

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK T. CRAIGHEAD,

Defendant-Appellant.

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UNPUBLISHED

December 22, 2005

No. 243856

Wayne Circuit Court

LC No. 00-007900-01

Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for manslaughter, MCL 750.321, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 40 months to 15 years in prison for the manslaughter conviction and two years in prison for the felony-firearm conviction. We affirm.

This case arises out of the shooting death of Chole Pruett on or about June 27, 1997. Mr. Pruett was found shot four times in his own apartment, and the evidence suggested that at least one of the bullets was shot while the shooter stood over him. There was no sign of forced entry, and the killer did not disturb much of the apartment. The killer went through a few of the victim's dresser drawers, but did not take the victim's jewelry. Mr. Pruett had recently received a sizeable cash settlement about which only a select few of his friends knew. Mr. Pruett spent much of his time with defendant, who was his best friend and one of only a few male friends. A police interview suggested that defendant and Pruett had discussed selling drugs together, and in the bedroom near the victim's body, police found several shoe boxes left open on the bed and two boxes of live ammunition. The ammunition was of two different calibers, .38 and .30, neither of which matched the caliber of spent .44 cartridges and bullets retrieved from the apartment.

Early in the morning on June 27, 1997, police and firefighters had responded to a report of a burning truck in Redford, roughly 4 ½ miles from defendant's house. The truck belonged to Pruett. It had been doused with an accelerant and set ablaze. Inside the truck, investigators found a .38 caliber handgun.

Witnesses placed Pruett with defendant on June 25, 1997, and defendant himself admitted that he had drinks with Pruett at a restaurant, although he said he could not remember whether it was on the 25<sup>th</sup> or 26<sup>th</sup> of June. Pruett's girlfriend also reported to police that she saw Pruett in

the mall with a friend on June 26, 1997. Nevertheless, police questioned defendant in late August of 1997, and in March of 1999, and did not make an arrest.

On June 20, 2000, two police officers, a detective and his superior officer, arrived at defendant's home. The detective was newly assigned to lead the investigation. They waited on defendant's front porch for him to return, and then asked him to accompany them to headquarters. Defendant initially requested that they postpone the interview until the next day, but he complied after the new detective insisted that he needed to do the interview that day. Defendant was not handcuffed, and the officers told his brother that they could follow them to headquarters. The trial court found that during an initial, casual interrogation of defendant at headquarters, the detective discovered inconsistencies between defendant's responses at headquarters and other statements provided to police. The trial court found that the detective read defendant his *Miranda*<sup>1</sup> rights, and told him he could not leave. The detective then turned the case over to an interrogation specialist within the squad, who accompanied defendant to a polygraph examination held between 2:00 a.m. and 3:00 a.m. on June 21, 2000, roughly eight hours after the officers brought defendant to headquarters. Following the examination, defendant was taken to a cell where he spent the night.

In a written statement at 11:00 a.m. on June 21, 2000, defendant admitted shooting and killing Pruett after wrestling a gun away from him. Defendant also admitted driving Pruett's truck home and then driving it somewhere and setting it on fire. Defendant signed the statement and repeatedly initialed a list of rights, acknowledging that he understood each of them and voluntarily waived them all. He also signed beside each response in a list of acknowledgements that he offered his statement without being threatened, promised anything, or deprived of anything. Finally, he signed beside his acknowledgement that the statement was true.

On appeal, defendant argues that his federal and state constitutional right against unreasonable searches and seizures was violated when he was arrested without a warrant or a showing of probable cause, and that his June 21, 2000, statement to the police obtained as a result of the illegal arrest should have been suppressed. We disagree. When considering a trial court's decision on a motion to suppress evidence, we review the trial court's factual findings for clear error. MCR 2.613(C); *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999).

Defendant contends that he was arrested when police accompanied him from his house to headquarters. He also argues that police did not have probable cause to arrest him until after he made his statement, and that they were only acting on speculation and their subjective belief that he was the perpetrator. We disagree. Defendant's arguments essentially challenge two separate factual findings made by the trial court following defendant's *Walker*<sup>2</sup> hearing. First, the trial court found that the lead detective did not arrest defendant until after defendant generally discussed the case with him and provided him with conflicting, evasive, and deceptive responses, which provided the lead detective with probable cause. Second, the trial court found that the incriminating statement did not flow directly from an illegal arrest, but was provided voluntarily.

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

<sup>2</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

Regarding the timing of defendant's arrest, defendant willingly accompanied the officers to headquarters without handcuffs or physical restraint. Defendant had voluntarily provided two other statements to police before. At headquarters, defendant told the detective that he was not involved in anything with Pruett, but vaguely alluded to the fact that they went to the apartment for some purpose. Defendant also stated that he was not concerned when he heard about Pruett's death even though he and Pruett were best friends. The detective also noted inconsistencies with defendant's statement and the time other witnesses placed defendant with Pruett, but the detective did not articulate these inconsistencies at the *Walker* hearing. Nevertheless, the trial court found that defendant was not under arrest when he willingly accompanied the detective to headquarters and was not put under arrest until after he made inconsistent statements that, together with the other evidence, reasonably indicated his probable role as the shooter. Although defendant contradicted the detectives' testimony, the trial court found that defendant's testimony at the *Walker* hearing was not credible and that the detective's testimony was. We defer to the trial court's credibility assessment, and the trial court's findings are not otherwise clearly erroneous. *Farrow, supra*.

Regarding the validity of defendant's confession, the trial court found that defendant's confession was not tainted by illegal arrest, so the test was whether defendant knowingly and voluntarily waived his *Miranda* rights. *People v Daoud*, 462 Mich 621, 633; 614 NW2d 152 (2000). The trial court found that defendant was not deprived of anything or promised anything and that he knowingly waived his right to remain silent and have an attorney present. Defendant's signature on his confession and his waiver of rights supports the trial court's findings. Also, the lead detective and the interrogation detective testified that defendant answered their questions without any coercive action on their part. Defendant was an articulate adult who willingly responded to police questions and took a polygraph examination on the night of his arrest. He provided his self-serving confession the following morning after one night in jail. Under the circumstances, the trial court did not clearly err when it found that defendant knowingly and voluntarily waived his *Miranda* rights. *Id.* at 629.

Defendant next argues that his counsel was ineffective in failing to call an expert witness to testify regarding the phenomenon of false confessions. We disagree. Because no *Ginther*<sup>3</sup> hearing was held, we limit our review to the facts contained in the record. *People v Thomas*, 260 Mich App 450, 456; 678 NW2d 631 (2004). Effective assistance of counsel is presumed, and the defendant bears the burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). "Defendant must overcome the strong presumption that counsel's performance was sound trial strategy." *People v Dixon*, 263 Mich App 393, 396; 688 NW2d 308 (2004). Defense counsel's decision not to call an expert witness is presumed to be trial strategy, and we will not reverse on the basis that counsel failed to call a witness unless the failure deprived defendant of a substantial defense. *Id.* at 398. Here, defendant assumes that expert testimony, under the circumstances of this case, would have bolstered his defense, but defendant did not present any favorable expert testimony to the trial court so we could review its efficacy. Moreover, defense counsel did not need expert testimony to advance, rather persuasively, the

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<sup>3</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

theory that defendant's confession was coerced, so the lack of expert testimony did not deprive defendant of a defense in this case. *Id.*

Affirmed.

/s/ Henry William Saad

/s/ Peter D. O'Connell