

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT WARD,

Defendant-Appellant.

UNPUBLISHED

May 1, 1998

No. 200739

Oakland Circuit Court

LC No. 95-141741-FC

Before: Young, Jr., P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of 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 consecutive terms of life imprisonment without parole for the murder conviction and two years' imprisonment on the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion to suppress his confession because it was not voluntarily given. We disagree. When reviewing a trial court's determination of voluntariness, this Court must examine the entire record and make an independent determination. *People v Robinson*, 386 Mich 551, 557; 194 NW2d 709 (1972). However, we give deference to the trial court's assessment of the weight of the evidence and the credibility of the witnesses, and the trial court's findings will not be reversed unless they are clearly erroneous. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992).

Defendant argues that the police officers threatened him both physically and psychologically into giving a confession. He testified that he felt physically threatened by the officer who drove him to the police station and then stood outside the door of the interrogation room. However, he admitted that he initially exercised his right to have an attorney despite being physically intimidated. Furthermore, defendant was the one who began asking questions after requesting an attorney. Finally, the trial court apparently did not find defendant's version of events credible. The officers denied using any threats

against defendant. As stated, this Court defers to the trial court's superior ability to view the evidence and witnesses. The trial court did not clearly err in finding that defendant's statement was voluntary.

Defendant next argues that prosecutorial misconduct denied him a fair trial. Prosecutorial misconduct issues are reviewed on a case by case basis. *People v McElhaney*, 215 Mich App 269, 283; 545 NW3d 18 (1996). On review, this Court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context. *Id.*

Defendant first takes issue with the prosecutor's comment during closing argument that "[t]his is the best case of first-degree murder that I've ever seen." Prosecutorial remarks which inject personal opinions into the case are generally improper. *People v Bahoda*, 448 Mich 261, 286-287; 531 NW2d 659 (1995). However, injecting personal opinions does not always amount to error requiring reversal. *Id.* This Court must determine whether the error caused the jury to suspend its power of judgment in favor of the belief of the prosecutor's office. *Id.* at 287. After review of the record, we conclude that the prosecutor's comment, even if improper, did not constitute error requiring reversal.

Defendant also argues that the prosecutor deprived him of a fair trial when he misstated that the law required the court to give an instruction on manslaughter. However, an alleged misstatement of the law by the prosecutor is presumptively not harmful, since the trial judge instructed the jury properly. *People v Reed*, 449 Mich 375, 401; 535 NW2d 496 (1995). Defendant was not denied a fair trial by the prosecutor's misstatement.

Finally, defendant argues that the trial court erred in allowing two witnesses to view a photographic showup while defendant was in custody. We disagree. Because defendant failed to challenge the pretrial identification procedures below, appellate review is foreclosed absent manifest injustice. *People v Melvin Davis*, 146 Mich App 537, 547; 381 NW2d 759 (1985). The record indicates that, prior to the preliminary examination, a corporeal lineup was scheduled. However, due to defendant's light skin color and small stature, the police were unable to secure individuals with similar characteristics for a proper lineup. This is a recognized exception to the general requirement that a photographic lineup should not be used when the accused is in custody. See *Id.* at 546. Accordingly, no manifest injustice would result from our failure to further review this issue.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Michael J. Kelly
/s/ Martin M. Doctoroff