

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHELLE A. OLIVERIO,

Defendant-Appellant.

UNPUBLISHED
December 5, 2000

No. 212986
Oakland Circuit Court
LC No. 97-156800-FH

Before: Wilder, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of fourth-degree criminal sexual conduct, MCL 750.520e(1)(a); MSA 28.788(5)(1)(a).¹ The trial court sentenced defendant to five years' probation with the first year to be served in the Oakland County Jail. Defendant's jail term was to be suspended to allow her participation in electronic monitoring. Defendant now appeals as of right. We affirm.

The only issue on appeal is whether the trial court erred in failing to suppress defendant's confession. Defendant argues her confession was not voluntary because of the coercive techniques used by the interrogating officer. We disagree.

The use of an involuntary statement in a criminal trial violates due process. *People v Cipriano*, 431 Mich 315, 331; 429 NW2d 781 (1988). The burden is on the prosecutor to prove voluntariness by a preponderance of the evidence. *People v DeLisle*, 183 Mich App 713, 719; 455 NW2d 401 (1990). 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 the accused's capacity for self-determination critically impaired. *Cipriano, supra* at 333-334; *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997). In determining whether a statement was voluntarily made, the trial court should consider the following factors:

¹ Defendant was acquitted of third-degree criminal sexual conduct, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a).

. . . the 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 accused was threatened with abuse. [*Cipriano, supra* at 334.]

The factors must be considered in totality and the absence or presence of any one factor is not necessarily conclusive on voluntariness. *Id.*

This Court must examine the entire record and make an independent determination of voluntariness. *People v Sexton*, 458 Mich 43, 68; 580 NW2d 404 (1998). However, the decision of the trial court will not be disturbed unless clearly erroneous. *Id.*

The trial court, considering the *Cipriano* factors in totality, determined, and the evidence supports the finding, that defendant's statement was made voluntarily. It should be noted that defendant does not argue on appeal that the confession was given in a custodial setting or that defendant's confession was involuntary because she was not given *Miranda* warnings.² Defendant was a high school graduate and articulate. Defendant had no prior experience with police. The questioning of defendant, as apparent through the transcript of the interview, was repeated, but not prolonged. The entire interview took only one hour and twenty minutes. Defendant was not detained before her interview, instead, she was asked to come into the police station at her convenience. Defendant does not argue that she was injured, intoxicated or drugged, in ill health, or deprived of food, sleep or medical attention at the time of her confession. Nor does defendant argue that she was physically abused or threatened with physical abuse.

Defendant argues that she was psychologically coerced into confessing, citing this Court's decision in *DeLisle, supra* and several cases from other jurisdictions. This Court has recognized that police coercion can be psychological as well as physical. *DeLisle, supra* at 720, citing *Chambers v Florida*, 309 US 227; 60 S Ct 472; 84 L Ed 716 (1940).

Considering the distinctions between this case and the cases defendant cites, the circumstances of this case do not indicate that defendant's confession was the product of psychological coercion. Defendant was interviewed for a relatively short time, approximately one hour and twenty minutes. We acknowledge that Detective Jorgenson told defendant that if she did not admit the allegations, the police would have to perform an investigation that could include questioning her neighbors, her employers, placing an advertisement in the newspaper,

² This Court's holdings in *People v Marsack*, 231 Mich App 364, 374; 586 NW2d 234 (1998) and *People v Mendez*, 225 Mich App 381, 383-384; 571 NW2d 528 (1997), support the conclusion that *Miranda* warnings were not required because defendant was not in custody.

and forming a criminal sexual conduct task force. However, the trial court determined that these statements were merely descriptive of standard police investigation techniques. We also acknowledge that Jorgenson suggested that the matter could be kept between the families of the victim and defendant, but these suggestions were in the context of how the investigation would proceed. In other words, Jorgenson suggested that if defendant admitted the allegations, she could avoid an embarrassing investigation. Moreover, Jorgenson clearly indicated that defendant's actions were criminal and that the matter would be handled in the court system. We also note that while Jorgenson appeared to be concerned for defendant's emotional well-being and asked defendant whether she would like to speak to a counselor, there was no evidence that Jorgenson took advantage of defendant's emotional state.

Further, a misrepresentation of fact by police is not enough to make an otherwise voluntary statement involuntary. *People v Hicks*, 185 Mich App 107, 112-113; 460 NW2d 569 (1990). Jorgenson admitted falsely telling defendant that the victim had passed a polygraph examination. However, considering the totality of the circumstances, including Jorgenson's false statements regarding the polygraph examination, we find the trial court properly determined that defendant's confession was voluntary.

Although we find defendant's confession was voluntary, we believe that the various techniques used during the questioning in this case do approach improper coercive tactics. We strongly recommend that the police to proceed with caution when using such techniques.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Gary R. McDonald