STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER WILEY,

Defendant-Appellant.

UNPUBLISHED
November 21, 1997

No. 193252
Recorder's Court
LC No. 95-002388

Before: Griffin, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for 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). He was sentenced to life in prison for the first-degree murder conviction, and two years in prison for the felony-firearm conviction, the two sentences to run consecutively. We affirm.

Defendant's first argument on appeal is that the trial court erred in denying his motion for directed verdict on the first-degree murder charge because the evidence presented by the prosecution was insufficient to establish the elements of premeditation and deliberation. We disagree. "In order to convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation and deliberation may be inferred from the circumstances surrounding the killing. *Id*. Premeditation and deliberation are absent when the killing occurs as the result of a sudden impulse. *People v Tilley*, 405 Mich 38, 44; 273 NW2d 471 (1979). Although the exact time needed to premeditate and deliberate is incapable of precise determination, "the interval between initial thought and ultimate action should be long enough to afford a reasonable man time to subject the nature of his response to a 'second look.'" *Id*. (quoting *People v Vail*, 393 Mich 460, 469; 227 NW2d 535 [1975]).

Here, the evidence viewed in the light most favorable to the prosecution indicates that defendant had ample opportunity to premeditate and deliberate. Defendant entered the backyard of a home

where several people, including the victim, were playing basketball. Defendant, who had a gun concealed on his person, asked who had been messing with his car. No one threatened defendant or tried to hurt him. Defendant twice asked the victim why he was smiling, and placed his hand on the gun. The victim told defendant that he was not scared, but did not rush defendant and made no motions toward him. Defendant pulled out the gun, cocked it, and pointed at the victim's chest area. Defendant then fired seven to eight shots at the victim. After the victim fell, defendant ran away but then came back when the victim began to get up. Defendant then fired two more shots at the victim. These facts establish that defendant had ample opportunity to premeditate and deliberate. The interval between his "initial thought and ultimate action" was long enough for him to take a second look at his actions. *Tilley*, *supra*, 405 Mich 45. Given the circumstances of the killing and defendant's actions, there was sufficient evidence to submit the first-degree murder charge to the jury.

Defendant's second argument on appeal is that the trial court erred in denying his pretrial motion to suppress the statement he gave to the police, because the statement was not voluntary and was induced by a promise by the police officer taking the statement that defendant would be sentenced as a juvenile if he gave the statement. We disagree.

> The voluntariness of a confession is a question for the trial court. In reviewing the court's determination, we examine the entire record and make an independent determination regarding voluntariness. Nonetheless, we defer to the trial court's superior ability to view the evidence and the witnesses and will not disturb the court's findings unless they are clearly erroneous. [*People v Marshall*, 204 Mich App 584, 587; 517 NW2d 554 (1994). Citations omitted.]

The testimony in this case presented a credibility contest between defendant and the officer taking the statement. Defendant testified to the effect that a specific promise was made that he would be sentenced as a juvenile. The officer, while conceding that he could not recall if there had been discussions concerning possible penalties if defendant were sentenced as a juvenile and that such conversations may have occurred, nevertheless testified that he did not make any promises to get defendant to make the statement. The trial court indicated that it found defendant's testimony difficult to believe, and concluded that the officer did not promise defendant anything to get him to make the statement. We defer "to the trial court's superior ability to judge the credibility of witnesses." See *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). Moreover, while we recognize that the prosecution has the burden of proving that the statement was voluntary, *id*., our examination of the totality of the circumstances surrounding the making of the statement indicates that it was freely made. *People v Haywood*, 209 Mich App 217, 226; 530 NW2d 497 (1995).

Defendant's third argument on appeal is that the trial court erred by allowing the prosecutor to cross-examine defendant regarding his prior contacts with the police because such prior contacts are not admissible convictions under MRE 609. We disagree. Our review of this issue is limited to determining whether the trial court's decision constitutes "plain error affecting substantial rights" because defense counsel failed to object in a timely manner to the prosecutor's questions regarding prior contacts. MRE 103. We find no plain error here. MRE 609 provides that "[f]or the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not

be admitted unless," *inter alia*, the crime contained an element of dishonesty, false statement, or theft. Defendant has not shown that MRE 609 bars admission of evidence of his prior contacts with the police. The prosecutor's questions were asked after defendant challenged the voluntariness of his statement on direct examination. The extent of defendant's prior experience with the police therefore became relevant to a consideration of the totality of the circumstances surrounding the making of the statement. *Haywood, supra*, 290 Mich App 226. Defendant has thus failed to establish that the questions about prior contacts were asked to attack his credibility rather than to rebut defendant's claim that the statement was not voluntary. Further, no evidence of prior convictions was admitted. The trial court made clear to the jury that "we are not talking about arrests. We are not talking about convictions. We are simply talking about contacts." For these reasons, MRE 609 is not applicable here. Moreover, even if admission of the evidence was error, such error would be harmless given the overwhelming evidence of defendant's guilt. At least five witnesses saw defendant shoot the victim, and defendant admitted to the crime in his statement. Given the strength of the prosecutor's case, it is unlikely that evidence of defendant's prior contacts with the police "had any effect at all on the jury's verdict." *People v Coleman*, 210 Mich App 1, 7; 532 NW2d 885 (1995).

Defendant's fourth argument on appeal is that because he was a juvenile on the date of the offense, his sentence of life in prison without the possibility of parole constitutes cruel or unusual punishment in violation of the Michigan Constitution. We disagree. Whether the imposition of a nonparolable life sentence is cruel or unusual punishment is a question of law. Questions of law are reviewed de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995). This Court recently held in *People v Launsburry*, 217 Mich App 358, 363-365; 551 NW2d 460 (1996), that sentencing a juvenile convicted of first-degree murder to life in prison without the possibility of parole is not cruel or unusual punishment in violation of the Michigan Constitution. Defendant's argument must therefore fail.

Affirmed.

/s/ Richard Allen Griffin
/s/ David H. Sawyer
/s/ Peter D. O'Connell