

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK BERNARD OLIVER,

Defendant-Appellant.

UNPUBLISHED

May 16, 1997

No. 178629

Saginaw Circuit Court

93-8306-FH

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

Defendant appeals his jury conviction of breaking and entering a place of business with intent to commit larceny, enhanced by a guilty plea to being a fourth offender, as of right. Defendant challenges denial, after evidentiary hearing, of his motion to suppress incriminating statements he made to police officers and the proportionality of his sentence.

Appellate review after a *Walker* hearing requires evaluation of the totality of the circumstances to determine if the challenged statement was freely and voluntarily made. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). Review of the trial court's findings of historical fact is for clear error, *People v Nelson*, 443 Mich 626, 631 n 7; 505 NW2d 266 (1993); that for any issue of law, or mixed question of law and fact, is *de novo*. *Thompson v Keohane*, 516 US ____; 116 S Ct ____; 133 L Ed 2d 383 (1995).

Here, the trial court's only resolution of a disputed historical facts was to express doubt as to the credibility of defendant's claim that he was so intoxicated as to be suffering from blackouts. Not only did the officer who obtained the statement testify that defendant did not appear to be intoxicated at all, none of the attending medical personnel protested that defendant's observed medical condition demanded immediate attention when the officer asked to be left briefly alone with defendant. Moreover, by defendant's own statement, hospital personnel thought him sufficiently *compos mentis* to provide informed consent for medical treatment and to supply medical insurance and biographical data, both in response to oral questions and by filling out written forms. Similarly, hospital personnel did not

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

consider defendant's injury warranted pain medication until after applying stitches, even though at least a preliminary medical evaluation of the injury had been made by virtue of the fact that, when Officer Peters arrived, clean gauze was observed applied to the wound.

In light of all the other relevant factors, including defendant's previous experience with police as a fourth offender, the brief nature of the questioning, the brief detention before defendant gave the statement in question, the advice to defendant of his constitutional rights and his waiver thereof, the lack of delay in bringing defendant before a magistrate, the fact that defendant was not deprived of food, sleep or medical attention, and the lack of physical abuse or threat of such abuse, this Court concludes that the trial court's findings of historical fact are not clearly erroneous and that defendant's statement was voluntary. Accordingly, there was no error in admission of the statement at trial.

Defendant's 7 to 15 year sentence as a fourth offender does not represent an abuse of the trial court's sentencing discretion. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995); *People v Gatewood (On Remand)*, 216 Mich App 559; 550 NW2d 265 (1996).

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot