

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY D'MARCO HUDGINS,

Defendant-Appellant.

UNPUBLISHED

June 18, 1999

No. 203798

Recorder's Court

LC No. 94-003618

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to twenty to thirty years' imprisonment for the second-degree murder conviction, ten to twenty years' imprisonment for the armed robbery conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by denying his motion to suppress the statement he made to the police. He claims that the statement was involuntary and that the police failed to comply with the statutory requirements of notifying and transporting defendant to the juvenile division of the probate court upon his arrest. We disagree. Findings of fact by a trial court following a suppression hearing will not be disturbed on appeal unless the findings are clearly erroneous. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Whether a juvenile's confession is admissible depends upon "whether, under the totality of the circumstances, the statement was voluntarily made." *Id.* at 120. "The test of voluntariness is whether, considering the totality of all the surrounding circumstances, the confession is the product of an essentially free and unconstrained choice by its maker, or whether the accused's will has been overborne and his capacity for self-determination critically impaired." *Id.* at 121.

The factors that must be considered in applying the totality of the circumstances test to determine the admissibility of a juvenile's confession include (1) whether the

requirements of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), have been met and the defendant clearly understands and waives those rights, (2) the degree of police compliance with MCL 764.27; MSA 28.886 and the juvenile court rules, (3) the presence of an adult parent, custodian, or guardian, (4) the juvenile defendant's personal background, (5) the accused's age, education, and intelligence level, (6) the extent of the defendant's prior experience with the police, (7) the length of detention before the statement was made, (8) the repeated and prolonged nature of the questioning, and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. [*Id.*]

Evidence was presented at the *Walker*¹ hearing that defendant had been read his rights at the time of his arrest and again prior to being interviewed. The doctor who interviewed defendant, pursuant to a court order, to determine if defendant was competent to waive his rights testified that defendant could read and understand his constitutional rights and “did have the ability to waive his Rights if he so chose to.” Defendant’s mother was not present during the questioning; however, the prosecution presented evidence that defendant’s mother was informed that defendant was being arrested and that he would be held at the police station. Defendant was sixteen at the time of his arrest. This was not defendant’s first contact with the criminal justice system. Evidence was presented that defendant was questioned for approximately one to two hours and, although he was not given anything to eat, he was given something to drink. Finally, evidence was presented that defendant was not threatened or promised anything in exchange for his statement.

Although the police did fail to take defendant immediately before the juvenile court upon his arrest, as required by MCL 764.27; MSA 28.886, “[f]ailure to take a juvenile defendant immediately before the juvenile division of the probate court does not per se require suppression of a statement made by the defendant during the period of delay.” *People v Rode*, 196 Mich App 58, 69; 492 NW2d 483 (1992), rev’d on other grounds sub nom *People v Hana*, 447 Mich 325; 524 NW2d 682 (1994). Considering the totality of the circumstances, the trial court did not clearly err in finding that defendant’s statement was voluntarily made. Hence, the trial court properly denied defendant’s motion to suppress.

Defendant next argues that the trial court committed reversible error in sentencing him as an adult instead of as a juvenile. We disagree. This Court reviews the trial court’s factual findings supporting its determination regarding each factor enumerated in MCL 769.1(3); MSA 28.1072(3), under the clearly erroneous standard. *People v Lyons*, 203 Mich App 465, 468; 513 NW2d 170 (1994). The decision whether to sentence a minor as a juvenile or as an adult is reviewed for an abuse of discretion to determine whether the sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.*

Defendant argues that the trial court failed to make specific findings of fact on the relevant criteria before deciding to sentence him as an adult. Pursuant to MCR 6.931(E) and MCL 769.1(3); MSA 28.1072(3), a trial court at a juvenile sentencing hearing must make specific findings of fact on the following criteria:

(a) The prior record and character of the juvenile, his or her physical and mental maturity, and his or her pattern of living.

(b) The seriousness and the circumstances of the offense.

(c) Whether the offense is part of a repetitive pattern of offenses which would lead to 1 of the following determinations:

(i) The juvenile is not amenable to treatment.

(ii) That despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to disrupt the rehabilitation of other juveniles in the treatment program.

(d) Whether, despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to render the juvenile dangerous to the public if released at the age of 21.

(e) Whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.

(f) What is in the best interests of the public welfare and the protection of the public security. [MCL 769.1(3); MSA 28.1072(3).]²

The trial court considered all of the factors set forth above before sentencing defendant as an adult. To the extent defendant argues to the contrary, he is incorrect. The trial court's findings of fact were specific and complied with the statute. Moreover, they were not clearly erroneous.

Additionally, the trial court did not abuse its discretion in deciding to sentence defendant as an adult. Defendant had a prior juvenile record for aggravated assault. When defendant committed the instant offense, he was an escapee from a juvenile detention center. This crime was reprehensible. Defendant and two of his friends decided to rob a man. While the victim was lying face down on the ground, defendant shot him in the back of the neck. Further, the presentence investigation report, the Recorder's Court Psychiatric Clinic report, the Department of Social Services report, and a report by another doctor from Clark & Associates Psychological Services all recommended that defendant be sentenced as an adult.

Affirmed.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff

¹ *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).

² Although MCL 769.1(3); MSA 28.1072 has been substantially revised, this is the version of subsection 3 in effect when the instant offense was committed.