

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY SCOTT,

Defendant-Appellant.

UNPUBLISHED
September 6, 1996

No. 173578
LC No. 93-005521

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Defendant appeals by right his conviction by jury of first-degree felony murder, MCL 750.316; MSA 28.548, and sentence to a term of life imprisonment without parole. We affirm.

On May 3, 1993, defendant shot and killed Walter Moore, manager of the E & J Gas Station in Detroit. Defendant and an unidentified accomplice had gone to the station intending to rob it. During the robbery, the victim exchanged gunfire with defendant, hitting him in the forearm.

About 8:00 a.m. on May 3, 1993, witnesses Comer Dorsey and his friend, Earl Goss, pulled their car into the E & J station to fix a flat tire. The two men noticed defendant's car, a white Chevrolet Camaro Iroc, with its hood up, parked next to a gas pump. Dorsey left the car while Goss remained in it. Dorsey then encountered defendant as he was leaving the station. As Dorsey approached the station, he saw another person standing inside and Moore lying on the floor. Defendant then shoved Dorsey into the station, swore, and threatened to kill Dorsey with his gun. Dorsey ran from the station, while defendant chased him, firing his gun. Dorsey ran into traffic on Eight Mile Road where he was struck by a car. Defendant also shot at Goss as Goss fled. Defendant attempted to leave in his Iroc, but the car would not start.

Defendant apparently had shot Moore first. Moore had then returned fire as defendant attempted to escape. Bullets from a .38 caliber pistol found next to Moore's body were lodged in defendant's car. The front passenger window on defendant's car was shattered, the passenger seat had

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

blood on it, and the passenger door contained bullet holes. A trail of blood led from the doorway of the station to the Iroc and then to Eight Mile Road.

Shortly after Moore's shooting, Sinai Hospital reported to the police that defendant had sought treatment for a gunshot wound. The police arrested defendant when they discovered that defendant matched the witnesses' description. Police advised defendant of his rights at the station. Defendant first told police that he had been car-jacked and shot. The next day, again after the advice of rights, defendant admitted that he had heard that the owners of the E & J Gas Station kept a large amount of money at the station. He admitted that he went to the station intending to rob it accompanied by a person whom he refused to identify. Defendant stated that at the station, Moore swore at him, the two began to wrestle, and he heard gunshots. After Moore was shot, defendant fled the station.

Defendant Scott first asserts that the trial court abused its discretion by denying his motion for substitution of counsel. He claims that he was thereby denied the effective assistance of counsel. We disagree. Defendant's request for substitution of counsel was not supported by a showing of good cause. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). Defendant's only showing in support of the motion for substitution was that defense counsel had not filed a motion to suppress his oral statement earlier in the proceedings.¹ Also, contrary to defendant's claims, counsel furnished defendant transcripts and discovery material from the case file. Defendant further claims that counsel did not visit him in jail. Defense counsel visited defendant in jail two days before the preliminary hearing. Defense counsel also informed the court that he believed defendant's concerns had been addressed and that the situation was under control. The court's inquiry of defense counsel in a full adversarial proceeding insured that defendant would be competently represented at trial. *People v Morgan*, 144 Mich App 399, 402; 375 NW2d 757 (1985). Defendant was not denied the effective assistance of counsel. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995); *People v Hurst*, 205 Mich App 634, 640-641; 517 NW2d 858 (1994).

Defendant next argues that his right to confrontation was violated when David Rice's preliminary examination testimony was read into evidence. At the preliminary examination, David Rice, an acquaintance of defendant, testified that defendant had telephoned him after the shooting, asking to be picked up on Eight Mile Road because he had been shot. Rice unsuccessfully tried to locate defendant on Eight Mile. Rice also admitted that in one of his two statements to police he said that defendant was shot at the "tire place on Eight Mile" while he was trying to rob it.

Defendant asserts that the prosecution failed to exercise due diligence in locating Rice before trial. We disagree. The authorities were not required to exhaust all avenues for locating Rice, but had a duty only to exercise a reasonable, good-faith effort in locating him. *People v Briseno*, 211 Mich App 11, 14; 535 NW2d 559 (1995). The record reveals that the police unsuccessfully attempted to serve Rice with a bench warrant. The police also made several telephone calls to Rice's home. A special unit visited his home. Testimony reflected that Rice was evading service. Thus, the trial court's finding that the prosecution exercised due diligence in attempting to locate Rice was not clearly erroneous. *Id.* Defendant further argues that he was denied the opportunity effectively to cross-examine Rice at the preliminary examination. Contrary to defendant's assertion, defendant had cross-examined Rice at the

preliminary examination. Defendant has not shown how his cross-examination at trial would have been different. Thus, the trial court did not abuse its discretion when it admitted Rice's preliminary examination testimony into evidence. *People v Davis*, 199 Mich App 502, 517; 503 NW2d 457 (1993).

Defendant also contends that the trial court erred in failing to suppress his statement to the police. In a suppression hearing, the prosecution must show by a preponderance of the evidence that the defendant confessed voluntarily. The court will examine the entire record and make an independent determination of voluntariness, and the court's decision will not be overturned on appeal unless clearly erroneous. *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965); *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). A decision is clearly erroneous if, although there is evidence to support the decision, this Court is left with a definite and firm conviction that a mistake has been made. *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993). The *Walker* hearing record reflects that defendant's statement to police was voluntarily given. Defendant freely agreed to talk about the shooting after waiving his rights under *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d (1966).

Defendant contends that the court's failure to suppress his statement prejudiced his trial. Defendant, however, has failed to prove he was prejudiced. Defense counsel moved mid-trial to suppress the statement. The judge held a separate proceeding and denied the motion. Defendant took the stand and received a complete hearing on the mid-trial motion. Defendant cannot now claim he was prejudiced by the denial after the trial court heard his arguments and rendered a decision to deny his motion.

Defendant next argues that this Court's failure to remand for an inquiry into the attorney-client problems deprived him of due process. Defendant asserts that a remand would have "sufficiently enlarged the record." He claims that without a remand he has been denied meaningful access to the appellate process. This argument lacks merit. This Court determined that all defendant's claims were of record. A remand would not have been useful because the record was clear.

Finally, defendant asserts that the cumulative effect of the trial errors warrants a new trial. A review of the record reflects not even a single error, much less a cumulative effect of a series of errors. *People v Morris*, 139 Mich App 550, 563; 362 NW2d 830 (1984).

Affirmed.

/s/ Maura D. Corrigan
/s/ Kathleen Jansen
/s/ Meyer Warshawsky

¹ During trial, defense counsel moved to suppress defendant's oral statement. The trial court denied the motion.