S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 12, 2005
v	No. 255125 Wayne Circuit Court
LARKETA COLLIER, Defendant-Appellant.	LC No. 03-011119

Before: O'Connell, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions for first-degree murder, MCL 750.316, and arson of a dwelling house, MCL 750.72. Defendant was sentenced to life in prison for her first-degree murder conviction and 4 to 20 years in prison for her arson conviction. We affirm.

This case arose when defendant, a sixteen-year-old, conspired with her companion, Sharon Patterson, to kill defendant's grandmother so that the two could meet at defendant's house without interruption. Defendant's mother had previously forbidden Patterson from coming over to the house when the mother was away. This restriction coincided with several incidents where defendant's mother was forced to ask Patterson to leave her home: once after she discovered Patterson hiding in defendant's bedroom in the middle of the night, and once when Patterson unresponsively and disrespectfully stared at her. Defendant's older sister testified that Patterson never spoke to her either, but "would like just stare you down."

On the day of the grandmother's murder, defendant skipped her afternoon classes, and she and Patterson went to defendant's house. Defendant's mother was at work, so the only adult at home was defendant's grandmother. Defendant sneaked Patterson into the basement. Defendant testified that, after greeting her grandmother, she joined Patterson in the basement, and the two began to "make out." Defendant's grandmother discovered them and scolded defendant for having Patterson over against her mother's will. A heated argument ensued between Patterson and defendant's grandmother, and, according to her trial testimony, defendant assured her grandmother that she would escort Patterson out of the house. Defendant's grandmother went back upstairs, but Patterson was still frustrated that the grandmother interrupted them. According to defendant, Patterson suggested that "we can just kill that bitch right now and we won't have any of these problems."

Here, defendant's trial testimony deviates substantially from the initial statements that she made to police on the night of the murder. The statements were transcribed and defendant signed each page, each substantive response, and separate responses acknowledging that she read the interview's transcript and that it was accurate. According to defendant's statements, which were read into the record, she did not want Patterson to leave the home, and the feeling was mutual. When Patterson mentioned that murdering the grandmother would eliminate the problem, defendant said, "You are right."

According to the statements:

> We started talking about what we would do to my grandmother.
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> Me and Sharon went upstairs, and we saw my grandmother. She was sitting in her chair in her bedroom.
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> We saw the hammer. It was on the counter outside the kitchen. The plan was that I was going to run into her bedroom and hit my grandmother with the hammer. And Sharon was going to choke her.
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> I went in my grandmother's room. I came out. I told Sharon I could not do it. Sharon said she would hit her, and for me to choke her. I went in the den and cut the radio on so no one could hear the noise. I went in the bedroom. Sharon hit my grandmother with the hammer. She kept on hitting her until part of the hammer got stuck in my grandmother's left eye.
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> After that I went in the basement and got the can of gas. Poured the gas in the room, and set the room on fire, and we left the house and went to the movies.

Defendant's statement also indicated that, "First it was Sharon's idea, but I went along with it."

Defendant's trial testimony painted a different picture. She testified that she initially did not take the suggestion of murder seriously and continued to hurry Patterson out of the house, but as they went upstairs, Patterson persisted, suggesting that they could strangle her. After noticing a hammer, Patterson suggested that she could use it to bludgeon the grandmother. Defendant testified that Patterson picked up the hammer and demonstrated how she could hit the grandmother with it. According to her testimony, defendant told Patterson to put the hammer down and continued to usher her toward the door. Defendant testified that Patterson suddenly remembered her book bag in the basement, so defendant went to retrieve it. According to her testimony, defendant returned to find Patterson hitting her grandmother with the hammer. Defendant testified that she tried to stop Patterson, but it was too late. In her testimony, defendant admitted pouring gasoline on and around her grandmother's body and setting the room on fire to protect Patterson. When firefighters arrived, they found the doors locked. After forcing entry, they found the grandmother's charred remains reclined in a chair and the claw end of the hammer still wedged in her face, piercing her upper lip and tongue.

Defendant argues that the trial court erred in allowing her statement to the police to be introduced as evidence, because it was not voluntarily given. We disagree. In this case, the trial

court held a *Walker*[1] hearing to determine whether defendant knowingly and intelligently waived her Fifth Amendment rights and voluntarily made her statements to police. We will not disturb the trial court's factual findings unless they are clearly erroneous. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000).

At the *Walker* hearing, the prosecution offered expert testimony that established that defendant was a person of average intelligence, literate, capable of understanding her rights, and aware of her right to counsel at the time she waived her rights. The officer who interviewed defendant testified that, in accordance with *Miranda v Arizona*, 384 US 436, 444-445; 86 S Ct 1602; 16 L Ed 2d 694 (1966), she advised defendant of her constitutional rights using a standard form. According to the officer, defendant read each right "out loud" before writing her initials next to each right and signing the form as evidence that defendant agreed to waive those rights. The officer testified that defendant did not appear tired, ask for an attorney, or attempt to remain silent. The officer also affirmatively stated that she used no trickery, force, or coercion to prod defendant into making her statement, but merely indicated, truthfully, that Patterson had implicated her in the crime. Other witness testimony established that defendant was in police custody for less than five hours when she gave her statement.

Although defendant offered competing testimony that defendant's statement was not knowingly, intelligently, and voluntarily given, the trial court was in "the best position" to determine credibility, and it found the officer's testimony credible. *People v Akins*, 259 Mich App 545, 566; 675 NW2d 863 (2003). We defer to those findings. The ultimate question of whether defendant's statement was voluntary is a question of law, *id.* at 563, and applying the *Cipriano*[2] factors to the trial court's factual findings, we agree with the trial court that defendant voluntarily provided her statement to police. Therefore, the trial court did not err when it allowed the prosecution to introduce the statement into evidence.

Defendant also argues that there was insufficient evidence to support her conviction for first-degree murder. We disagree. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508,

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[1] *People v Walker*, 374 Mich 331, 338-339; 132 NW2d 87 (1965).

[2] *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). The factors include:

> 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. [*Id*.]

515; 489 NW2d 748, amended 441 Mich 1201 (1992). Under this deferential standard of review, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

In this case, the prosecutor advanced an aiding and abetting theory. "One who procures, counsels, aids, or abets in the commission of an offense may be convicted and punished as if he committed the offense directly." *People v Norris*, 236 Mich App 411, 419; 600 NW2d 658 (1999). So, in this case, the prosecution provided sufficient evidence if it demonstrated that defendant counseled or aided Patterson in committing the "willful, deliberate, and premeditated killing" of defendant's grandmother. MCL 767.39; see also MCL 750.316(1)(a). Defendant's statements alone suggest that she at least encouraged Patterson by agreeing to choke her grandmother, and she assisted her by turning on the radio to mask her grandmother's struggle. Therefore, the prosecutor presented sufficient evidence that the killing was premeditated and deliberate and that defendant helped commit the murder knowing that Patterson intended to kill her grandmother. *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004).

Affirmed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Michael J. Talbot