

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREKA LONG,

Defendant-Appellant.

UNPUBLISHED

July 22, 2003

No. 237016

Wayne Circuit Court

LC No. 00-012764

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Defendant appeals as of right her jury-trial conviction of second-degree murder, MCL 750.317, for which the trial court sentenced her to 22½ to 40 years' imprisonment. We affirm.

Defendant first argues that the trial court erred in refusing to suppress defendant's statement to the police. According to defendant, her statement was involuntary because she was ill at the time she gave the statement and because the statement was induced by a promise that she would receive medical attention.

With respect to whether a statement is voluntary, in *People v Sexton (After Remand)*, 461 Mich 746, 752-753; 609 NW2d 822 (2000), our Supreme Court explained:

[The Court of Appeals] review of the issue of voluntariness must be independent of that of the trial court. *People v Robinson*, 386 Mich 551, 558; 194 NW2d 709 (1972). However, we will affirm the trial court's decision unless we are left with a definite and firm conviction that a mistake has been made. *Id.*; *People v DeLisle*, 183 Mich App 713, 719; 455 NW2d 401 (1990). Further, if resolution of a disputed factual question turns on the credibility of witnesses or the weight of the evidence, we will defer to the trial court, which had a superior opportunity to evaluate these matters. See *People v Marshall*, 204 Mich App 584, 587; 517 NW2d 554 (1994).

In evaluating the admissibility of a particular statement, we review the totality of the circumstances surrounding the making of the statement to determine whether it was freely and voluntarily made in light of the factors set forth by our Supreme Court in *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988):

“[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police, the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

“The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made. [Citations omitted.]”

Here, defendant requested and received a *Walker*¹ hearing, at which both defendant and a Detroit police investigator testified concerning the circumstances surrounding defendant’s statement to the investigator. From this testimony, it is clear that defendant was advised of her constitutional rights after she presented herself to police headquarters to tell what happened to the victim. Although defendant claimed she did not understand her rights, she testified that she was informed of her rights, she chose not to exercise her right to remain silent, and she did not ask for a lawyer, and she did not ask the investigator to end the process. Consistent with the investigator’s testimony, defendant stated that she was not threatened and that the investigator did not trick her into talking. Although defendant testified that she indicated to the investigator that she was ill and that the investigator told her that she would be going to the hospital after giving a statement, the investigator testified to the contrary. Defendant introduced medical records indicating that she received medical treatment in the evening on the day after she made her statement to police. The investigator stated that although she believed that defendant may have been on medication at the time of the statement, defendant did not appear to be intoxicated or on drugs and did not indicate that she was sick or needed medical attention, and that she made no promises to defendant. Given this record, and giving deference to the trial court’s findings with respect to issues of credibility, *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997) (“An appellate court will defer to the trial court’s resolution of factual issues, especially where it involves the credibility of witnesses.”), we conclude that the trial court’s finding that defendant’s statement was voluntary is not clearly erroneous.

Next, defendant argues that it was reversible error for the trial court to deny her motion for a directed verdict on the charged offense of first-degree premeditated murder. We disagree.

“In ruling on a motion for a directed verdict, the trial court must consider in the light most favorable to the prosecutor the evidence presented by the prosecutor up to the time the

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

motion is made and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001). “Circumstantial evidence and reasonable inferences arising therefrom can sufficiently establish the elements of a crime.” *Id.*

At trial, the prosecution proceeded against defendant on the charge of first-degree murder on an aiding and abetting theory. The aiding and abetting statute provides that

[e]very person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense. [MCL 767.39; see also *People v Mass*, 464 Mich 615, 627-628; 628 NW2d 540 (2001).]

This Court set forth the following requirements necessary to prove a crime under an aiding and abetting theory:

A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995).² “To support a finding that a defendant aided and abetted a crime, the prosecution must show that (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement.” *Id.* at 568. [*People v Izarraras-Placante*, 246 Mich App 490, 495-496; 633 NW2d 18 (2001) (footnote added).]

“First-degree premeditated murder requires proof that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate.” *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). “Premeditation and deliberation require sufficient time to allow the defendant to take a second look.” *Id.*, quoting *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). “Premeditation and deliberation may be established by evidence of ‘(1) the prior relationship of the parties; (2) the defendant’s actions before the

² We acknowledge that in *Mass*, *supra*, the Michigan Supreme Court disapproved of the language in *Turner* that in order to support a finding that a defendant aided and abetted a crime, the prosecutor must show that the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time the defendant gave aid and encouragement. *Mass*, *supra* at 627-628. The *Mass* Court further indicated that “[t]he ‘requisite intent’ for conviction of a crime as an aider and abettor ‘is that necessary to be convicted of the crime as a principal,’” and that “[c]onviction of a crime as an aider and abettor does not require a higher level of intent with regard to the commission of the crime than that required for conviction as a principal.” *Id.* at 628 (citation omitted). Thus, while the language has been disapproved to some extent, we conclude that the *Mass* Court did not overrule *Turner*, but rather, merely clarified the application of the disputed language taken from *Turner*.

killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide.” *Abraham, supra*, quoting *Schollaert, supra*. “[A]iders and abettors can be liable for specific intent crimes if they possess the specific intent required of the principal or if they know that the principal has that intent.” *People v King*, 210 Mich App 425, 431; 534 NW2d 534 (1995).

Here, there was evidence presented at trial that defendant fought with the victim on two prior occasions during the day of the incident. On the first occasion, defendant approached the victim with a knife, and then defendant and codefendant, Ruben Jordan, proceeded to beat the victim until the victim ran into a store. On the second occasion, defendant found the victim and went after her with a champagne bottle; however, a bystander intervened, took the bottle, and pushed defendant back into her car. Defendant then went to Jordan's house and informed him about that confrontation. Jordan then went inside his house and retrieved a gun. Defendant, Jordan, and LaTonya McGhee³ then began to drive around and look for the victim. Defendant asked people where the victim could be found. After the group found the victim, McGhee drove around the corner and stopped the car. Meanwhile, defendant told Jordan to give her the gun so that she could go and “shoot up into the car,” but Jordan stated that he would do it. Defendant indicated, in her statement, that she asked Jordan for the gun because she wanted to shoot the victim. It was Jordan, however, who exited the car, shot several times, and upon his return to the car, stated, “I got that ho,” or “I've got that bitch.”

Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found the essential elements of first-degree murder on an aiding and abetting theory were proved beyond a reasonable doubt. A rational trier of fact could determine that Jordan shot and killed the victim and that defendant had the requisite intent and gave encouragement and acted to assist in a premeditated and deliberate murder. The trial court did not err in denying defendant's motion for a directed verdict.

Next, defendant argues that there was insufficient evidence to support her conviction of second-degree murder on an aiding and abetting theory. We disagree. “When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt.” *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

Again, with regard to aiding and abetting, the prosecutor must demonstrate that

“(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had

³ McGhee was charged with one count of first-degree premeditated murder, but pleaded guilty to one count of accessory after the fact to the first-degree premeditated murder charge in exchange for her testimony as a prosecution witness.

knowledge that the principal intended its commission at the time he gave aid and encouragement.” [*Izarraras-Placante, supra* , quoting *Turner, supra*.]

The elements of second-degree murder include:

“(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification of excuse.” *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). . . . The element of malice is defined as “the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Id.* at 464. Malice for second-degree murder can be inferred from evidence that the defendant “intentionally set in motion a force likely to cause death or great bodily harm.” *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998). The offense of second-degree murder does not require an actual intent to harm or kill, but only the intent to do an act that is in obvious disregard of life-endangering consequences. *Goecke, supra* at 466. [*People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999).]

In the present case, the same evidence that, viewed in a light most favorable to the prosecution, was sufficient to avoid a directed verdict on the first-degree murder charge is sufficient to support a second-degree murder conviction. Defendant gave encouragement in that she told Jordan what happened to her, drove around with Jordan knowing that he had a gun, asked people where she could find the victim, and asked Jordan for the gun because she wanted to shoot the victim before Jordan shot the victim himself. These acts followed several fights during the day between defendant and the victim, and actually involved defendant’s participation in the search for the victim. This evidence, viewed in a light most favorable to the prosecution, is sufficient to establish malice, as there was an intent to kill, to cause great bodily harm, or to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm through Jordan’s act of shooting the victim. These acts establish defendant’s participation as an aider or abettor in the crime of second-degree murder. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational jury could find that the essential elements of second-degree murder on an aiding and abetting theory were proved beyond a reasonable doubt.

Finally, defendant argues that the trial court erred in scoring offense variable (“OV”) 6 of the legislative sentencing guidelines at twenty-five points rather than at ten points. We disagree. This Court must affirm all sentences within the guidelines’ range “absent an error in scoring the sentencing variables or inaccurate information relied upon in determining the defendant’s sentence.” MCL 769.34(10). “A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

OV 6 addresses “the offender’s intent to kill or injure another individual.” MCL 777.36(1). Defendant contends that the trial court improperly scored OV 6 at twenty-five points, as is required when “[t]he offender had unpremeditated intent to kill, the intent to do great bodily harm, or created a very high risk of death or great bodily harm knowing that death or great bodily harm was the probable result.” MCL 777.36(1)(b). According to defendant, MCL 777.36(2)(b), which requires that ten points be scored “if a killing is intentional within the

definition of second degree murder or voluntary manslaughter, but the death occurred in a combative situation or in response to victimization of the offender by the decedent,” is applicable in the present case.

Defendant argues that the evidence demonstrated that the death occurred in a combative situation because she had earlier been involved in combat with the victim. Although there was evidence that defendant and the victim had engaged in combat earlier on the day of the shooting, there is no evidence that “the death occurred in a combative situation or in response to victimization of the offender by the decedent.” MCL 777.36(2)(b). Rather, after their confrontations had ended, defendant and two others drove around looking for the victim, found her, and then the victim was shot. This situation did not represent a combative situation at the time the death occurred. Accordingly, the trial court properly scored OV 6 at twenty-five points.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White