

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL HENRY HADRIAN,

Defendant-Appellant.

---

UNPUBLISHED

May 6, 2008

No. 277880

Macomb Circuit Court

LC No. 2006-001932-FC

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of four counts of first-degree criminal sexual conduct, the victim being under 13 years of age, MCL 750.520b(1)(a). Defendant was sentenced to concurrent terms of 17 ½ to 30 years' imprisonment. Defendant appeals as of right. We affirm.

Defendant challenges the trial court's denial of his motion to suppress his confessions, arguing that he was in de facto custody during the first confession in his home<sup>1</sup> and yet he received no warnings about self-incrimination. He also asserts that his first confession was not voluntary. We conduct a de novo review of the denial of a motion to suppress based on the entire record, but we will not disturb factual findings unless they are clearly erroneous. *People v Akins*, 259 Mich App 545, 563-564; 675 NW2d 863 (2003).

"A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *Id.* at 564. A formal advice of rights is only required when the defendant is subject to custodial interrogation. *People v Hill*, 429 Mich 382, 384; 415 NW2d 193 (1987). A custodial interrogation is "questioning initiated by law enforcement officers after [the defendant] has been taken into custody or otherwise deprived of his freedom of action in any significant way." *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999) (quotations and internal citation omitted). Whether the defendant was in custody depends on the totality of the circumstances. *Id.* The key question is whether the defendant "reasonably could have believed that he was not

---

<sup>1</sup> Defendant made a subsequent confession at the police station.

free to leave.” *Id.* “The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned.” *Id.*

We conclude that defendant was not in custody at the time of the initial interview in his home. The detective testified that when he and his partner began the interview he did not yet know who had committed the crime or whether a sex crime had been committed. He advised defendant that, while he was investigating a possible assault, defendant was not under arrest and had no obligation to talk. Defendant acknowledged that he agreed to talk and invited the detectives inside his home. Defendant, because he was free to expel the detectives from his home, was not in custody.

Defendant also argues that his first confession was involuntary. Whether the defendant’s statement was knowing, intelligent, and voluntary is a question of law that a court must determine under the totality of the circumstances. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005). Whether a statement was voluntary is determined by examining police conduct, but whether the statement was made knowingly and intelligently depends in part on the defendant’s capacity. *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). The prosecutor must establish that a statement was voluntary by a preponderance of the evidence. *People v Abraham*, 234 Mich App 640, 645; 599 NW2d 736 (1999). In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), our Supreme Court set forth the following nonexhaustive list of factors that a trial court should consider in determining whether a statement is voluntary:

[T]he 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.

Defendant was 26 years old at the time of the offense, had a high school education, was questioned for a relatively short length of time before he admitted to the sexual assault, was not injured, intoxicated, drugged, or in ill health, was not deprived of food, sleep, or medical attention, and was not abused or threatened with abuse. However, defendant had no apparent previous experience with the police, and he had attention deficit hyperactivity disorder (ADHD) and difficulty understanding big words. Further, he was not advised of his right to a lawyer or that his statements could be used against him, but he was advised that he did not have to talk to the detectives. The detective indicated that defendant was very cooperative. On this record, there is no indication that defendant’s ADHD, difficulty with big words, or lack of information on the extent of his rights compromised the voluntariness of his statement. Accordingly, there is no basis for concluding that defendant’s initial statement was not voluntary.

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski