

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MILTON DOUGLAS RICKMAN,

Defendant-Appellant.

UNPUBLISHED

September 22, 2005

No. 253390

Wayne Circuit Court

LC No. 03-007184-01

Before: Fitzgerald, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

A jury convicted defendant of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, unlawfully driving away an automobile, MCL 750.413, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to prison terms of eighteen to twenty-eight years the armed robbery conviction, one to five years for the felon in possession of a firearm and the UDAA convictions, and two years for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first argues that his oral and written statements were not made voluntarily and therefore the trial court erred in denying his motion to suppress. This Court reviews for clear error findings of fact regarding a motion to suppress evidence; however, we review de novo the trial court's ultimate decision on a motion to suppress. *People v Fosnaugh*, 248 Mich App 444, 450; 639 NW2d 587 (2001).

The prosecution must prove by a preponderance of the evidence that a defendant's statement was made voluntarily. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). To determine the voluntariness of a statement, a court must consider the non-exclusive factors as identified in *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988):

In determining whether a statement is voluntary, the trial court should consider, among other things, the following factors: the 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.

Moreover, "[t]he 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." *Id.*

At the conclusion of the *Walker* hearing, the trial court ruled that defendant's statement to the police was voluntary and denied defendant's motion to suppress. The court found that defendant's demeanor and background indicated that defendant was a very knowledgeable person and understood what was happening in this case. The trial court cited defendant's educational background and his previous encounters with the criminal justice system as indicating his knowledge of the criminal process. The court noted that defendant's testimony lacked credibility.

The trial court is in "the best position to assess the crucial issue of credibility." *Akins, supra* at 566. Here, there was evidence that police initially had contact with defendant on June 1, 2003, at Detroit Receiving Hospital. Defendant was thirty-three years old and a high school graduate. Defendant was advised of his rights and made a verbal inculpatory statement. On June 2, 2003, Officer Davis spoke to defendant at the police station and read defendant his rights. Defendant then read his rights out loud to Officer Davis and explained to Officer Davis what it meant to him. Defendant signed and dated the advice of rights on June 2, 2003, at 11:00 a.m. Defendant did not ask for an attorney. Officer Davis did not threaten defendant nor did he promise defendant that things would be easier if he gave a statement. Defendant made no complaints to Officer Davis during the interview. After the interview was complete, defendant was given the opportunity to review the form where his interview was reduced to writing. Defendant initialed his answers and signed the form. The interview lasted forty-five to seventy-five minutes. Defendant did not appear to be under the influence of anything that would have changed his behavior. Given the totality of the circumstances, we conclude that no clear error existed in the trial court's ruling that defendant's statement was voluntary and admissible.

Defendant next argues that his detainment and arrest were illegal, thus making his statements the fruit of the poisonous tree. We disagree. Defendant did not raise this argument in his motion to suppress and, therefore, this argument is not preserved for appeal. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000); *People v Goold*, 241 Mich App 333, 340; 615 NW2d 794 (2000). Therefore, appellate relief is precluded absent a plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Probable cause to arrest exists when the facts and circumstances within the officer's knowledge are sufficient to warrant a reasonable person to believe that an offense has been or is being committed. *People v Dunbar*, 264 Mich App 240, 250; 690 NW2d 476 (2004). If a felony has been committed and there exists probable cause to believe that the defendant committed the felony, police may arrest an individual without a warrant. *Id.* "Probable cause is found when the facts and circumstances within an officer's knowledge are sufficient to warrant a reasonable person to believe that an offense had been or is being committed." *Id.*

At the hospital, defendant was read his rights and made a verbal inculpatory statement. He stated that he robbed a lady on June 1, 2003, took her purse, came back later, and took her car. At some point, defendant went to Chene and East Vernor where he was shot by someone in a burgundy or red Monte Carlo with a black ragtop and ran to Detroit Receiving Hospital. As determined previously, the verbal statement police obtained from defendant at the hospital was voluntary. Based upon this inculpatory statement, the police had probable cause to arrest defendant. *Dunbar, supra* at 250. An arrest warrant was issued on June 2, 2003. Defendant's detainment and arrest were not illegal.¹

An arrested person must be taken before a court for arraignment without unnecessary delay. MCR 6.104(A). A delay of more than forty-eight hours between arrest and arraignment is presumed to be unreasonable, and the prosecutor has the burden to demonstrate that extraordinary circumstances necessitated the delay in order to introduce evidence gained during that time. *Manning, supra* at 628. Defendant was arraigned on June 3, 2003, less than forty-eight hours after police first began to question him at the hospital on June 1, 2003, and less than twenty-four hours after he was arrested and taken to the police station on June 2, 2003. Contrary to defendant's suggestion, there was not an unreasonable delay in arraigning defendant.

Defendant next argues that the trial court abused its discretion by admitting other acts evidence because the probative value was outweighed by unfair prejudice. A trial court's decision to admit evidence pursuant to MRE 404(b) is reviewed for an abuse of discretion. *People v Starr*, 457 Mich 490, 495; 577 NW2d 673 (1998).

Use of bad acts as evidence of character is excluded, except as allowed by MRE 404(b), to avoid the danger of conviction based on a defendant's history of misconduct. *Starr, supra* at 495. To be admissible under MRE 404(b)(1), bad acts evidence must satisfy three requirements: (1) it must be offered for a proper purpose, (2) it must be relevant, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. The third requirement is at issue in this case.

The prosecutor introduced evidence that defendant sought out two sisters who were going into a multi-unit dwelling, approached them, and displayed a weapon. Defendant robbed one victim of her purse and later returned with the victim's car keys and took her vehicle. The trial court ruled that this evidence was admissible for the purpose of showing a common scheme or plan because the acts were so similar and distinctive to the acts in this case so as to link the acts together. The prior bad acts evidence had probative value that was not substantially outweighed by the danger of unfair prejudice.

¹ Defendant's argument that counsel was ineffective by failing to object to defendant's detainment and arrest is therefore without merit. *People v Hawkins*, 245 Mich App 439, 454-455; 628 NW2d 105 (2001).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jessica R. Cooper

/s/ Kirsten Frank Kelly