

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUINCEY DEWHITT BRADLEY,

Defendant-Appellant.

UNPUBLISHED

January 11, 2000

No. 205660

Berrien Circuit Court

LC No. 97-400428 FC

Before: Zahra, P.J., and Kelly and McDonald, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of one count of first-degree, premeditated murder, MCL 750.316; MSA 28.548, three counts of second-degree murder, MCL 750.317; MSA 28.549, and four counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to mandatory life imprisonment without parole for the first-degree murder conviction, three concurrent terms of life imprisonment for the second-degree murder convictions, and four two-year terms for the felony-firearm convictions, to be served concurrent with each other and consecutive to defendant's sentences for the other offenses. We affirm.

I

Defendant claims the trial court erred in denying his motion to suppress his statements to the police. Defendant argues his statements were neither voluntary nor knowingly and intelligently given because of his hearing disability, limited intellectual functioning, and the format of the statements. We disagree.

Based on the totality of the record and the testimony presented at the *Walker*¹ hearing, the trial court denied defendant's motion. In reviewing the trial court's determination of voluntariness, we engage in a de novo review of the entire record and make an independent determination of voluntariness. *People v Sexton*, 458 Mich 43, 68; 580 NW2d 404 (1998); *People v Cheatham*, 453 Mich 1, 29-30 (Boyle, J), 44 (Weaver, J); 551 NW2d 355 (1996). However, deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's factual findings regarding a knowing and intelligent waiver of *Miranda*² rights will not be

reversed unless they are clearly erroneous. *Sexton, supra; Cheatham, supra*. No single factor is determinative, including limited mental capacity, in deciding whether a person is capable of knowingly and intelligently waiving his *Miranda* rights. *Sexton, supra* at 66; *Cheatham, supra* at 36, 43; *People v Fike*, 228 Mich App 178, 181-182; 577 NW2d 903 (1998). A written waiver is strong evidence that a waiver of *Miranda* rights is valid. *Cheatham, supra* at 31.

Following our review of the record, we agree with the trial court's conclusion that, despite defendant's hearing disability and questionably limited intellectual functioning, defendant's statements to the police were voluntary, knowing and intelligent, and therefore admissible at trial.

II

Next, defendant claims that the trial court should have granted his motion to strike his statements that: (1) he could have committed the instant crimes because he has been involved in drive-by shootings; (2) he was part of the Crips gang in Los Angeles and he could have committed the homicides but he just did not remember; and (3) he had been taught on the streets that if you commit a crime you do not leave any witnesses. Defendant asserts that the statements should have been excluded under MRE 403 because the probative value of the statements were substantially outweighed by the danger of unfair prejudice and the admission of the statements denied him a fair trial.

The trial court did not abuse its discretion in admitting the statements into evidence at trial because their probative value was not *substantially* outweighed by the danger of *unfair* prejudice. MRE 403; *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998); *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

Admittedly, prejudice resulted to defendant from the admission of the statements. “[O]therwise, there would be no point in presenting it.” *People v Fisher*, 449 Mich 441, 451; 537 NW2d 577 (1995). However, “the danger the rule seeks to avoid is that of *unfair* prejudice” (emphasis added). *Starr, supra* at 500. Here, the prejudice was not unfair in light of the fact that defendant made the oral and written statements to the police after having been advised of his *Miranda* rights and having waived those rights. He knew when he made the statements that they could be used against him. No unfair prejudice resulted to defendant from admission of statements that he made to his acquaintances because the statements were apparently freely given by defendant and were merely cumulative to the statements given to the police after *Miranda* warnings had been issued. Defendant's claim is without merit.

III

Finally, defendant contends that insufficient evidence was presented to establish the elements of premeditation and deliberation to support his conviction of first-degree, premeditated murder as to victim David Fuse. We disagree.

To prove first-degree, premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. MCL 750.316;

MSA 28.548; *People v Tilley*, 405 Mich 38, 45; 273 NW2d 471 (1979); *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995). The elements of premeditation and deliberation may be inferred from all the facts and circumstances surrounding the killing, including the prior relationship of the defendant and the victim, the defendant's actions before and after the killing, and the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. *People v Hoffmeister*, 394 Mich 155, 158-160; 229 NW2d 305 (1975); *People v Daniels*, 192 Mich App 658, 665-666; 482 NW2d 176 (1992).

Viewing the evidence presented at trial in a light most favorable to the prosecution, *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979), we conclude that sufficient evidence was presented to establish the elements of premeditation and deliberation beyond a reasonable doubt to support the jury's verdict of first-degree, premeditated murder as to victim Fuse. The specific intent to kill the victim could be inferred from the fact that after defendant shot Fuse twice in the chest, shot and killed the three other victims, and then found Fuse still alive, he shot Fuse three times in the head, with two of the gunshots having been inflicted within an inch of Fuse's face and causing almost instantaneous death. Premeditation could also be inferred from defendant's statements to his acquaintances a few days before the murders that he would not leave any witnesses to a crime that he committed. Premeditation could also be inferred from defendant's statements to the detectives that, before he went to the victims' home, he armed himself with a gun and decided he was going to get his money from Fuse "whatever it took." Deliberation and specific intent to kill the victim could likewise be inferred from defendant's statement, as told by defendant to the police detectives, that just before he fatally shot Fuse in the head, he told Fuse, "David, you know this didn't have to be this way." It could also be inferred from defendant's admission that he saw that Fuse was still alive, "So I finished him off." The foregoing evidence clearly establishes that defendant had a sufficient interval of time to take a "second look" and to contemplate his actions before he deliberately inflicted the fatal gunshots to Fuse's head. See *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

Affirmed.

/s/ Brian K. Zahra

/s/ Michael J. Kelly

/s/ Gary R. McDonald

¹ *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).