

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLENN JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

January 4, 2000

No. 208813

Wayne Circuit Court

Criminal Division

LC No. 97-001701

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316; MSA 28.548, four counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of mandatory life imprisonment for the first-degree murder conviction, five to ten years each for the assault with intent to murder convictions, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from a shooting incident in which defendant and two codefendants fired at five people in a car in front of a fast food restaurant in Detroit, killing one and injuring the others.

Defendant argues on appeal that the trial court erred in finding that his custodial statement to police was voluntarily made. We disagree. Whether defendant's statement was voluntary is a question of law which the court must determine under the totality of the circumstances. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966); *People v Cheatham*, 453 Mich 1, 27; 551 NW2d 355 (1996); *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). In reviewing a trial court's determination of voluntariness, this Court examines the entire record and makes an independent determination of voluntariness. *Id.* However, deference is given to the trial court's findings of fact, given the court's superior ability to view the evidence, and, therefore, this Court will not reverse the trial court's findings unless they are clearly erroneous. *Id.*; *People v Mack*, 190 Mich App 7, 17; 475 NW2d 830 (1991).

In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), the Supreme Court set forth the following factors that a trial court should consider in determining whether a statement is voluntary:

[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. . . .

The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made.

A defendant's inculpatory statement is not inadmissible per se if induced by a promise of leniency. Rather, a promise of leniency is merely one factor to be considered in the evaluation of the voluntariness of a defendant's statement. *People v Givans*, 227 Mich App 113, 120; 575 NW2d 84 (1997).

After conducting a four-day evidentiary hearing pursuant to *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965), the trial court, observing that the case hinged on the "credibility of the witnesses," rejected defendant's contention that his statement was not voluntary. Affording deference to the trial court's assessment of credibility, we likewise conclude that defendant's statement was voluntary. *People v Joyner*, 93 Mich App 554, 558; 287 NW2d 286 (1979). We note that defendant's argument that his confession was involuntary due to physical coercion is not properly before us, given that defense counsel conceded at the *Walker* hearing that defendant's custodial statement did not result from physical intimidation. *People v Stanaway*, 446 Mich 643, 694; 521 NW2d 557 (1994); *People v Griffin*, 235 Mich App 27, 45-46; 597 NW2d 176 (1999).

Defendant also claims that the trial court abused its discretion in admitting under MRE 804(b)(3) hearsay statements made by codefendant Fowlkes to prosecution witness Rimson, and that the admission of these hearsay statements also violated his Sixth Amendment right of

confrontation. We disagree. The record indicates that the challenged statements made by Fowlkes to Rimson did not reference defendant. Because the statements did not implicate defendant, they did not run afoul of *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993).

Affirmed.

/s/ Roman S. Gibbs

/s/ William B. Murphy

/s/ Richard Allen Griffin