STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 19, 2014
v DIANNA LAKIESHA FLYNN, Defendant-Appellant.	No. 315989 Wayne Circuit Court LC No. 12-010345-FC

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Dianna Lakiesha Flynn appeals as of right from her jury trial convictions of second-degree murder[1] and possession of a firearm during the commission of a felony ("felony-firearm").[2] Flynn was sentenced to 20 to 40 years for the murder conviction, and two years for the felony-firearm conviction to be served consecutively to the sentence for murder. We affirm.

Flynn was convicted of the shooting death of Vaughn Lamont Robinson. Robinson died of a gunshot wound to the face. The shooting occurred in the early morning hours of October 6, 2012, at a home that Robinson shared with Flynn, his wife Crystal Robinson, and Crystal's three children; two of whom Robinson fathered. The Robinsons and Flynn had an intimate relationship.

On appeal, Flynn argues that the trial court erred when it admitted as dying declarations certain statements made by Robinson while he was hospitalized. We disagree. "This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion."[3]

"Before admitting a statement as a dying declaration, the trial court must make a preliminary investigation of the facts and circumstances surrounding the statement."[4] The

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[1] MCL 750.317.

[2] MCL 750.227b.

[3] *People v Dobek*, 274 Mich App 58, 93; 732 NW2d 546 (2007).

statement may be admitted as substantive evidence if it is demonstrated that (1) "the declarant is unavailable as a witness," (2) "the statement was made 'while believing that the declarant's death was imminent,' " and (3) the statement " 'concern[ed] the cause or circumstances of what the declarant believed to be impending death.' "[5]

In the instant case, Robinson was deceased at the time of trial and thus was unavailable. Additionally, on October 6, 2012 at 4:34 a.m., close in time to when the statements in question were made, Robinson told his stepdaughter that "he just got shot" and "he didn't think he was gonna make it." He also said, "I love you, take care of your sister, I gotta call my momma, bye." Therefore, the evidence supports that the statements were made while Robinson believed his "death was imminent." Finally, the statements concerned the cause or circumstances of Robinson's impending death. Just before making the challenged statements, Robinson allegedly glared at Flynn, who was in his hospital room, and stated that it was "over; you know it's over," and to his wife he stated "[B]aby, I didn't do nothing, I swear I didn't do nothing." This Court finds that under the circumstances of this case, the statements, while purportedly related to the fact that the relationship between Robinson and Flynn was "over," also implicate Flynn as the shooter and support that Robinson was not the aggressor. Thus, the trial court did not abuse its discretion when it admitted the statements as dying declarations. Moreover, because other evidence was presented to support that Flynn was the shooter, the dying declarations made by Robinson were cumulative, and any error in their admission was harmless.[6]

Flynn also challenges the trial court's admission of her second custodial statement to police. Flynn asserts that the challenged statement was made involuntarily in violation of her constitutional rights. We find Flynn's argument to be without merit. "[A] trial court's ultimate decision on a motion to suppress evidence" is reviewed de novo.[7] "Although this Court engages in a review de novo of the entire record, this Court will not disturb a trial court's factual findings with respect to a *Walker*[8] hearing unless those findings are clearly erroneous."[9] "[A] finding is clearly erroneous if it leaves us with a definite and firm conviction that the trial court has made a mistake."[10]

To determine whether a statement is voluntary:

> the trial court should consider, among other things, the following factors: the age of the accused; [her] lack of education or [her] intelligence level; the extent of [her] previous experience with the police; the repeated and prolonged nature of

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[4] *People v Stamper*, 480 Mich 1, 4; 742 NW2d 607 (2007).

[5] *Id*., quoting MRE 804(b)(2).

[6] *People v Gursky*, 486 Mich 596, 619-620; 786 NW2d 579 (2010).

[7] *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003).

[8] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

[9] *Akins*, 259 Mich App at 563 (footnote added).

[10] *Id*. (quotation marks and citation omitted).

> the questioning; the length of the detention of the accused before [she] gave the statement in question; the lack of any advice to the accused of her constitutional rights; whether there was an unnecessary delay in bringing [her] before a magistrate before [she] gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when [she] 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.[11]

It is undisputed that on October 6, 2012, before her first custodial statement, Flynn was Mirandized. The second custodial statement occurred on October 8, 2012, and was made without *Miranda*[12] warnings being re-administered. At a *Walker* hearing during which admission of the October 8, 2012, custodial statement was challenged, evidence was presented that Flynn could read; had a GED and some college education; had been detained approximately two days before the statement was made; had previously been Mirandized and had expressed her understanding of her rights; did not request an attorney or ask that questioning be stopped; did not appear to be injured or intoxicated at the time the statement was made; was not deprived of sleep, food, or medication; and the statement was not the result of promises, threats, coercion, or force. Therefore, under the totality of the circumstances, the statement was made voluntarily, and its admission by the trial court does not warrant relief.[13]

Affirmed.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot

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[11] *People v Ryan*, 295 Mich App 388, 396-397; 819 NW2d 55 (2012), quoting *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988) (internal quotation marks omitted).

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

[13] *Ryan*, 295 Mich App at 396-397; *Dobek*, 274 Mich App at 93.