

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN MICHAEL CIPPONERI,

Defendant-Appellant.

UNPUBLISHED

May 15, 2001

No. 220265

Oakland Circuit Court

LC No. 98-159803-FC

98-159804-FC

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from a conviction of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), for which he was sentenced to a term of 60 to 90 years in prison. We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant first contends that the trial court erred in finding that his confession was voluntary. When reviewing a trial court's determination regarding the voluntariness of defendant's statement, 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). The trial court's factual findings are 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, this Court will ordinarily defer to the trial court's resolution of factual issues, especially when it involves the credibility of witnesses whose testimony conflicts. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

Statements made during a custodial interrogation are inadmissible unless the defendant voluntarily, knowingly and intelligently waives his Fifth Amendment rights. Whether a waiver of *Miranda*¹ rights is voluntary and whether an otherwise voluntary waiver is knowing and intelligent are separate questions. *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16

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

(1997). The issue of voluntariness is to be determined solely by examining police conduct and cannot be resolved in defendant's favor absent some police coercion. *Id.*; *People v Garwood*, 205 Mich App 553, 555; 517 NW2d 843 (1994). The test of voluntariness is whether, considering the totality of the circumstances, the statement was the product of an essentially free and unconstrained choice or whether it was the result of an overborne will. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988).

Relevant factors in determining voluntariness include: the defendant's age; 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 defendant's detention before he made the statement; the lack of any advice to the defendant of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he made his statement; whether the defendant was injured, intoxicated or drugged, or in ill health when he made the statement; whether the defendant was deprived of food, sleep or medical attention; and whether he was physically abused or threatened with abuse. *Id.* at 334. The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test is whether the totality of the circumstances indicates that the statement was freely and voluntarily made. *Id.*

Having reviewed the record in light of the relevant factors, we find no basis for concluding that the trial court's findings were clearly erroneous. Indeed, the totality of the circumstances permits but one logical conclusion: defendant's statement was voluntary. We therefore affirm the trial court's ruling.

Defendant next contends that his sentence was disproportionate. This Court's review is limited to determining whether the trial court abused its discretion by violating the principle of proportionality. *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). A trial court's imposition of a particular sentence is reviewed on appeal for an abuse of discretion, which will be found "where the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense and the offender." *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998).

A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). "The crucial test for proportionality is not whether the sentence departs from, or adheres to, the recommended range under the sentencing guidelines, but whether it reflects the seriousness of the matter." *Castillo, supra* at 447-448. The court may depart upward from the sentencing guidelines where there are legitimate factors not considered by the guidelines, where there are factors considered but inadequately weighed by the guidelines, or where the recommended sentencing range is disproportionate to the seriousness of the offense. *Id.*; *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994).

Defendant molested his stepdaughter over several years, beginning when she was about five years old. Defendant admitted to numerous sexual acts with her, as well as with other children, for which he was not charged. Defendant's long-term sexual abuse of children indicates a low potential for rehabilitation. Defendant also coerced the victim's submission by preying on her concern for her dog, humiliated her during the act, and threatened her should she

ever tell what he'd done. In light of the repulsive nature of defendant's conduct, that he robbed his stepdaughter of her childhood, and that he presented a clear threat to other children in the community, the court's sentence did not constitute an abuse of discretion.

Affirmed.

/s/ Gary R. McDonald

/s/ Michael R. Smolenski

/s/ Kirsten Frank Kelly