STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KARLE A. HARPER,

Defendant-Appellant.

UNPUBLISHED
December 1, 1998

No. 203810
Recorder's Court
LC No. 95-013734

Before: Talbot, P.J., and McDonald and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3), and armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced to ten to fifteen years' imprisonment for the second-degree criminal sexual conduct conviction and to ten to twenty years' imprisonment for the armed robbery conviction. We affirm.

On appeal, defendant first argues that prosecutorial comments regarding his failure to give police a full explanation of his whereabouts on the day of the crime improperly infringed upon his constitutional right to remain silent. Defendant did not object at trial to the comments he now claims unfairly prejudiced his case. Therefore, his claim of error is forfeited and we will only review this issue if the alleged error could have been decisive to the outcome of the case. *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994); see also *People v Davis*, 191 Mich App 29, 30; 477 NW2d 438 (1992).

As noted above, this was a bench trial. In the absence of proof to the contrary, trial judges are presumed to know and follow the law. See *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988); *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971). Here, if the prosecutor's comments were in fact improper, there was no indication (1) that the trial court was unaware of their impropriety or (2) that the trial court even considered the comments in reaching its decision. To the contrary, the trial court's findings of fact show that it reached its verdict on the basis of the victim's compelling testimony identifying defendant as the perpetrator. Accordingly, we will not

review this issue because the error, if any, could not have been decisive to the outcome. *Grant*, *supra* at 547.

Defendant next argues that the trial court erred in failing to suppress evidence of a statement made to Detroit Police Officer John Jenkins in the absence of *Mirnada*[1] warnings. We disagree. A trial court's decision whether to suppress evidence is entitled to deference and is not to be disturbed on appeal unless clearly erroneous. *People v Faucett*, 442 Mich 153, 170; 499 NW2d 764 (1993).

It is axiomatic that *Miranda* warnings need only be given in situations involving a custodial interrogation. *People v Robert Anderson*, 209 Mich App 527, 532; 531 NW2d 780 (1995). The term "custodial interrogation" means "'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" *People v Hill*, 429 Mich 382, 387; 415 NW2d 193 (1987), quoting *Miranda*, *supra* at 444. The Fifth Amendment does not bar the admission of volunteered statements of any kind. *Robert Anderson*, *supra* at 532. In this case, the voir dire examination of Officer Jenkins revealed that defendant's statement was volunteered and not prompted by a question from Jenkins. Accordingly, *Miranda* warnings were not necessary and defendant's Fifth Amendment rights were not violated. Moreover, although defendant does not specifically rely on the Sixth Amendment on appeal, we note that a defendant's Sixth Amendment right to counsel is not violated when, as in this case, the post-arraignment communications at issue are initiated by the accused. See *People v James Anderson (After Remand)*, 446 Mich 392, 402-403; 521 NW2d 538 (1994). For these reasons, we hold that the trial court did not clearly err in refusing to suppress evidence of defendant's statement to Jenkins.

Finally, defendant argues that the trial court's findings of fact with respect to the timing of the events on the day of the crime were clearly erroneous. We disagree. A trial court's findings of fact may not be set aside unless clearly erroneous. MCR 2.613(C). A finding is clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). Here, the trial court's finding that the defendant came to the victim's place of employment to inquire about an apartment "at about 11:30 A.M." was supported by the victim's testimony that defendant arrived around 11:30 a.m. or 12:30 p.m. Accordingly, we are not left with a definite and firm conviction that a mistake was made. See *id.* at 46. Moreover, it appears from the record that the trial court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). Therefore, defendant is not entitled to relief on this issue.

Affirmed.

/s/ Michael J. Talbot
/s/ Gary R. McDonald
/s/ Janet T. Neff

[1] See *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).