

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRIVEAL TAYLOR,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 175422

Recorder's Court

LC No. 93-011925

Before: Reilly, P.J. and White and P.D. Schaefer,* JJ.

PER CURIAM.

Defendant was convicted following a jury trial of second-degree murder, MCL 750.317; MSA 28.549. He then pleaded guilty of habitual offender, third, MCL 769.11; MSA 28.1083, and was sentenced to twenty to forty years in prison. On appeal, defendant challenges the trial court's denial of his motion to suppress statements made in police custody, arguing that the statements were the fruit of an illegal investigatory warrantless arrest without probable cause, and were involuntarily made as a result of a prolonged delay in his arraignment. Defendant also challenges the sufficiency of the evidence and the denial of his motion for directed verdict. We affirm.

This Court reviews a lower court's denial of a motion for suppression of evidence for clear error. *People v Smielewski*, 214 Mich App 55, 62; 542 NW2d 293 (1995); *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993). However, application of constitutional standards by the trial court is not entitled to the same deference as factual findings. *People v Nelson*, 443 Mich 626, 631, n 7; 505 NW2d 266 (1993).

Probable cause is the single basis for arrest without a warrant and a fundamental requirement for obtaining an arrest warrant. *People v Hamoud*, 112 Mich App 348, 351; 315 NW2d 866 (1981).

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

While a “reasonable suspicion” that criminal activity has been or is taking place may suffice for a brief stop to investigate or determine identity, probable cause alone is the foundation for a valid arrest. *Id.* A detention for custodial interrogation must also be supported by probable cause. *Dunaway v New York*, 442 US 200, 216; 99 S Ct 2248; 60 L Ed 2d 824 (1979). An arrest may not be used as a pretext or subterfuge to search for evidence of a crime. *People v Haney*, 192 Mich App 207, 209; 480 NW2d 322 (1991).

Probable cause to arrest exists if the facts and circumstances known to the officer at the time of arrest are sufficient to justify a fair-minded person of average intelligence in believing that the suspected person has committed a felony. *People v Richardson*, 204 Mich App 71, 79; 514 NW2d 518 (1994). The determination of probable cause is “an act of judgment” to be taken in light of all the circumstances. *United States v Lewis*, 556 F2d 385, 388 (CA 6, 1977). Such judgment is guided by the “factual and practical considerations of everyday life on which reasonable” persons act. *Id.* at 388. The determination of probable cause must be judged on the sum total of all the information and “the synthesis of what police have heard, what they know, and what they observe as trained officers.” *Id.* at 389. Based on the information known to the police concerning defendant’s involvement with the victim, his connection with the victim at the location of her death, and reasonable inferences drawn regarding his behavior after her death, we conclude that the trial court did not err in determining that the officers had probable cause to arrest defendant.

Defendant next argues that his statements were not voluntary, but, rather, were the result of the prolonged delay between his arrest and arraignment. An “unnecessary delay” in arraignment does not automatically require suppression of inculpatory statements made during the delay. *People v Cipriano*, 431 Mich 315, 319; 429 NW2d 781 (1988). Rather, the delay is one factor that should be considered in determining whether the statement was given voluntarily. *Id.* at 333. In addition the court should consider, among other things, the defendant’s age; the defendant’s level of education or intelligence; the defendant’s previous experience with the police; the nature of the police questioning; the length of detention before the defendant made the statement; the lack of any advice regarding the defendant’s constitutional rights; whether the defendant was under the influence of drugs, alcohol or illness, when he gave the statement; whether the defendant was deprived of food, sleep or medical attention; and whether the defendant was physically abused or threatened with such abuse. *Cipriano, supra*, 431 Mich 334. The absence or presence of any one factor is not necessarily dispositive on the issue of voluntariness. *Id.* Rather, the totality of the circumstances must be evaluated. *Id.* With respect to unnecessary delay, the focus should not be on the length of delay, “but rather on what occurred during the delay and its effect on the accused.” *Id.*, 334-335. We conclude that, although defendant was subjected to a prolonged delay that cannot be condoned, the evidence, including much of defendant’s own testimony, adequately supports the trial court’s conclusion that defendant’s statements were, nonetheless, voluntary.

Next defendant asserts that there was insufficient evidence to convict him of second-degree murder. We review a sufficiency of the evidence argument by viewing the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the

prosecution established the essential elements of the crime beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-269; 380 NW2d 11 (1985). In order to establish the elements of second-degree murder, the prosecution must show that the accused caused the death of the victim and that the killing was done with malice and without justification. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993).

Malice is either the intent to kill, the intent to cause great bodily harm or the intent to create a high degree of risk of death or great bodily harm with the knowledge that such death or harm is the probable result. *Id.* at 322; *People v Miller*, 198 Mich 494, 497; 499 NW2d 373 (1993). The element of malice may be inferred from the facts and circumstances surrounding the killing. *Kemp* at 322. We conclude that on the basis of defendant's second statement to police, there was sufficient evidence from which a rational trier of fact could find the element of malice had been established beyond a reasonable doubt. Similarly, we conclude that the trial court did not err in denying defendant's motion for directed verdict based on a challenge to the sufficiency of the evidence.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Helene N. White
/s/ Philip D. Schaefer