

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY DALE BROWN,

Defendant-Appellant.

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UNPUBLISHED

April 12, 2002

No. 229930

Oakland Circuit Court

LC No. 00-170749-FH;

2000-170763-FH;

2000-170764-FH

Before: K. F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Defendant appeals by right from convictions of first-degree home invasion, MCL 750.110a(2), possession of a firearm during the commission of a felony, MCL 750.227b, and larceny of a firearm, MCL 750.357b, for which he was sentenced to prison terms of 6½ to twenty years', two years', and one to five years', respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in denying his motion to suppress his confessions.

In reviewing a trial court's determination of the voluntariness issue, 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); *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983).

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*<sup>1</sup> rights is voluntary and whether an otherwise voluntary waiver is knowing and

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

intelligent are separate questions. *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (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 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. Another relevant factor is whether the police made any promises of leniency to induce the confession. *Givans, supra* at 119-120. 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. *Cipriano, supra*.

There is no claim that defendant was unable to understand his rights and make a knowing and intelligent waiver. The evidence showed that defendant was twenty years old, had an 11<sup>th</sup> grade education, and could read, write, and understand English. There was no evidence that he was of other than average intelligence, that he was suffering from any physical or mental infirmity, that he was deprived of food or sleep, or was otherwise subjected to such ill treatment that he felt compelled to confess. Officer Luther advised defendant of his rights and he waived them. She stated that she made no promises to defendant and he did not testify to the contrary. Although Luther said another officer told defendant that it was best to tell the truth, "mere adjurations or exhortations to tell the truth, without more, are insufficient to vitiate the voluntariness of a confession." *People v Conte*, 421 Mich 704, 740; 365 NW2d 648 (1984) (Williams, CJ.). Therefore, the trial court did not err in admitting defendant's confession to the Wixom offense.

Deputy Venus denied making any promises to defendant regarding the number of charges to be filed against him. Although defendant testified to the contrary, that testimony was belied by the fact that he read and signed a waiver form in which he confirmed that no promises had been made to him. The court clearly found defendant's credibility to be suspect and this Court will defer to that finding. Based on the record, the trial court did not clearly err in finding that defendant's statement to Venus was not induced by a promise of leniency. Although Venus admittedly told defendant that it was in his best interests to tell him about all the break-ins in which he was involved, he said he made the statement only after defendant had admitted his participation in the two Commerce Township crimes and thus it could not have induced defendant to confess to those crimes. Therefore, the trial court did not clearly err in admitting defendant's confession to the two Commerce Township offenses.

Defendant next contends that the conviction of first-degree home invasion was against the great weight of the evidence. The issue has not been preserved for appeal because defendant

did not move for a new trial below. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Moreover, defendant's claim is premised on the contention that the prosecutor failed to prove that he intended to steal guns when he entered the homes. Apart from the fact that the statute only requires the intent to commit a larceny in general, not a larceny of specific goods, MCL 750.110a(2), defendant has waived this issue by failing to brief the merits of the claim. See *People v Kean*, 204 Mich App 533, 536; 516 NW2d 128 (1994).

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Martin M. Doctoroff  
/s/ Mark J. Cavanagh