STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 13, 2009
v	No. 282817 Washtenaw Circuit Court
JAMES HOLLAND, JR., Defendant-Appellant.	LC No. 06-000617-FH

Before: Murray, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

On October 23, 2007, after a bench trial, defendant James Holland, Jr., was convicted of one count of first-degree (premeditated) murder, MCL 750.316(1)(a).[1] He was sentenced as an habitual offender, third offense, MCL 769.11, to life imprisonment. We affirm.

The victim in this case was murdered on May 25, 1991. Christopher Jackson discovered the victim's body in her apartment early in the morning of May 27, 1991. The victim was lying between her bed and the wall, with the bottom half of her clothes removed and her hands bound behind her back with a telephone cord. Jackson found his infant son lying against the victim and crying. According to the medical examiner, the victim died of strangulation. Investigators found cut-up pieces of telephone cord and dollar bills scattered in the apartment and the victim's blue Princess telephone in the toilet bowl; the victim's bed sheets were missing from her bed.

In 1993, defendant told investigators that Jackson confessed to him that he killed the victim. In February 2006, Jackson was slated to go to trial for the victim's murder, and investigators wished to gain defendant's cooperation and speak with him regarding his earlier statements implicating Jackson. Defendant had turned himself in for a parole violation on January 5, 2006, and investigators interviewed defendant on January 12 and 13, 2006, about his knowledge of the event in preparation for him to be a witness against Jackson. During the discussion, defendant changed his original story and stated that he was present when Jackson murdered the victim. The investigators wanted to confirm these revised statements and asked

[1] The record reflects that defendant was charged with and convicted of both first-degree murder and first-degree felony murder, MCL 750.316(1)(b), but the trial court merged the two convictions at the sentencing hearing.

defendant to take a polygraph test. The polygraph examiner, Harold Raupp, testified that during the subsequent interview, defendant indicated that he had "aces up his sleeve" and asked what he could talk about. Defendant then revealed that he murdered the victim and described the circumstances of the crime. Defendant's interviews with the investigators and Raupp were recorded and played at trial.

Defendant's sole claim of error on appeal is that his tape-recorded confession, played for the trial court, was erroneously admitted because it was involuntary. Defendant moved to suppress his confession in the trial court, which denied his request after a *Walker* hearing.[2]

"This Court reviews de novo a trial court's ultimate decision on a motion to suppress evidence." *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). We examine the entire record and make an independent determination whether the confession was voluntary based on the totality of the circumstances. *People v Sexton*, 458 Mich 43, 67-68; 580 NW2d 404 (1998). We review the trial court's findings of fact for clear error. *Id.* at 68. We review de novo issues of law, such as the application of a constitutional standard to uncontested facts. *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000). We defer to the trial court's determinations regarding the credibility of the witnesses at a *Walker* hearing. *People v Tierney*, 266 Mich App 687, 708; 703 NW2d 204 (2005).

"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." *Akins*, *supra* at 564, citing *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). We consider the following nonexhaustive list of factors in making this determination, although no one factor is dispositive:

> [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. [*Id.*, quoting *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).]

After reviewing the evidence presented at the hearing, we conclude that the trial court's findings of fact were not clearly erroneous, and the totality of the circumstances indicates that defendant's confessions on January 12 and 13, 2006, were voluntary. Defendant was 39 years old when he made his confession; he had some post-high school education, and the interviewers noted that he was articulate. Defendant also had a record of other juvenile and adult convictions,

[2] *People v Walker* (*On Rehearing*), 374 Mich 331, 338; 132 NW2d 87 (1965).

indicating that he had experience with the criminal justice system. In particular, defendant indicated that he had been read his *Miranda* rights and understood them when he was a juvenile. Further, defendant was advised of his *Miranda* rights during a January 6, 2006, interview and requested an attorney, which halted the questioning. This earlier request indicates that defendant understood his rights and how to invoke them. The record also reflects that defendant was advised of his *Miranda* rights on several occasions throughout the interviews on January 12 and 13, 2006, and each time defendant indicated that he understood his rights and signed the waiver form. There was also no evidence of an unnecessary delay in bringing defendant before a magistrate, that defendant was injured, drugged, or intoxicated,[3] or that defendant was physically abused or threatened with physical abuse.[4]

We further defer to the trial court's finding that defendant was not suffering from ill health and did not inform the interviewers of any health problems. Instead, the evidence presented at the *Walker* hearing indicated that on January 6, 2006, the day after defendant turned himself in for a parole violation, he exhibited no symptoms of drug withdrawal. Further, defendant's interviewers testified that he did not exhibit symptoms of drug withdrawal during the interviews on January 12 and 13. In addition, no evidence indicates that defendant complained to the prison staff or the interviewers regarding any alleged ailments or that he requested or received medical treatment.

We also hold that the trial court's finding that defendant was not deprived of food or sleep was not clearly erroneous. The record reflects that defendant was provided food in the afternoon on January 12, 2006, and breakfast and lunch on January 13, 2006. Harold Raupp, the polygraph examiner, testified that defendant told him that he had eaten. Defendant also acknowledged that he was given food on January 13;[5] defendant cannot argue that he was deprived of food when he simply chose not to eat the food offered to him. Moreover, although defendant testified that he slept poorly or could not sleep in the holding cell at the Washtenaw County Jail, there was no evidence that the interviewers or the corrections officers purposely deprived him of sleep. In addition, although defendant might have been tired during the interview, the interviewers noted that he was nonetheless coherent, articulate, and indicated that he wanted to proceed with the interview. In fact, Raupp refused to administer the polygraph examination on the night of January 12 even though defendant wanted to continue, because Raupp believed that defendant was too tired and he wanted defendant to rest that night and come back the next day. The next day, defendant exhibited no signs of extreme sleep deprivation and indicated that he wanted to take the polygraph test.

We also find that the trial court did not clearly err in concluding that defendant was not subjected to several hours of coercive questioning. The record reflects that the interviewers

---

[3] In particular, defendant testified that he did not request or receive any illegal or legal drugs while in jail.

[4] Defendant's interviewers testified that defendant was not physically abused, and defendant did not refute these statements.

[5] Specifically, defendant testified that he was offered a hamburger on January 13 but was not hungry at the time.

originally planned to talk to defendant only regarding his role as a witness in an upcoming murder trial. Years earlier, defendant had told police that the suspected murderer, who was slated to go to trial in February of 2006, told defendant about the 1991 homicide. When the police spoke with defendant in January 2006, however, he changed his story, indicating that he was actually present during the murder when the suspected murderer committed it. The police then wanted to give defendant a polygraph test to verify his statements. During defendant's interview with Raupp before the polygraph examination, defendant volunteered that he had "aces up his sleeve," and that he was the man "they were looking for." Defendant indicated "that he was going to lay it on the table. He was going to lay it all out." Defendant then revealed his participation in crimes about which Raupp had no previous knowledge, and Raupp attempted to redirect defendant's attention to his knowledge as a witness in the murder case. Raupp testified that defendant never answered questions in an automatic manner during these conversations and that he was articulate and eager to proceed.

Additionally, the record reflects that defendant was in jail since January 5, 2006, because of a parole violation, and he was interviewed on January 12 beginning late in the afternoon and ending at approximately 9:00 p.m. Raupp refused to administer the polygraph examination at 9:00 p.m. because defendant looked too tired. The polygraph test and interview on January 13 began at approximately 9:00 a.m. and lasted until approximately 11:00 a.m. or 12:00 p.m. Defendant was given breaks, food, and water. After carefully reviewing the testimony presented at the *Walker* hearing and the portions of defendant's tape-recorded statements played for the trial court, we conclude that the trial court did not clearly err in finding that defendant was not coerced into making a statement and that he was actually speaking in full sentences, explaining why he desired to confess. Based on the record evidence, we defer to the trial court's decision to credit the interviewers' testimony and the tape-recorded evidence over defendant's testimony and assertions that he was subjected to hours of coercive questioning. *Tierney, supra* at 708.

Defendant also argues that his request for counsel during an interview conducted on January 6, 2006, is sufficient reason, standing alone, to suppress his statements and confession on January 12 and 13. Once a defendant invokes his right to counsel during custodial interrogation, this request must be honored "*unless the accused himself initiates* further communication, exchanges or conversations with the police." *People v Paintman*, 412 Mich 518, 525; 315 NW2d 418 (1982), quoting *Edwards v Arizona*, 451 US 477, 484; 101 S Ct 1880; 68 L Ed 2d 378 (1981) (emphasis in original). This rule also applies where the police subsequently attempt to question the defendant regarding a matter unrelated to the initial interrogation. *Arizona v Roberson*, 486 US 675, 687; 108 S Ct 2093; 100 L Ed 2d 704 (1988).

Regardless, the record reflects that defendant initiated the discussion about his involvement in the case at bar and that he was not being interrogated at the time he confessed. The interviewers only intended to ask defendant about his knowledge as a witness against the suspected murder in a homicide investigation. Raupp knew nothing about defendant's involvement in other crimes and he tried to redirect the conversation back to defendant's knowledge as a witness in the murder case. An "interrogation" is "express questioning and [] any words or actions on the part of police that the police should know are reasonably likely to elicit an incriminating response from the subject." *People v Raper*, 222 Mich App 475, 479; 563 NW2d 709 (1997). See also *People v McCuaig*, 126 Mich App 754, 760; 338 NW2d 4 (1983) (no interrogation occurred where the police informed the defendant of the charge against him and

why the police believed the defendant was responsible, because the police statements were not intended to elicit a response, but to provide information). The questions posed to defendant were directed toward his knowledge as a witness in a homicide investigation in which defendant was not a suspect; these questions were not reasonably likely to elicit information about the case at bar.

Defendant also alleges that his confession is inadmissible because it was induced by a promise. We disagree. The existence of a promise is just one of the circumstances to consider in examining whether, under the totality of the circumstances, the statement was made voluntarily. *People v Givans*, 227 Mich App 113, 119-120; 575 NW2d 84 (1997). Raupp testified that defendant first introduced the topic of speaking with his family, although defendant claims that Raupp brought it up. We find no basis to upset the trial court's determination that Raupp's testimony was more credible on this issue. See *Tierney*, *supra* at 708. Considering that Raupp had no knowledge of defendant's other crimes before defendant told him, Raupp had no reason to promise defendant anything in order to obtain a confession. In fact, Raupp was unaware that there was even the possibility of obtaining a confession or confessions. In addition, Raupp did not have the authority to grant defendant's request to see his family. To the extent there was any promise, it was merely Raupp's promise to pass along defendant's request to see family to Raupp's supervisors. Accordingly, the record does not support a finding that defendant was induced or coerced into making the incriminating statements, and the trial court did not err in holding that defendant's incriminating statements were not improperly induced by a promise.[6]

Affirmed.

/s/ Christopher M. Murray
/s/ Peter D. O'Connell
/s/ Alton T. Davis

[6] At oral argument, defendant's attorney, with the prosecutor's permission, made an oral motion to remand this case to the lower court to conduct a *Ginther* hearing. See *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). After accepting and considering this oral motion and reviewing the lower court record, we deny defendant's motion to remand for a *Ginther* hearing.