benefit he thought participating in his interviews might bring him. Given the absence of any detail of record concerning a "benefit" potentially flowing to defendant if he made a statement, we conclude that defendant cannot "reasonably [have] understood the [police] statements as a promise of leniency." *Butler,* 193 Mich App at 69.

Defendant additionally characterizes as undermining the voluntary nature of his participation in the second interview Sergeant Diaz's urging that he "give the [victim's] family closure." Police influence that induces a defendant to offer a statement may take the form of mental coercion, as well as physical. *People v Manning*, 243 Mich App 615, 625; 624 NW2d 746 (2000). Our review of defendant's preliminary conversation with Diaz reveals that Diaz

[3] Additionally, nothing in the record gives rise to a suggestion that defendant lacked sleep at the time of his interviews.

only once broached the topic of closure when he remarked, "If you don't want to talk, no pressure, no nothing[;] I want to give this family closure." After the initial mention of closure, defendant repeated three times that he "want[ed] to give the family closure." It does not appear that Diaz psychologically coerced defendant's statement through Diaz's lone record mention of closure for the victim's family.

Defendant also asserts that threats to his mother and sister motivated his statements to Sergeant Diaz. Defendant's argument about threats presumably stems from the following testimony he presented at the suppression hearing:

> Well, [Diaz] was telling me that I ought to give the family closure and he said . . . "I've been out to . . . your mother's house," and I said yes. And he said he knew she lived alone. I said yes. He said, "Your sister, she goes to work early in the morning." I said yes . . . . He said, "You don't want that kind of thing to happen to your mother that happened to Ms. Paramore." I said no. He said, well, just tell the truth . . . .

Diaz's references to defendant's mother, sister, and the victim were apparently intended to try to make defendant identify with the victim. We do not detect any hint of a threat reasonably arising from Diaz's comments.

Defendant lastly submits that an extended, several-day delay between the time of his arrest and his arraignment also "contributed to the involuntariness of [his] statements," another argument he did not raise in the trial court. The police arrested defendant in the late afternoon of June 14, 2009, defendant's first interview with Agent Gunnarson occurred on the evening of June 15, 2009, and defendant's second interview with Sergeant Diaz took place in the early morning hours of June 16, 2009. The trial court's register of actions reveals that a warrant issued on June 17, 2009, and that defendant was arraigned on June 18, 2009. Although a delay exceeding 48 hours between a defendant's arrest and arraignment qualifies as presumptively unreasonable, this period of delay does not automatically mandate that a court suppress statements obtained during the detention period. *Manning*, 243 Mich App at 642-643. This Court in *Manning* explained:

> When a confession was obtained during an unreasonable delay before arraignment, in Michigan the *Cipriano* factors still must be applied. The unreasonable delay is but one factor in that analysis. The longer the delay, the greater the probability that the confession will be held involuntary. At some point, a delay will become so long that it alone is enough to make a confession involuntary.
>
> In engaging in the balancing process that *Cipriano* outlines, a trial court is free to give greater or lesser weight to any of the *Cipriano* factors, including delay in arraignment. A trial court cannot, however, give preemptive weight to that one factor . . . . [*Id*. at 643.]

The Court in *Manning* held that, taking into account the other voluntariness factors, a delay of "at least eighty-one hours after [the defendant's] arrest without a warrant" did not standing alone justify the exclusion of the defendant's custodial statement. *Id*. at 644-645.

Taking into account the totality of the voluntariness considerations identified in Michigan case law, the record in this case establishes that defendant voluntarily offered his statements. At the time of defendant's interviews, he was 51 years of age. Defendant acknowledged that he had multiple prior arrests by and interviews with law enforcement, and that he had understood the prior recitations of his constitutional rights. Regarding defendant's education and intelligence level, the extent of defendant's schooling appears unclear, although he could read and write and had enough intelligence to operate a cement contracting business. Defendant underwent two interviews within approximately 1-1/2 days of his arrest, but he initiated the second interview after at least a half-hour rest or break period between the discussions. The first interview lasted three hours. The record does not specify precisely when the second interview, which began after 2:00 a.m. on June 16, 2009, ended, however no indication exists that the second interview qualified as unduly long. Agent Gunnarson and Sergeant Diaz both testified that defendant seemed to comprehend their identifications of his constitutional rights in this case. Nothing in the record indicates that defendant "was injured, intoxicated or drugged, or in ill health when he gave the statement[s]," that he needed "food, sleep, or medical attention," or that the police physically abused him or threatened him with abuse. *Cipriano*, 431 Mich at 334.

In conclusion, under the totality of the circumstances, the prosecution proved by a preponderance of the evidence that defendant voluntarily waived his *Miranda* rights and offered his incriminating statements to the officers. *Daoud*, 462 Mich at 633-634. Consequently, the trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher