

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN LESLIE MOORHOUSE,

Defendant-Appellant.

UNPUBLISHED

January 21, 1997

No. 177323

Lapeer Circuit Court

LC No. 93-004960-FH

Before: Holbrook, Jr., P.J., and White and S.J. Latreille,* JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), involving a seven-year old child. He was sentenced to serve two concurrent prison terms of eighteen months to fifteen years. We affirm.

Defendant first argues that the trial court erred in denying defendant's motion to suppress the inculpatory statements he made during police questioning where he was the focus of the police investigation and he was not informed of his *Miranda*¹ rights. We find no error. The triggering mechanism for the duty to furnish *Miranda* warnings is custody, not focus. *People v Hill*, 429 Mich 382; 415 NW2d 193 (1987). The duty to give *Miranda* warnings attaches when a defendant is in custody or otherwise deprived of freedom of action in any significant way. The obligation does not extend to general investigative questioning as to facts surrounding the crime. *People v Mayes*, 202 Mich App 181; 508 NW2d 161 (1993). Here, Trooper Bohnett had asked defendant for an interview by telephone at his convenience, but defendant volunteered to go to the state police post for the interview. The officer characterized the interview as a conversation in which he only asked for defendant's comments on the victim's allegations. The interview lasted less than one hour and at no time was defendant placed under arrest. The nature of the interview was neither "police-dominated" nor coercive. See *Berkemer v McCarty*, 468 US 420, 438, n 27; 104 S Ct 3138; 82 L Ed 2d 317 (1984). Thus,

* Circuit judge, sitting on the Court of Appeals by assignment.

we find, after conducting an independent review of the record, that defendant was not under custodial interrogation at the time he made his inculpatory statements and, therefore, *Miranda* warnings were not required to be given. Consequently, Trooper Bohnett's testimony regarding defendant's inculpatory statements was properly admitted at trial. See also MRE 801(d)(2)(A).

Defendant also claims that his confession should not have been admitted because it was not a recorded confession, but rather one that the officer testified to from memory and which was therefore too unreliable to place before a jury. We find this argument to be wholly without merit. See *People v Smith*, 120 Mich App 429; 327 NW2d 499 (1982).

Defendant next argues that the trial court abused its discretion in allowing the complainant's mother to testify, in violation of MRE 803A, regarding the complainant's statement to her about being molested by defendant. We disagree. First, we note that complainant's mother did not testify regarding the substance of complainant's statement to her. Thus, it is arguable whether MRE 803A is applicable to these facts. To the extent that the substance of complainant's statement to her mother was alluded to by the manner in which the prosecutor posed his questions to the witness, we decline to address this issue because no specific objection was raised at trial and manifest injustice will not result by our refusal to review the issue. See *People v Johnson*, 205 Mich App 144; 517 NW2d 273 (1994). Likewise, because no objection was made at trial to Trooper Bohnett's testimony regarding his understanding of the accusations against defendant after interviewing the complainant, appellate review of this issue is also precluded.

Defendant's final argument is that trial counsel rendered ineffective assistance by failing to object to the alleged evidentiary errors outlined above, failing to object to the introduction of defendant's confession, and by not having defendant testify in his own behalf. To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below the professional norm, and that but for counsel's performance a reasonable probability existed that the outcome of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). We find no merit to defendant's allegations. First, the cited testimony was unobjectionable. Second, counsel did in fact move to suppress defendant's confession and a *Walker*² hearing was held on the issue. Third, the decision whether a criminal defendant will testify in his own behalf is strictly a matter of trial strategy, which this Court will not second-guess. See *People v Tommolino*, 187 Mich App 14; 466 NW2d 315 (1991). Accordingly, defendant has failed to meet his initial burden of showing that trial counsel's performance was deficient.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Stanley J. Latreille

¹ *Miranda v Arizona*, 484 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

² *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).