

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD WILLIE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

February 14, 1997

No. 176570

Macomb Circuit Court

LC No. 94-1791 FC

Before: O’Connell, P.J., and Markman and M.J. Talbot,* JJ.

PER CURIAM.

Defendant, who was sixteen years old at the time of the events giving rise to his prosecution, was convicted by jury of first-degree murder, MCL 750.316(1)(b); MSA 28.548(1)(b), prosecuted under an aiding and abetting theory. He was sentenced as an adult to a term of mandatory life imprisonment. Defendant now appeals as of right, and we affirm.

Defendant first argues that insufficient evidence was presented at the preliminary examination to justify his being bound over on charges of first-degree murder. Defendant’s argument fails for two reasons. First, our independent review of the record, *People v Kieronski*, 214 Mich App 222, 228; 542 NW2d 339 (1995), reveals sufficient evidence was, in fact, presented at the preliminary examination. Second, our Supreme Court, in *People v Hall*, 435 Mich 599, 601; 460 NW2d 520 (1990), has concluded that “such an evidentiary deficiency at the preliminary examination is not ground for vacating a subsequent conviction where the defendant received a fair trial and was not otherwise prejudiced by the error.” Therefore, because defendant received a fair trial and has not demonstrated any prejudice, reversal would not be required even had the evidence presented at the preliminary examination been insufficient.

Defendant next contends that certain incriminating statements that he made were involuntary in light of *People v Irby*, 129 Mich App 306, 320; 342 NW2d 303 (1983), and that the trial court erred in refusing to suppress these statements. We disagree. The “*Irby* factors” are relevant when the defendant is a juvenile whose statements are taken in violation of the procedural requirements of MCL

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

764.27; MSA 26.886. *People v Good*, 186 Mich App 180, 189; 463 NW2d 213 (1990). When the prosecutor chooses to charge a juvenile as an adult under the automatic waiver provisions, the procedural safeguards set forth in MCL 764.27; MSA 26.886, do not apply. *People v Spearman*, 195 Mich App 434, 445; 491 NW2d 606 (1992), rev'd in part on other grounds sub nom *People v Rush*, 443 Mich 870 (1993). Considering the totality of the circumstances, which is the pertinent standard in the present case, see *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), we find that defendant's statements were made voluntarily.

Defendant also submits that the trial court improperly instructed the jury. Our review of the record indicates that the instructions "presented the issues to be tried and sufficiently protected the rights of the defendant." *People v LeGrone*, 205 Mich App 77, 79; 517 NW2d 270 (1994). Further, contrary to defendant's suggestion, the court's instruction to the jury concerning the requirement that their verdict be unanimous was not coercive. See *People v Pollick*, 448 Mich 376, 386; 539 NW2d 159 (1995).

Finally, defendant argues that the trial court abused its discretion when it sentenced him as an adult. The trial court complied with the requirements of MCL 769.1; MSA 28.1072 and MCR 6.931 by holding a dispositional hearing to determine "if the best interests of the defendant and the public would be served better by sentencing the juvenile as an adult" and made findings of fact on each of the factors set forth in the statute. *People v Cheeks*, 216 Mich App 470, 474-475; 549 NW2d 584 (1996). Defendant does not challenge these findings of fact, but argues that the trial court erred by sentencing him as an adult. We find that the trial court's ultimate sentencing decision was well-supported by its findings of fact and that its decision to sentence defendant as an adult was not an abuse of discretion. *People v Black*, 203 Mich App 428, 431; 513 NW2d 152 (1994).

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen J. Markman
/s/ Michael J. Talbot