STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHYTOUR TONRAY WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
December 7, 1999

No. 208222
Saginaw Circuit Court
LC No. 97-013452 FJ

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316; MSA 28.548, carjacking, MCL 750.529a; MSA 28.797(a), conspiracy, MCL 750.157a; MSA 28.354(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to mandatory life imprisonment for the first-degree murder conviction and paroleable life terms for the carjacking and conspiracy convictions, to be served concurrently, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

This case arises from the abduction, assault and death of Karen King.

Defendant first contends that the trial court erred in admitting his taped statement to the police. In reviewing a trial court's determination of the voluntariness issue, this Court must examine the entire record and make an independent determination. *People v Gould,* 225 Mich App 79, 88; 570 NW2d 140 (1997). The trial court's findings of fact will not be disturbed unless they are clearly erroneous. *People v LoCicero (After Remand),* 453 Mich 496, 500; 556 NW2d 498 (1996). A finding is clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Givans,* 227 Mich App 113, 119; 575 NW2d 84 (1997). However, appellate courts will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The admissibility of a juvenile's statement depends upon whether, under the totality of the circumstances, the statement was voluntarily made. *Givans, supra* at 120. The test of voluntariness is

whether, considering the totality of the circumstances, the confession was the product of an essentially free and unconstrained choice or whether the defendant's will was overborne and his capacity for self-determination was critically impaired. *Id.* at 121.

The factors to be considered in determining 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), were met and whether the defendant clearly understood and waived those rights, (2) the degree of police compliance with MCL 764.27; MSA 28.866 and the juvenile court rules, (3) the presence of an adult parent, custodian or guardian, (4) the defendant's personal background, (5) the defendant's age, educational and intelligence level, (6) the extent of his 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 defendant was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep or medical attention. *Givans, supra* at 121; *People v Good,* 186 Mich App 180, 189; 463 NW2d 213 (1990). Other relevant factors include whether the statement was induced by a promise of leniency or by threats. *Givans, supra* at 120, 123.

The record indicates that defendant was advised of his constitutional rights prior to custodial interrogation, i.e., "questioning and any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from" a person in custody. *People v Anderson,* 209 Mich App 527, 532-533; 531 NW2d 780 (1995). Defendant, who was fifteen and had last attended ninth grade, could read and write. His *Miranda* rights were read to him while he followed along. He asked the police to explain his right to counsel and they did. He then indicated that he understood his rights and agreed to waive them. The trial court rejected defendant's claim that he was unable to understand his rights due to the use of marijuana and that finding, which is supported by the record, is not clearly erroneous. The police were not required to take defendant before a probate court because the charges fell under the automatic waiver statute, MCL 600.606; MSA 27A.606. *People v Spearman,* 195 Mich App 434, 445; 491 NW2d 606 (1992), rev'd in part on other grounds sub nom *People v Rush,* 443 Mich 870; 504 NW2d 185 (1993), overruled in part on other grounds by *People v Veling,* 443 Mich 23; 504 NW2d 456 (1993). However, that does not eliminate the defendant's right to have a parent present if desired, that being a separate factor, and thus the trial court erred in ruling otherwise. Nonetheless, the absence of a juvenile defendant's parent does not automatically render the defendant's confession involuntary because voluntariness depends upon the totality of the circumstances. *People v Inman,* 54 Mich App 5, 9-10; 220 NW2d 165 (1974). The trial court found that defendant had not requested the presence of his parents or a lawyer and that finding is supported by the record and, therefore, not clearly erroneous. Defendant was only questioned once and the entire process, from arrival at the police station to completion of the statement, took only two and a half hours. There was no evidence that defendant was not in good health and he admitted that he was not mistreated. In light of the trial court's factual findings, we independently conclude that defendant's confession was voluntary.

Defendant next contends that his statement to a juvenile detention youth specialist was inadmissible because he was not first advised of his *Miranda* rights. "[C]onstitutional protections apply only to government action. Thus, a person who is not a police officer and is not acting in concert with

or at the request of the police is not required to give *Miranda* warnings before eliciting a statement." *Anderson, supra* at 533 (citations omitted). Because the youth specialist did not wear a uniform or carry a gun or a badge and was not working at the request of or with the police, he was not required to give defendant *Miranda* warnings. *Id.* at 534.

Defendant next asserts that the trial court improperly allowed a third person to testify to certain statements that codefendant August Williams made about the crime after it was committed. Defendant failed to preserve this issue with a timely objection at trial. MRE 103(a)(1). We find that manifest injustice would not result from our failure to review the issue, MCL 769.26; MSA 28.1096, because any error was harmless, the testimony being cumulative of other properly admitted evidence. *People v Crawford*, 187 Mich App 344, 353; 467 NW2d 818 (1991).

Defendant also contends that an officer's testimony that co-defendant August Williams had implicated defendant in a taped statement, violated his right of confrontation under *Bruton v United States*, 391 US 123; 88 S Ct 1620; 20 L Ed 2d 476 (1968). Because defendant and Williams were not tried together, Williams' statement was not admitted into evidence, and the jury was not even advised that Williams had actually implicated defendant in the crimes, we find defendant's contention to be without merit. *People v Frazier (After Remand)*, 446 Mich 539, 546; 521 NW2d 291 (1994) (Brickley, J.); *People v Banks*, 438 Mich 408, 415; 475 NW2d 769 (1991).

Defendant next argues that the trial court erred in admitting autopsy photographs at trial because they were gruesome and cumulative of other evidence. After viewing the photographs at issue, we determine that they are not gruesome. They objectively show the victim's wounds. Even if the photographs are gruesome, however, that alone does not render them inadmissible. *People v Mills*, 450 Mich 61, 76; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). The photographs were relevant to prove "intent because they illustrated the nature and extent of the injuries." *Id.* at 71. They were also admissible to corroborate the medical examiner's testimony. *Id.* at 76. Relevant photographs are not rendered inadmissible "simply because a witness can orally testify about the information contained in the photographs," *id.*, or because the "defendant did not contest the nature of the fatal wounds or the physical circumstances of the [killing]." *People v Schmitz*, 231 Mich App 521, 534; 586 NW2d 766 (1998). Thus, defendant has not demonstrated that the trial court abused its discretion in admitting the photographs. *People v Flowers*, 222 Mich App 732, 736; 565 NW2d 12 (1997).

Defendant next assigns error to the trial court's denial of his motion to dismiss the jury venire after one potential juror, who was ultimately excused, inadvertently disclosed that defendant had been in jail pending trial. Considering that defendant has failed to show that he was actually prejudiced by the remark, and the fact that he failed to request a cautionary instruction which could have cured any impropriety, we find that reversal is not required. *People v Cleveland Wells*, 103 Mich App 455, 460-461; 303 NW2d 226 (1981); *People v Carroll*, 49 Mich App 44, 49; 211 NW2d 233 (1973), aff'd 396 Mich 408; 240 NW2d 722 (1976).

Defendant lastly contends that the circuit court lacked jurisdiction over the felony-firearm charge because that offense is not an enumerated felony in the automatic waiver statute. We disagree. The

Supreme Court rejected this argument in *Veling*, *supra* at 42-43. More significantly, an amendment to the automatic waiver statute, which became effective before the charged crimes were committed, expressly provides that a circuit court has jurisdiction over nonenumerated offenses committed during the same transaction giving rise to any enumerated offenses with which a defendant is charged. MCL 600.606(2)(i); MSA 27A.606(2)(i). Thus, there is no merit to defendant's argument.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Michael R. Smolenski
/s/ Jeffrey G. Collins