STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FENTON ALMOND,

Defendant-Appellant.

UNPUBLISHED
December 28, 2001

No. 223014
Wayne Circuit Court
LC No. 99-001761

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of carjacking, MCL 750.529a, armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b. Defendant was sentenced to concurrent terms of imprisonment for eight to fifteen years for both the carjacking and armed robbery convictions, to run consecutive to a two-year term of imprisonment for the felony firearm conviction. We affirm.

Defendant argues that the trial court erred in denying his motion to suppress his custodial statement to the police. Defendant claims that sleep deprivation, cocaine use, and his mental disability rendered his statement involuntary. Further, defendant states that although "the trial court correctly noted that the police did not inflict these conditions on defendant, the trial court erred in then dismissing these conditions in finding defendant's confession to be voluntary." According to defendant, although the police did not cause his condition, they took advantage of his condition. Defendant concludes that under the conditions present at the time, defendant's confession was not given voluntarily. We disagree.

When reviewing a trial court's decision on a motion to suppress a statement, w review the record de novo, but we review the trial court's factual findings under the clearly erroneous standard. *People v Adams*, 245 Mich App 226, 230; 627 NW2d 623 (2001), citing *People v Kowalski*, 230 Mich App 464, 472; 584 NW2d 613 (1998). A finding of fact is clearly erroneous if, after a review of the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *In re SSL*, 246 Mich App 204, 208-209; 631 NW2d 775 (2001).

"[S]tatements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Snider*, 239 Mich App 393, 417; 608 NW2d 502 (2000), citing *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). In deciding whether a defendant's statement

was knowing, intelligent, and voluntary, a trial court must view the totality of the circumstances. *People v Manning*, 243 Mich App 615, 620; 624 NW2d 746 (2000). "[T]he voluntariness prong is determined solely by examining police conduct." *People v Abraham*, 234 Mich App 640, 645; 599 NW2d 736 (1999), quoting *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997); see also *People v Wells*, 238 Mich App 383, 387; 605 NW2d 374 (1999) (The voluntariness of a waiver of the right against self-incrimination is determined by examining the police conduct involved).

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

> 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 suspect was threatened with abuse.

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

In the present case, defendant focuses on his lack of sleep, his drug use, and his mental disability in arguing that his statement was involuntary. Applying the *Cipriano* factors here, we find nothing that would support suppression of defendant's statement. The police officer who interrogated defendant testified that he had no reason to believe that defendant was deprived of sleep, medication, or food at the time. The officer stated that defendant told him that it had been a couple of days since he used crack cocaine and that he was not then under the influence of any controlled substances. According to the officer, defendant did not appear to be intoxicated or paranoid. Defendant's parole officer, who interrupted the police interrogation to interview defendant, testified that defendant was as lucid as he was in her past meetings with him and that she had no reason to believe that he was under the influence of drugs. She testified that defendant was rocking back and forth and was noticeably upset and quite nervous, but that it was not unusual to see people nervous and upset while in police custody. Nonetheless, he "tracked" her well. Further, despite defendant's mother's assertions that defendant had not slept in days and was acting paranoid, defendant was able to follow his mother's directions that morning. Moreover, the record is devoid of evidence that defendant told the police officer or the parole officer that he was sleep deprived, on medication, or did not understand his rights. The record shows no police misconduct. The trial court did not err in finding defendant's statement to be voluntary.[1]

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[1] Defendant does not address any of the other *Cipriano* factors or argue that a consideration of the other factors leads to the conclusion that his statement was involuntary. As stated previously,

(continued…)

Defendant also argues that his statement to his parole officer should have been suppressed because his parole officer failed to advised him of his *Miranda* rights before the interview. Defendant claims that he was in custody when his parole officer, who was acting in concert with police authority, interrogated him. We find no merit in this claim.

Defendant predicates his argument on the notion that his parole officer "was certainly 'acting in concert with or at the request of police authority,'" quoting *People v Faulkner*, 90 Mich App 520, 525, 526; 282 NW2d 377 (1979). Even if the parole officer's interview of defendant was the functional equivalent of a police interrogation, the failure to readvise defendant of *Miranda* warnings before each interrogation does not render his subsequent statements inadmissible. *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992). "The police are not required to read *Miranda* rights every time a defendant is questioned." *Id.* In *People v Godboldo*, 158 Mich App 603, 605-606; 405 NW2d 114 (1986), this Court explained:

> [T]he *Miranda* rights are not a liturgy which must be read each time a defendant is questioned. The *Miranda* rule is not in itself a constitutional right, but rather is only a procedural safeguard designed to protect an individual's Fifth Amendment privilege against self-incrimination. Thus, the only question is whether, viewing the "totality of the circumstances," the defendant's statement was voluntary. [Citations omitted.]

Here, there was no need to readvise defendant of the *Miranda* rights because his parole officer's interview occurred during the police interrogation of defendant. The record reveals that at some point during the police interrogation after the investigating officer advised defendant of his constitutional rights, defendant's parole officer interrupted the interrogation by requesting an interview with defendant. Defendant responded in the negative when asked whether he wanted the police officer to leave the room, so the police officer remained in the room during the parole officer's interview with defendant. Further, defendant makes no claim that his statement to his parole officer was involuntary. On this record, we find no error. Because defendant's statement to his parole officer was made voluntarily, and because there was no need, under the circumstances of this case, to readvise defendant of his *Miranda* rights, the statement was properly admitted at trial.[2]

Defendant next argues, in his supplemental brief in propria persona, that the complaint on the basis of which a warrant was issued for his arrest was insufficient and thus the warrant was invalid and defendant's arrest illegal. According to defendant, the complaint lacked any personal knowledge or factual basis, and consequently, lacked probable cause. We disagree.

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we find nothing that would support suppression of defendant's statement.

[2] To the extent that defendant relies on this Court's decision in *People v Carr*, 149 Mich App 653; 386 NW2d 631 (1986), in support of his argument, we find this case unhelpful. Since defendant filed his appellate brief, our Supreme Court has overruled the *Carr* decision. *People v Wyngaard*, 462 Mich 659, 662, 674; 614 NW2d 143 (2000). It does not appear that defendant filed with this Court a supplemental authority communication pursuant to MCR 7.212(F).

Because defendant failed to raise this issue before the trial court, it is unpreserved. *People v Van Sickle*, 116 Mich App 632, 637; 323 NW2d 314 (1982). This Court's review of unpreserved claims of constitutional or nonconstitutional error is limited to determining whether the defendant has demonstrated a plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). This Court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id*. at 763.

Defendant failed to establish outcome determinative plain error. *Carines*, *supra*. Indeed, we find no error where the woman arrested for driving the stolen car confessed about her and defendant's involvement in the carjacking. See MCL 764.1a. As such, defendant's arguments that his statements were the fruit of the poisonous tree because his arrest was illegal and that his three trial attorneys where ineffective because they failed to move to suppress defendant's statements on the basis of his illegal arrest have no merit.

Affirmed.

/s/ William B. Murphy
/s/ Janet T. Neff
/s/ Joel P. Hoekstra