

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

August 26, 2003

No. 238163

Wayne Circuit Court

LC No. 01-000249

Before: Hoekstra, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of two counts of first-degree murder, MCL 750.316, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to life imprisonment on each of the murder convictions, to be served consecutive to two years' imprisonment on the felony-firearm conviction. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant's convictions stem from the shooting deaths of the owner of a beauty supply store and an employee of the store. The storeowner, who had been shot twice in the back of the head and once in the face on his left eyebrow, was found on the floor behind the counter of the store. The employee, who had been shot once in the back of the head, was found on the floor in an aisle of the store.

At trial, the trial court admitted into evidence two statements that defendant had made regarding his role in the incident. First, defendant's friend testified that defendant told him that he entered the store to make a purchase and the owner confronted him, holding a gun on him. When the owner looked away, defendant shot him twice with his gun and then shot the other man once because the other man saw defendant's face. Also, defendant claimed to have taken the owner's gun with him when he left the store. Defendant made the second statement to a police officer, again admitting to the shootings. In this statement, defendant maintained that the owner confronted him with a gun because he saw defendant's gun and believed defendant was there to rob him. Defendant further told of shooting the two men and leaving with the owner's gun.

On appeal, defendant first argues that the circuit court lacked jurisdiction to try defendant, a juvenile, as an adult because proper procedures were not followed. Specifically,

defendant argues that upon discovering that defendant was sixteen-years-old at the time of the incident, the circuit court should have transferred the case to the family division pursuant to MCL 712A.3. However, in *People v Conat*, 238 Mich App 134; 605 NW2d 49 (1999), this Court explained:

The circuit court is given jurisdiction over juveniles at least fourteen years of age who commit any of the “specified juvenile violations,” so that it may hear the automatic waiver cases where the prosecutor charges the juvenile as an adult. MCL 600.606; MSA 27A.606. Correspondingly, the normally exclusive jurisdiction of the family court over juveniles is limited in cases where a juvenile at least fourteen years of age is charged with any of the “specified juvenile violations,” so that the family court only has jurisdiction if the prosecutor chooses to file a petition in the family court instead of authorizing a complaint and warrant to proceed against the juvenile as an adult. MCL 712A.2(a)(1); MSA 27.3178(598.2)(A)(1). The effect of these automatic waiver provisions is that the prosecutor has discretion whether to charge a juvenile at least fourteen years of age who commits specified serious felonies as an adult or as a juvenile. Under the automatic waiver provisions, no hearing is held to determine whether the juvenile should be tried as an adult. [*Id.* at 141-142.]

Murder is one of the specified violations enumerated in MCL 600.606(2), and thus the normally exclusive jurisdiction of the family court is subject to the discretionary decision of the prosecutor to choose whether to institute proceedings in the circuit court or the family court. Because the statutory scheme in Michigan vests the power to make this decision with the prosecutor as opposed to the court, we find that the requirements of MCL 712A.3 do not apply when the prosecutor elects to proceed with an automatic waiver.¹

Defendant next argues that the trial court erred in denying defendant’s motion to suppress the statement that he made to the police. Specifically, defendant asserts that the statement was not voluntary because he was held incommunicado, was under the influence of marijuana, was sixteen-years-old at the time, his relatives were not contacted, and he did not waive his right to a lawyer. 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 Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). “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 findings will not be reversed unless they are clearly erroneous.” *Id.*; see also *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

“A juvenile’s confession is admissible if, given the totality of the circumstances, the statement was voluntarily made.” *In re SLL*, 246 Mich App 204, 209; 631 NW2d 775 (2001).

¹ Defendant also raises issues regarding whether *Kent v United States*, 383 US 541; 86 S Ct 1045; 16 L Ed 2d 84 (1966), and MCR 6.931 require a finding that the circuit court lacked jurisdiction. Defendant acknowledges, however, that those issues were decided in *Conat*, *supra*. Not only is *Conat* binding precedent, MCR 7.215(I)(1), but unlike defendant we agree with the *Conat* Court’s analysis of the same issues raised by defendant in this appeal.

“The test of voluntariness is whether, considering the totality of all the surrounding circumstances, the confession is the product of an essentially free and unconstrained choice by its maker, or whether the accused’s will has been overborne and his capacity for self-determination critically impaired.” *Id.*, quoting *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997). In *Givans, supra*, this Court provided a list of factors to consider in determining whether a juvenile’s statement is voluntary:

The factors that must be considered in applying the totality of the circumstances test to determine the admissibility of a juvenile’s confession include (1) whether the requirements of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), have been met and the defendant clearly understands and waives those rights, (2) the degree of police compliance with MCL 764.27; MSA 28.886 and the juvenile court rules, (3) the presence of an adult parent, custodian, or guardian, (4) the juvenile defendant’s personal background, (5) the accused’s age, education, and intelligence level, (6) the extent of the defendant’s prior experience with the police, (7) the length of detention before the statement was made, (8) the repeated and prolonged nature of the questioning, and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. [*Id.* at 121.]

After reviewing the record, we are satisfied that defendant’s statement was voluntary. At the hearing on defendant’s motion to suppress his statement to the police, only the officer that took the statement and defendant testified. The only points of disagreement between their testimony concerned whether defendant told the officer that he had used marijuana shortly before his arrest and whether defendant requested to be allowed to make a phone call. Other than those points of disagreement, the testimony established that defendant was advised and understood his *Miranda*² rights and agreed to answer questions. Nothing elicited during the hearing established that defendant’s personal background or circumstances impaired his ability to make a voluntary statement, nor did defendant challenge police compliance with procedures for juveniles.³ Further, defendant was not held for a long time before being questioned, nor was he subjected to repeated or long questioning. On the issue of intoxication, the trial court found, and we agree, that despite defendant’s statement regarding use of marijuana, there was no indication that defendant was intoxicated at the time he was questioned. Regarding the claim that he was denied access to a phone so that he could call a relative, the trial court agreed with defendant that he asked to use the phone, but found that that fact alone does not support a finding that defendant’s statement was not voluntary. This finding is not clearly erroneous. In light of the record before us, we conclude that defendant’s statement to the police was voluntary.

Finally, defendant argues that the evidence is insufficient to support his convictions of first-degree murder because it failed to establish that the shootings were premeditated. We

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

³ Initially, defendant did raise an issue in this regard, but after reviewing *People v Brooks*, 184 Mich App 793; 459 NW2d 313 (1990), he withdrew his objection.

disagree. When reviewing the evidence presented at trial to determine if sufficient evidence was presented to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find the essential elements of the crime were proved beyond a reasonable doubt. *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998).

To obtain a conviction 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 Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002). Premeditation and deliberation may be inferred from the circumstances surrounding the incident and minimal circumstantial evidence is sufficient. *Id.*

In this case, defendant maintains that he shot the victims as a sudden response to being confronted with a gun in the hand of the storeowner, and thus the shootings could not have been premeditated. The flaw we find in defendant's argument is that it relies on an interpretation of the evidence that favors defendant, not the prosecution. Viewed in a light most favorable to the prosecution, the evidence established that defendant entered the store armed with a weapon that he used to execute the two unarmed store employees by shooting each in the back of the head. This evidence, if believed by the jury, is sufficient to establish the element of premeditation.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Brian K. Zahra