STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER THOMAS CRAWLEY,

Defendant-Appellant.

UNPUBLISHED
June 14, 1996

No. 163247
LC No. 92-009717

Before: Taylor, P.J., and Murphy and E. J. Grant,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life in prison for the first-degree murder conviction, and two years in prison for the felony-firearm conviction. Defendant now appeals as of right. We remand for an evidentiary hearing on the issue of ineffective assistance of counsel. In all other respects, we affirm defendant's conviction.

First, we find that, viewed in the light most favorable to the prosecution, there was sufficient evidence produced at trial to justify the trial court's finding of premeditation and deliberation. The evidence established that defendant was angry about losing $3,000 in a drug deal set up by decedent, and that defendant left Columbus, Ohio, with a loaded gun, in a car unknown to decedent, to confront decedent. Defendant bragged to his girlfriend that he "had something to take care of" and that she would "hear about it the next day." Defendant tracked down decedent and blocked his means of escape. He took the loaded weapon from his car and approached decedent's car. Defendant fired the weapon five times, though only one bullet hit decedent. Defendant fled the scene at high speed with the car's lights off. Defendant later gave what proved to be a false statement to the police in order to avoid prosecution. Whether the intent was formed days before the killing or at the moment defendant took the loaded weapon out of his car to confront decedent, the facts demonstrate a sufficient span of time to

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

plan and "take a second look." *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993); *People v Passeno,* 195 Mich App 91, 100; 489 NW2d 152 (1992).

Next, we decline to address defendant's argument that he was prejudiced by improper prosecutorial remarks. Defendant failed to object to these remarks, and none was so egregious that that error could not have been cured by an appropriate instruction. *People v Stanaway,* 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Saunders*, 189 Mich App 494, 497; 473 NW2d 755 (1991).

Finally, we find that a remand is necessary in order to conduct an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). Defendant argues on appeal that his counsel was ineffective for failing to move to suppress his statements made to the police after indicating he wished to cease interrogation. *People v Jackson*, 158 Mich App 544, 550; 405 NW2d 192 (1987), articulates the conditions under which an interrogation could be resumed after an initial termination by a defendant as: (1) a significant period of time elapsing since the defendant invoked his right to remain silent, and (2) the defendant was re-advised of his *Miranda*[1] rights. It appears from the record that defendant may not have been re-apprised of his *Miranda* rights before giving his second statement. If, however, defendant's invocation of his right to remain silent was equivocal, interrogation would not have to cease. *People v Catey*, 135 Mich App 714, 722; 405 NW2d 192 (1984). There is no record of the actual words used by defendant to invoke his right. The only reference in the record to defendant's invocation was made by the prosecutor who, while examining the interrogating officer, stated, "[a]t this time he indicate [sic] he didn't want to continue any further at this time?" We find that the record is not sufficiently complete to determine whether defendant unequivocally invoked his right to remain silent. We therefore remand for an evidentiary hearing to determine whether defendant's assertion of his right to remain silent was unequivocal, and if so, to develop the record with regard to defense counsel's failure to request suppression of his subsequent statement. If the court finds that defendant's second statement would have been suppressed if defense counsel had so moved, the trial court must determine if trial counsel's failure to make such a motion prejudiced defendant, i.e., whether there is a reasonable probability that, but for counsel's error, the result of the trial would have been different (conviction of a lesser crime or an acquittal). *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995); *People v Johnson*, 451 Mich 115, 124; ___ NW2d ___ (1996).

We find no merit to defendant's remaining claims of ineffective assistance of counsel. We further reject defendant's claim that the cumulative effect of errors at trial denied him a fair trial. *People v Taylor*, 185 Mich App 1, 10; 460 NW2d 582 (1990).

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Clifford W. Taylor
/s/ William B. Murphy
/s/ Edward J. Grant

[1] *Miranda v Arizona,* 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966).