

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LYNN BOYD,

Defendant-Appellant.

UNPUBLISHED

March 27, 1998

No. 193890

Oakland Circuit Court

LC No. 95-137252 FC

Before: Michael J. Kelly, P.J., and Cavanagh and N. J. Lambros*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, and was subsequently sentenced to life imprisonment. Defendant now appeals as of right. We affirm.

On appeal, defendant first argues that the waiver of her *Miranda*¹ rights was neither voluntary nor knowing and intelligent, and therefore, the admission of her confession into evidence was a violation of her constitutional right against self-incrimination. We disagree.

This Court reviews a trial court's determination of voluntariness and the decision to admit a defendant's confession by examining the entire *Walker*² hearing record and making an independent determination as to the admissibility of the evidence. However, this Court should not disturb the lower court's factual findings regarding the validity of the waiver of *Miranda* rights unless that ruling is found to be clearly erroneous. *People v Cheatham*, 453 Mich 1, 29-30; 551 NW2d 355 (1996). Where a defendant challenges the admissibility of a confession on the grounds that her *Miranda* rights had not been validly waived, the court must consider the totality of circumstances surrounding the interrogation. *Cheatham*, *supra* at 27. A voluntary relinquishment of her rights means that the decision must be the "product of a free and deliberate choice rather than intimidation, coercion, or deception." *People v Garwood*, 205 Mich App 553, 556; 517 NW2d 843 (1994), quoting *Colorado v Spring*, 479 US 564; 107 S Ct 851; 93 L Ed 2d 954 (1987). An intelligent waiver is established when the evidence

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

indicates that the accused understood she did not have to speak, had the right to presence of counsel and that the state could use what she said in a later trial against her. *Cheatham, supra* at 29.

After a thorough review of the record made during the *Walker* hearing, we are persuaded that defendant was properly informed of her *Miranda* warnings and that she knowingly and voluntarily waived those rights and made a statement to the police. The record refutes defendant's argument that defendant's statement was the product of police coercion. Defendant contacted the police and asked to be brought into the station so that she could confess to the murder. In addition, defendant testified at the *Walker* hearing that she wanted to turn herself in and tell her story because she was feeling remorseful. She stated that the officers did not force or coerce her to make the statement, but rather that she made that statement because she wanted to do so. The absence of police coercion precludes finding that the waiver of *Miranda* rights was involuntary. *Garwood, supra* at 555.

The record also indicates that the voluntary waiver was knowing and intelligent. The tape-recording of defendant's statement includes the officers reading defendant her *Miranda* rights verbatim from the advice of rights form. Defendant indicated that she understood her rights, but, nevertheless wanted to speak to the officers. Although defendant contends that she was impaired by having taken too many Xanax pills, her statement suggests that she was able to comprehend her rights and validly waive them. Defendant spoke about the attorney that she had retained and explained to the officers that before she turned herself in, she had asked her son to contact the attorney the following day. At the *Walker* hearing, she agreed with the prosecutor that she did not want her attorney present when she gave her statement because she wanted to "come clean." She also understood the implications of her confession, stating that she knew she was going to prison. Considering the totality of the circumstances, we agree with the trial court that defendant's waiver of her *Miranda* rights was voluntary, knowing and intelligent.

Defendant next argues that she was deprived of a fair trial when the trial court refused to instruct the jury on the lesser offense of accessory after the fact. Accessory after the fact is not a cognate lesser offense of murder. *People v Perry*, 218 Mich App 520, 532; 554 NW2d 362 (1996). It is a separate and distinct offense that can occur only after the substantive crime has been committed. *People v Bargy*, 71 Mich App 609, 614-615 n 5, 61-617; 248 NW2d 636 (1976). Therefore, the court did not err by refusing to give the requested instruction.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros

¹ *Miranda v Arizona*, 384 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).