STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY RICHARDSON,

Defendant-Appellant.

UNPUBLISHED
May 28, 1996

No. 174853
LC No. 93-61483-FC

Before: Sawyer, P.J, and Griffin, and M. G. Harrison*, JJ.

PER CURIAM.

Defendant appeals as of right his convictions by a jury of felony murder [MCL 750.316; MSA 28.548], possession of a firearm during the commission of a felony [MCL 750.227b; MSA 28.424(2)], and armed robbery [MCL 750.529; MSA 28.797]. Defendant was sentenced to a mandatory two years' imprisonment for the felony-firearm conviction, a mandatory life sentence for the felony murder conviction (to run consecutive to the two year sentence), and life for the armed robbery conviction (to run consecutive to the two year sentence and concurrent with the mandatory life sentence).

I

Defendant's first argument is that the trial court erred in denying his motion to suppress his confession because the confession was involuntary and the result of coercive acts that the police used to intentionally further defendant's depressed, agitated, and near suicidal mental state. We disagree.

When reviewing a trial court's determination of voluntariness, this Court must examine the entire record and make an independent determination, giving deference to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and affirm the court's findings unless found to be clearly erroneous. *People v Robinson*, 386 Mich 551, 557; 194 NW2d 709 (1972); *People v Bordeau*, 206 Mich App 89, 92; 520 NW2d 374 (1994). A finding is clearly erroneous if it leaves this

Circuit judge, sitting on the Court of Appeals by assignment.

Court with a definite and firm conviction that a mistake has been made. *People v Kvam*, 160 Mich App 189, 196; 408 NW2d 71 (1987).

The test of voluntariness of a confession is whether, considering the totality of the circumstances, the confession is "the product of an essentially free and unconstrained choice by its maker," or whether the accused's "will has been overborne and his capacity for self-determination critically impaired." *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988).

The evidence clearly establishes that not only did defendant himself initiate contact with the police, he consented to being transported from one police station to another, to being temporarily handcuffed for safety purposes, and to speak to several different officers concerning his confession. The record also reveals that defendant's behavior and state of mind never appeared questionable to the officers, and at the time he was asked whether he was a Christian and momentarily sat, just inside the drive to a cemetery (two things with which defendant specifically finds fault), defendant had already confessed to police and subsequently reiterated that same confession four separate times after being fully apprised of his *Miranda*[1] rights. We find the record devoid of any evidence of police coercion, and find that the trial court did not clearly err in finding defendant's confession voluntary, nor in denying his motion to suppress that confession.

II

Next, defendant argues that the trial court erred in entering a judgment of conviction and sentence for both armed robbery and felony murder, because separate convictions and punishments for both the felony murder and the underlying felony violate defendant's right to be free from double jeopardy. We agree and vacate defendant's armed robbery conviction. *People v Passeno*, 195 Mich App 91, 95; 489 NW2d 152 (1992); see also *People v Harding*, 443 Mich 693, 714, 735; 506 NW2d 482 (1993).

III

Finally, defendant argues that the trial court abused its discretion by admitting opinion testimony of a police officer regarding defendant's truthfulness and mental health. We disagree.

The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993). This Court will find an abuse of discretion only if an unprejudiced person, considering the facts upon which the trial court made its decision, would conclude that there was no justification for the ruling made. *People v Miller*, 198 Mich App 494, 495; 499 NW2d 373 (1993).

Generally, all relevant evidence is admissible, MRE 402, including evidence that is in any way helpful in explaining a material point, or includes facts from which "any reasonable presumption of the truth or falsity of a charge can be found." *People v Kozlow*, 38 Mich App 517, 524-525; 196 NW2d

792 (1972). Furthermore, MRE 701 allows opinion testimony from lay witnesses as long as the testimony is "rationally based on the perception of the witness" and "helpful to a clear understanding of his testimony or the determination of a fact in issue."

We find that not only did the officer, a fifteen-year veteran of the police department, give proper lay witness opinion testimony based on his observations of defendant, his opinion that defendant's mannerisms while giving his confessions were "surprisingly believable," was extremely relevant to the issue of whether defendant was indeed overcome by depression and whether he intentionally fabricated the confession as defendant asserted at trial. The testimony challenged by defendant is permissible under the rules of evidence; therefore, the trial court did not abuse its discretion in allowing for its admission.

We affirm defendant's felony murder and felony-firearm convictions, and vacate his armed robbery conviction.

/s/ Richard Allen Griffin
/s/ Michael G. Harrison

Judge Sawyer not participating.

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