

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM RAY WALKER, JR.,

Defendant-Appellant.

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UNPUBLISHED

June 18, 1996

No. 171951

LC No. 92-013416

Before: Neff, P.J., and Jansen and G. C. Steeh, III,\* JJ.

PER CURIAM.

Following a waiver trial, defendant, sixteen years old at the time he committed the murder in question, was convicted of first-degree murder, MCL 750.316; MSA 28.545, and sentenced as an adult to life without parole. Defendant appeals his conviction and sentence as of right and we affirm.

I

Defendant first argues that insufficient evidence of premeditation existed to support his conviction for first-degree murder. We disagree.

When reviewing a sufficiency of the evidence claim, this Court views the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). In so doing, this Court will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. A prosecutor need not negate every reasonable theory of innocence, but must prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Carson*, 189 Mich App 268, 269; 471 NW2d 655 (1991).

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

Here, the evidence demonstrated that any altercation between defendant and the victim occurred well before defendant shot him twice while he slept. The record also reflects that defendant and others talked about shooting the victim shortly before defendant did so, and that after the others left, defendant waited approximately three minutes and then shot the victim. Further, although some evidence existed suggesting defendant had consumed some beer before the shooting, the evidence did not indicate defendant was so intoxicated that he could not form the requisite mens rea. We find this evidence sufficient to sustain defendant's conviction.

## II

Defendant next argues that the trial court erred in allowing his confession into the record because it was involuntarily given. We disagree.

When determining whether a trial court erred in finding a confession voluntary, we examine the totality of the circumstances. *People v Brannon*, 194 Mich App 121, 130; 486 NW2d 83 (1992). The record reflects that although defendant spent approximately one to two hours alone before being interrogated, his *Miranda* warnings were provided before the interrogation began. Further, defendant's mother was with him when he made his confession. Accordingly, the trial court's ruling was not clearly erroneous. *Id.*

## III

Next, plaintiff asserts that the trial court erred in finding that the prosecution exhibited due diligence in searching for Derrick Knox, a res gestae witness. We disagree.

In order to establish unavailability in order to use Knox's preliminary examination testimony at trial, the prosecutor had the burden of proving that it exercised diligent good faith efforts to obtain Knox's presence at trial. *People v Conner*, 182 Mich App 674, 681; 452 NW2d 877 (1990).

The lengths to which the prosecution must go to produce a witness is a question of reasonableness. The test is whether the proponent of the evidence made good-faith efforts to procure the testimony, not whether more stringent efforts would have produced it. [*Id.*]

Here, the testimony of Officer Kevin Kemp indicated that he began searching for Knox some four to five weeks before trial. Kemp contacted both of Knox's parents, and discovered from Knox's father that he filed a missing person's report on Knox. Further, Kemp followed leads obtained by Knox's father and contacted various relatives of Knox. Kemp also contacted local hospitals, the local medical examiner and the local schools in his efforts to subpoena Knox. Although, as defendant points out, more could have been done, on the basis of this record, we find no abuse of discretion in the trial court's ruling on this matter. *Id.*

## IV

Finally, defendant contends that the trial court erred in sentencing him as an adult. We disagree.

MCR 6.931(E)(3) provides six criteria the court must consider when making its determination to either sentence defendant as a juvenile or an adult. Further, the court is required to make findings of fact and conclusions of law. MCR 6.931(E)(4). We review the court's findings of fact for clear error, and its dispositional ruling for an abuse of discretion. *People v Passeno*, 195 Mich App 91, 103-104; 489 NW2d 152 (1992).

On our review of the record, we conclude that the trial court sufficiently stated its findings of fact by referencing the reports and testimony of the experts submitted during the three-day hearing. MCR 6.931(E)(4). Further, we are not left with a definite and firm conviction that a mistake was made with regard to whether the six criteria were met. Finally, again on the basis of the record below, we cannot say the court abused its discretion in sentencing defendant as an adult.

Defendant's conviction and sentence are affirmed.

/s/ Janet T. Neff

/s/ Kathleen Jansen

/s/ George C. Steeh, III