

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROY STANLEY SEGER,

Defendant-Appellant.

UNPUBLISHED

November 13, 2003

No. 240806

Jackson Circuit Court

LC No. 01-004447-FC

Before: O’Connell, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for home invasion first degree, MCL 750.110a(2), and felony murder, MCL 750.316(1)(b). We affirm. Defendant and his friend, Chad Van Wagoner, were convicted for beating a seventy-four-year-old man to death with a baseball bat during a robbery of the man’s apartment.

Defendant first argues that the trial court erred in denying his mid-trial motion to suppress evidence the police obtained after searching his temporary residence without the benefit of a search warrant or exigent circumstances. We disagree. We review for abuse of discretion a trial court’s decision to grant a suppression motion raised during trial. *People v Ferguson*, 376 Mich 90, 95; 135 NW2d 357 (1965).

A defendant must ordinarily raise motions to suppress before trial. *Id.* at 94-95. But if a defendant does not learn of the factual underpinnings of a constitutional challenge until trial, the defendant may move for a suspension of the trial proceedings and an immediate hearing on the motion to suppress. *Id.* at 95. Below, defense counsel claimed that he only became aware at trial of the officers’ alleged failure to announce themselves and their purpose before entering defendant’s temporary home and arresting him. While we acknowledge the prosecutor’s persuasive arguments that defendant had access to the relevant facts before trial, we will address the legal issues the trial court found determinative.

Defendant did not dispute that the officers refrained from thoroughly searching the house or his personal property until after they received oral and written consent from him and the house’s owner. When defendant moved to suppress at trial, the prosecutor had already admitted all the challenged evidence, except for defendant’s custodial confession. Because the physical evidence the officers found was negligibly incriminating, already admitted, and under color of

the oral and written consent of all relevant individuals, the trial court did not abuse its discretion when it denied defendant's motion to suppress this evidence.

Regarding defendant's incriminating statements, defendant had already moved to suppress them before trial, and the trial court had denied the motion, finding that defendant voluntarily made his incriminating statements. Because we find no error in the trial court's conclusion that the statements were voluntarily made, defendant had no legal basis to exclude the statements from trial irrespective of the circumstances surrounding his arrest. *People v Dowdy*, 211 Mich App 562, 569-570; 536 NW2d 794 (1995), adopting the rule applied in *New York v Harris*, 495 US 14, 17-18; 110 S Ct 1640; 109 L Ed 2d 13 (1990).

Testimony from the preliminary examination also reveals that the officers acted pursuant to a felony arrest warrant. Other testimony demonstrated that defendant had a questionable expectation of privacy in the house. Defendant attempted to prove his standing to raise a Fourth Amendment defense by introducing evidence that he was living at the home indefinitely. But the Fourth Amendment does not shield defendant from execution of an arrest warrant whether he is a third person who lacks standing to oppose the search's legality, *People v Wood*, 447 Mich 80, 89; 523 NW2d 477 (1994), or a temporary resident of the home. *People v Oliver*, 417 Mich 366, 375-376; 338 NW2d 167 (1983), citing *Payton v New York*, 445 US 573; 100 S Ct 1371; 63 L Ed 2d 639 (1980). Given the utter lack of legal support and questionable factual support for defendant's suppression motion, the trial court did not abuse its discretion by denying it.

Next, defendant argues that the trial court violated his constitutional right to confront his accusers when it applied MRE 804(b)(3) and admitted statements Van Wagoner made to his former girlfriend, Shawndra Harris and her mother, Sherry Thornsberry. We disagree. In *People v Poole*, 444 Mich 151, 165; 506 NW2d 505 (1993), our Supreme Court found that statements against penal interest are admissible and do not violate the Confrontation Clause if the declarant is unavailable as a witness and the statement bears adequate indicia of reliability. The Court listed the following factors for determining whether a statement inculcating another is reliable and should be admitted:

[W]hether the statement was (1) voluntarily given, (2) made contemporaneously with the events referenced, (3) made to family, friends, colleagues, or confederates – that is, to someone to whom the declarant would likely speak the truth, and (4) uttered spontaneously at the initiation of the declarant and without prompting or inquiry by the listener.

On the other hand, the presence of the following factors would favor a finding of inadmissibility: whether the statement (1) was made to law enforcement officers or at the prompting or inquiry of the listener, (2) minimizes the role or responsibility of the declarant or shifts blame to the accomplice, (3) was made to avenge the declarant or to curry favor, and (4) whether the declarant had a motive to lie or distort the truth. [*Id.*]

Van Wagoner called Harris just a couple of hours after the murder and told her he had done something horrible and really needed to speak with her about it. While he implicated defendant by stating that it was defendant's plan and defendant told him to hit the victim with the bat if he sat up, Van Wagoner fully inculcated himself by admitting that he did the hitting. Van

Wagoner's statements to Harris were voluntarily made soon after the murder, and Harris was an intimate friend of Van Wagoner. He uttered the confession spontaneously without any prompting or questioning. So under the *Poole* factors, Van Wagoner's statements to Harris were admissible.

Van Wagoner's statements to Thornsberry were also properly admitted. The day after the murder, with defendant waiting in the car, Van Wagoner went to Thornsberry's house and told her that he needed an alibi. After she asked him why and refused to give him an alibi unless he told her, he confessed to her that he killed a man by beating him with a bat during a robbery. While he again implicated defendant by telling Thornsberry that defendant handed him the bat and told him to hit the man if he sat up, he also took primary responsibility for the victim's death. Under the circumstances, these statements also meet *Poole's* reliability test, so the trial court properly admitted Van Wagoner's statements to Harris and Thornsberry.

Finally, defendant argues that the trial court erred in admitting defendant's own confession and statements to the police. We disagree. We review for clear error a trial court's factual findings following a suppression hearing, but review de novo constitutional questions that arise from the hearing. *People v Custer (On Remand)*, 248 Mich App 552, 558-559; 640 NW2d 576 (2001). Here, the police interrogations were neither excessively repeated nor prolonged and defendant initiated the final interview where he actually confessed. Though no one witnessed him sleep during the twelve custodial hours preceding his confession, defendant was not deprived of sleep or food and was not threatened, injured, intoxicated, drugged, or in ill health during his incarceration. Therefore, reviewing the totality of circumstances, the trial court did not clearly err when it determined that defendant voluntarily confessed his participation in the murder. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder