STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

DEVON L. HORSLEY,

Defendant-Appellant.

UNPUBLISHED
December 28, 2001

No. 224915
Wayne Circuit Court
LC No. 99-000654

Before: Owens, P.J., and Holbrook, Jr. and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of voluntary manslaughter, MCL 750.321, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to two to fifteen years' imprisonment for the manslaughter conviction and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant contends that the trial court erred when it denied his motion to suppress his statement to the police because it was induced by promises of leniency. A confession may not be introduced into evidence unless the prosecution proves by a preponderance of the evidence that the statements were voluntary. *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). This Court reviews for clear error a trial court's findings of fact regarding a motion to suppress evidence. *People v Echavarria*, 233 Mich App 356, 366; 592 NW 2d 737 (1999). 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 was made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997). We review de novo the trial court's ultimate decision regarding a motion to suppress. *Echavarria*, *supra*.

Whether a statement is deemed voluntary depends on the totality of the circumstances, including the following: 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 physical abuse. *People v Sexton*,

458 Mich 43, 66; 580 NW2d 404 (1998). A promise of leniency is merely one factor to be considered in the evaluation of the voluntariness of a defendant's statements. *Givans*, *supra* at 120.

Even assuming the veracity of defendant's testimony at the suppression hearing that police investigators promised him a reduced bond and that any charge would be reduced from first-degree murder to second-degree murder if he gave a statement, we find that the totality of the circumstances establishes that defendant voluntarily provided his statements. At the time of his statements, defendant was eighteen years of age, had gone to school for eleven years, and had the ability to read and write.[1] Defendant did not have prior experience with the police, but did not endure repeated or prolonged interrogations before making his statements, which he gave on the third day following his arrest.[2] The investigating officer testified that he advised defendant of his constitutional rights and that defendant expressed his understanding of these rights, both verbally and by initialing a form that described the rights, and waived his rights. According to the investigating officer, defendant appeared clear and sober and did not express that he was tired or hungry or that he had been beaten or threatened into speaking with the police. No indication exists that defendant was unhealthy or needed medical attention when he gave his statements. Under these circumstances, we conclude that defendant's statements were the products of his essentially free and unconstrained choice. We cannot conclude that defendant's will was overborne or that his capacity for self-determination was critically impaired. *Givans*, *supra* at 121. Consequently, the trial court properly denied defendant's motion to suppress.

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage

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[1] The record reflects that the trial court repeatedly requested that defendant better articulate his testimony, but defendant did not appear to have difficulty comprehending the questions posed by counsel and the court.

[2] The police initially interviewed defendant on January 6, 1999 because they believed that he might have some information regarding the victim's murder. The investigating officer testified that defendant, who was accompanied to the police station by his mother, was not under arrest. Defendant gave an unmemorialized statement to the police that aroused their suspicions, after which the police arrested defendant. The investigating officer testified that on January 8, defendant expressed his desire to take a polygraph examination. The examination occurred on January 9, after which defendant wrote a statement. After the polygraph examination, the investigating officer then took another statement from defendant. The officer typed the statement and defendant signed it. The record contains no indication that either questioning session that took place on January 9 was extensive or unduly long.