STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 20, 2006
v	No. 259584 Wayne Circuit Court
EDWARD TERRELL WALTON, Defendant-Appellant.	LC No. 04-005433-01

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of first-degree felony murder, MCL 750.316(1)(b), two counts of second-degree murder, MCL 750.317, two counts of assault with intent to commit murder, MCL 750.83, assault with intent to do great bodily harm less than murder, MCL 750.84, first-degree home invasion, MCL 750.110a(2), armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court vacated the second-degree murder convictions and sentenced defendant to concurrent terms of life imprisonment for the felony-murder convictions, 23 to 40 years each for the assault with intent to commit murder convictions, five to ten years for the assault with intent to do great bodily harm conviction, 10 to 20 years for the first-degree home invasion conviction, and 23 to 40 years for the armed robbery conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in denying his motion to suppress his police statement. Defendant maintains that suppression was required because he did not knowingly and voluntary waive his *Miranda*[1] rights and his confession was coerced. We disagree.

As the Court explained in *People v Sexton (After Remand)*, 461 Mich 746, 752-753; 609 NW2d 822 (2000):

> [The Court of Appeals] review of the issue of voluntariness must be independent of that of the trial court. However, we will affirm the trial court's decision unless we are left with a definite and firm conviction that a mistake has

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

been made. 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.

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.]

Two police officers testified that defendant was given a Constitutional Rights Certificate of Notification form, which he read and then initialed to indicate that he understood his rights. According to the officers, defendant was alert and coherent and did not appear to have trouble reading the form. The officers also indicated that defendant did not ask questions about his rights and appeared to understand the nature of the process. Defendant was nineteen years old and had completed most of his basic formal education. He had extensive prior contacts with the police as a juvenile. The officers testified that defendant never invoked any of his rights, but instead agreed to give a statement. The officers denied that any threatening conduct took place or that any promises were made to defendant. The evidence also showed that defendant was not subjected to an unduly lengthy detention, and was not deprived of food or water before giving a statement. The totality of the circumstances support the trial court's determination that defendant was advised of and understood his *Miranda* rights, and voluntarily waived those rights and gave a statement. *Sexton, supra*.

Defendant testified that he was groggy from sleep medication and that he initially refused to make a statement, but rather requested a lawyer. Although defendant indicated that he did not fully understand his rights and asserted that any statement was coerced by police promises and misconduct, the trial court found that defendant's testimony was not credible. Giving deference to the trial court's evaluation of the witnesses' credibility because of its superior opportunity to evaluate these matters, we affirm the trial court's decision denying defendant's motion to suppress. *Sexton, supra*.

Defendant also argues that the prosecutor's remarks during opening statement and closing argument denied him a fair trial. Because defendant did not object to the remarks in question, this issue is unpreserved and our review is limited to plain error affecting defendant's substantial rights. *People v Barber*, 255 Mich App 288, 296; 659 NW2d 674 (2003).

Defendant argues that it was improper for the prosecutor to repeatedly refer to the charged incident as an "execution," because the facts did not support this characterization of the event. He asserts that the remarks were appeals for sympathy that inflamed the jury. We disagree.

A prosecutor may not make statements that are not supported by the evidence. *People v Fisher*, 193 Mich App 284, 291; 483 NW2d 452 (1992). It is also improper for a prosecutor to intentionally inject inflammatory arguments with no apparent justification except to arouse prejudice, *People v Lee*, 212 Mich App 228, 247; 537 NW2d 233 (1995), or to appeal to the jury to sympathize with the victim, *People v Abraham*, 256 Mich App 265, 273; 662 NW2d 836 (2003). However, a prosecutor is free to argue the evidence and all reasonable inferences drawn therefrom as it relates to her theory of the case, and she is not required to state her arguments in the blandest possible terms. *People v Matuszak*, 263 Mich App 42, 53; 687 NW2d 342 (2004); *People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001). Here, the victims testified that three armed men entered the apartment, made the unarmed victims lie down on the floor, and then shot them. The prosecutor's characterization of the offense as an "execution" was clearly supported by the evidence, and it does not plainly appear that the prosecutor was making an improper appeal to sympathy or intentionally attempting to inflame the jury by her description of the incident.

We also reject defendant's claim that it was improper for the prosecutor to argue that defendant and his accomplices were armed because they intended to rob the victims, and that the group shot the victims because they did not want to leave any witnesses. The remarks were proper comments on the evidence and reasonable inferences drawn therefrom.

Finally, the prosecutor did not improperly vouch for defendant's guilt by stating, "I believe." The prosecutor prefaced her statement by explaining that she was merely making arguments about what she believed the trial evidence had shown. In this context, the prosecutor's statement was not improper. *People v Cowell*, 44 Mich App 623, 628; 205 NW2d 600 (1973).

Affirmed.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Karen M. Fort Hood