STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNATHAN OWENS,

Defendant-Appellant.

UNPUBLISHED
April 3, 1998

No. 200606
Recorder's Court
LC No. 96-003453

Before: Holbrook, Jr., P.J., and White and J.W. Fitzgerald*, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 25.549, first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He appeals as of right and we affirm.

Defendant argues that the trial court erred in denying his motion to suppress his statement to police, which defendant contends was involuntary because the investigating police officer informed him that he could not obtain counsel until he was bound over. Defendant also argues that the statement was taken in violation of his right to counsel. We find no merit to these claims.

Whether a suspect's inculpatory statement was given voluntarily is determined by viewing the totality of the circumstances. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988); *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997). In reviewing a trial court's determination on this issue, we examine the record and make an independent determination, *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992), while giving deference to the trial court's findings of historical fact, absent clear error, *People v Cheatham*, 453 Mich 1, 29-30 (Boyle, J), 44 (Weaver, J); 551 NW2d 355 (1996).

At the *Walker*[1] hearing, defendant testified that he read and signed the constitutional rights form which informed him that he had the right to an attorney before he made a statement. The investigating

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* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

officer disputed defendant's testimony that he had requested an attorney as he was reading the waiver form. The court chose to accept the testimony of the officer. Thus, there was no evidence of police coercion. *Peerenboom, supra*; *People v McElhaney*, 215 Mich App 269, 277; 545 NW2d 18 (1996). Further, defendant had two years of college education and previous experience with the criminal justice system. No evidence was presented that he was under the influence of drugs or alcohol, or that he had been deprived of food, sleep, or medical attention. Accordingly, under the totality of the circumstances, defendant's motion to suppress was properly denied because his right to counsel was not violated and his statement was voluntary.

We decline to review defendant's claim that the trial court improperly scored his sentencing guidelines because it does not present an appealable claim of legal error. *People v Raby*, 456 Mich 487; 572 NW2d 644 (1998); *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ John W. Fitzgerald

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