STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee	UNPUBLISHED January 21, 2016
v	No. 323777 Kent Circuit Court
CHADWICK DONALD POLL, Defendant-Appellant.	LC No. 14-002049-FH

Before: BECKERING, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Chadwick Donald Poll, appeals by right his jury convictions of two counts of second-degree criminal sexual conduct. See MCL 750.520c(1)(a). The trial court sentenced Poll to serve concurrent terms of 4 to 15 years in prison for each conviction. Because Poll has not identified any errors in the lower court proceedings that warrant relief, we affirm.

Poll argues that the trial court violated his right against self-incrimination when it denied his motion to suppress a video recording of statements he made to police officers on the grounds that the officers did not give him the warnings required by the decision in *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). We review de novo a trial court's decision on a motion to suppress. *People v Cortez (On Remand)*, 299 Mich App 679, 691; 832 NW2d 1 (2013) (opinion by METER, J.). We review for clear error a trial court's factual findings with regard to the circumstances surrounding a defendant's statement. *Id.* A trial court's finding is clearly erroneous if we are left with a firm and definite conviction that it made a mistake. *People v Shipley*, 256 Mich App 367, 372-373; 662 NW2d 856 (2003).

Both the Michigan and federal constitutions guarantee that "[n]o person shall be compelled in any criminal case to be a witness against himself." US Const, Am V; Const 1963, art 1, § 17. Generally, an officer must give the warnings required under *Miranda* when he or she subjects an individual to custodial interrogation. *People v Roberts*, 292 Mich App 492, 504; 808 NW2d 290 (2011). Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *People v Hill*, 429 Mich 382, 387; 415 NW2d 193 (1987), quoting *Miranda v Arizona*, 384 US at 444.

Examining the totality of the circumstances, *Cortez (On Remand)*, 299 Mich App at 691, it is evident that Poll was not in custody at the time he made the video-recorded statements. A person is in custody when he has been formally arrested or subjected to a restraint on freedom of movement to the degree associated with formal arrest. *People v Peerenboom*, 224 Mich App 195, 197; 568 NW2d 153 (1997). Custody is determined from how a reasonable person in the suspect's situation would perceive his circumstances, and whether the reasonable person would believe that he was free to leave. *Roberts*, 292 Mich App at 504. "[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v California*, 511 US 318, 323; 114 S Ct 1526; 128 L Ed 2d 293 (1994). In order to determine whether Poll reasonably believed that he was not free to leave, we consider factors such as whether he drove himself to the police station, was advised that he was not under arrest, was unrestrained, was left alone for periods of time, and was allowed to leave after talking with police. See, e.g., *People v Mendez*, 225 Mich App 381, 383; 571 NW2d 528 (1997).

At the suppression hearing, the trial court found that the door to the room in which Poll was interviewed was left open a crack at the beginning of the interview, and the court found credible the detective's testimony that the door was never locked. Further, the trial court found no indication that Poll tried to stop the interview, refused to answer any questions, or requested or attempted to leave the interview. These factual findings are supported by the record, and therefore are not clearly erroneous. *Shipley*, 256 Mich App at 372-373. The evidence established that Poll drove himself to the sheriff's department and was ushered into an interview room. See *Mendez*, 225 Mich App at 383; *Oregon v Mathiason*, 429 US 492, 495; 97 S Ct 711; 50 L Ed 2d 714 (1977). No one advised Poll of his rights, but he was informed immediately that he was not under arrest and was free to leave and walk out of the room at any time. See *Mendez*, 225 Mich App at 383; *Mathiason*, 429 US at 495. Partway through the interview, the room's door was closed, but at no time during the video recording did the door appear to be locked, nor did Poll attempt to open the door and leave the room. Despite denying Poll's request to walk up and down the hall because he was in a room on a secured floor, the detective allowed him to leave the room, walk down the hallway, and use a drinking fountain. Moreover, the detective left the interview at times during the interview, and Poll was left unrestrained and unattended. See *Mendez*, 225 Mich App at 383.

Nonetheless, Poll argues that he was clearly not free to leave the interview room because the detective closed the door and refused his request to leave to smoke a cigarette. While Poll asked to go and have a cigarette at the end of the interview, there was no evidence that Poll asked for, and was denied, the right to leave and end the interview. At no point was Poll subjected to a restraint on his freedom of movement to the degree associated with formal arrest. *Peerenboom*, 224 Mich App at 197. Accordingly, Poll was not in custody at the time he made the video-recorded statements and the detective had no obligation to advise him of his rights. *Roberts*, 292 Mich App at 504.

We also address whether Poll's statements were voluntary. In doing so we examine the entire record and make an independent determination of the voluntariness of the inculpatory statements. *Shipley*, 256 Mich App at 372-373. Even a noncustodial interrogation may give rise to an involuntary statement when " 'the behavior of . . . law enforcement officials was such as to overbear [a defendant's] will to resist and bring about confessions not freely self-determined

. . . .' " *Beckwith v United States*, 425 US 341, 347-348; 96 S Ct 1612; 48 L Ed 2d 1 (1976), quoting *Rogers v Richmond*, 365 US 534, 544; 81 S Ct 735; 5 L Ed 2d 760 (1961). In *Beckwith*, the United States Supreme Court stated that when a defendant makes such a claim, "it is the duty of an appellate court . . . 'to examine the entire record and make an independent determination of the ultimate issue of voluntariness.' " *Beckwith*, 425 US at 348, quoting *Davis v North Carolina*, 384 US 737, 741-742; 86 S Ct 1761; 16 L Ed 2d 895 (1966). The prosecution bears the burden of proving by a preponderance of the evidence that a confession was voluntary. *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). "The test of voluntariness is whether considering the totality of all the surrounding circumstances, the confession is the product of an essentially free and unconstrained choice by its maker, or whether the accused's will has been overborne and his capacity for self-determination critically impaired." *Peerenboom*, 224 Mich App at 198 (quotation marks and citation omitted). In order to determine voluntariness, we consider, among other circumstances, the following factors:

> the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with 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. [*People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).]

No single factor is determinative, and the ultimate test for admissibility is whether the totality of the circumstances indicates that the confession was freely and voluntarily made. *Id.*

In this case, the trial court found no suggestion that Poll's statements were involuntary. The record shows that he was 49 years of age, did not demonstrate a lack of intelligence, and was not ill or intoxicated. There was no evidence that Poll was deprived of food or sleep, that he was threatened with abuse, or that he was physically abused during the interview. Both the video recording and Poll's testimony at the evidentiary hearing show that he complimented the detective for helping him stay calm.

Nevertheless, Poll argues that he involuntarily made the statements because of back pain during the interview. Poll did not ask for any medication or medical attention because of his pain. While he may have been in discomfort, the interview lasted less than two hours and he was not restrained and was allowed to move around. Poll also contends that his statements were involuntary because, as a former member of the military, he was instinctively responding to a law enforcement officer's order to go to the Sheriff's Department before returning home. However, Poll was not arrested prior to the interview, and he voluntarily drove himself to the department. Poll offered no support for his claim that his status as a former military member rendered his actions involuntary. Therefore, the trial court did not clearly err in finding that his statement was involuntary. *Cortez (On Remand)*, 299 Mich App at 691.

The trial court did not err when it denied Poll's motion to suppress his statement.

Affirmed.

/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly