

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 4, 2012

v

JUSTIN ANDREW TERPSTRA,

Defendant-Appellant.

No. 304437
Allegan Circuit Court
LC No. 10-016831-FC

Before: MARKEY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder, on alternate theories of premeditated murder and felony murder, MCL 750.316(1)(a) and (b); conspiracy to commit first-degree murder, MCL 750.157a; MCL 750.316(c); kidnapping, MCL 750.349; and torture, MCL 750.85. The trial court sentenced defendant as a habitual offender, third offense, MCL 769.11, to concurrent sentences of life in prison without the possibility of parole for the first-degree murder conviction, life in prison without the possibility of parole for the conspiracy to commit first-degree murder conviction, and 25 to 50 years' imprisonment each for the kidnapping and torture convictions. We affirm.

Defendant's conviction arises out of the murder of Brandon Silverlight on November 14, 2009. At trial, the prosecution presented evidence that defendant's fiancée, Alison Martin,¹ exchanged text messages with Silverlight before the murder and arranged to meet him at a restaurant. After Martin and Silverlight met, Silverlight followed Martin to her parents' trailer, where defendant attacked Silverlight, subduing him and binding his hands and feet with duct tape. He and Martin then transported Silverlight to a nearby parcel of vacant land, where Silverlight was hit, stabbed multiple times, and set on fire.

On appeal, defendant contends that the trial court erred in denying a motion to suppress statements he made during interviews with police detectives. Defendant was interviewed by the

¹ Martin was convicted of the same charges as defendant, and her convictions were previously affirmed by this Court. *People v Martin*, unpublished opinion per curiam of the Court of Appeals, issued May 17, 2012 (Docket No. 302071).

detectives a total of six times. The first three interviews occurred in the week immediately following the murder and were conducted at the Kalamazoo County Jail, where defendant was being held for a parole violation. During those interviews, defendant denied any involvement in or knowledge of the murder. The fourth interview, in which defendant first confessed to the murder, took place over two weeks later at the Jackson State Prison, where defendant was being held on the parole violation. Defendant was placed under arrest at the conclusion of this interview and transported to the Allegan County Jail, where he was given a meal of his choosing and re-interviewed. The fifth interview, which was substantially the same as the interview at the Jackson State Prison, was recorded in its entirety, as was the sixth interview, which took place at the Allegan County Jail the following morning. Defendant contends that the totality of the circumstances surrounding his questioning demonstrate that the statements he made during the last three interviews were involuntary and the result of police coercion.

“Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his or her Fifth Amendment rights.” *People v Gipson*, 287 Mich App 261, 264; 787 NW2d 126 (2010) (citations omitted). The prosecution bears the burden of establishing a valid waiver by a preponderance of the evidence. *People v Daoud*, 462 Mich 621, 634; 614 NW2d 152 (2000). However, the waiver does not need to be express. *Berghuis v Thompkins*, ___ US ___; 130 S Ct 2250, 2261; 176 L Ed 2d 1098 (2010). “Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused’s uncoerced statement establishes an implied waiver of the right to remain silent.” *Id.*, 130 S Ct at 2262.

Defendant challenges both the voluntariness of his statements to the police and the voluntariness of his implied waiver of his *Miranda* rights. A determination of the voluntariness of a waiver of *Miranda* rights “involves the same inquiry as in the due process context.” *Daoud*, 462 Mich at 635. “Thus, whether a waiver of *Miranda* rights is voluntary depends on the absence of police coercion.” *Id.* (citation omitted). “A waiver is voluntary if it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Gipson*, 287 Mich App at 264-265 (citation omitted). “The voluntariness of a defendant’s statements is determined by examining the totality of the circumstances surrounding the interrogation.” *Id.* at 265. The factors to be considered include:

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

“No single factor is determinative.” *People v Tierney*, 266 Mich App 687, 708; 703 NW2d 204 (2005).

We find that the totality of the circumstances establish that defendant's statements and waiver were voluntary and were not the result of police coercion. At the time of the challenged statements, defendant was 24 years old and had prior experience with the criminal justice system. Defendant was advised of his *Miranda* rights at each interview and he appeared to understand or indicated to the detectives that he understood those rights. While defendant was incarcerated at the time of the interviews, he was initially being held for a separate parole violation, and was not arrested in conjunction with this case until after his confession during the fourth interview. Further, defendant did not ask for the questioning to stop or indicate to the officers that he did not wish to speak with them further. Although defendant repeatedly told officers that he had nothing else to say, we find no error in the trial court's finding that these statements did not amount to requests that questioning stop or indicate that defendant did not wish to continue speaking with detectives. Moreover, defendant made those statements during the second and third interviews, during which he made no incriminating statements, and over two weeks passed before the detectives interviewed defendant again. Additionally, defendant was not deprived of food, water, sleep, or any other necessity, and the only evidence of any illness was testimony that defendant reported feeling sick to his stomach during one of the interviews. However, the evidence indicated that after defendant was given a glass of water, defendant felt better and was able to continue. Moreover, there was no evidence that defendant was intoxicated or under the influence of drugs during any of the interviews.

While defendant was questioned a total of six times, interviews two, three and four took place after officers learned new information related to the crime. Interview five took place in order to fully record defendant's statement, and the sixth interview was planned during the fifth one to give defendant time to think about whether he would give details about Martin's participation. Further, over two weeks passed between the first three interviews and the fourth interview, in which defendant first implicated himself in the murder. Further, none of the interviews were unduly long. The longest of the interviews lasted just one hour and 45 minutes. Defendant points out that he spent an additional 80 minutes in the presence of the interrogating officers while he was transported from Jackson State Prison to the Allegan County Jail. However, there was testimony that the officers engaged in very little conversation with defendant during that time, and there was no questioning related to the case. Further, defendant was provided with a meal of his choosing upon arrival in Allegan, and he was given time to eat before the next interview began. Moreover, there was no evidence that defendant was abused, deceived, or threatened in any way.

In sum, a review of the *Cipriano* factors reveals that defendant's statements were voluntary. In addition, his waiver was voluntary. The voluntariness factors favor this conclusion, and we emphasize that defendant had prior experience with the criminal justice system and was advised of his rights at each interview. Defendant appeared to understand or indicated that he understood his rights and at no point during any of the interviews did defendant request counsel, ask that the questioning stop, or indicate that he did not want to answer further questions. Although defendant gave one of the detectives the business card for an attorney, the trial court did not err in finding that this act did not constitute a request for an attorney. See *Davis v United States*, 512 US 452, 461-462; 114 S Ct 2350; 129 L Ed 2d 362 (1994) (finding that invocation of the right to counsel requires an unambiguous, unequivocal request for the assistance of counsel). Defendant was not being questioned when he presented the card, he later acknowledged that he was not represented by counsel, he voluntarily agreed to answer questions

in the absence of counsel, and he never requested an attorney during any of the interviews. The detectives also contacted the attorney, who stated that while he had consulted with defendant previously, defendant had not retained him and he did not expect to be retained. The record reveals no police coercion that would render defendant's waiver or statements involuntary.

Although defendant contends that he was asked leading questions and that he was compelled to confess when officers told him that Martin had been arrested and suggested that she was going to cooperate with police, a review of the record indicates that defendant willingly provided a detailed account, including long narratives in which defendant continued to talk with little or no interruption from the detectives. While defendant's responses to police questioning near the end of the fifth interview support defendant's argument that he confessed and minimized Martin's involvement in an attempt to protect her, the record does not support that defendant did so as a result of police coercion. Rather, a review of the totality of the circumstances surrounding defendant's questioning indicates that defendant willingly and voluntarily confessed to the crime. The trial court did not err in finding that defendant's statements were the product of a free and deliberate choice and were not the result of intimidation, coercion, or deception by the investigating detectives. *Gipson*, 287 Mich App at 264. Because the evidence established that defendant was given *Miranda* warnings, understood those warnings, and made voluntary statements to the police, the trial court did not err in finding an implied waiver of defendant's right to remain silent. *Berghuis*, ___ US at ___; 130 S Ct. at 2262.

Defendant also argues that his right to counsel was violated because he was questioned without counsel even after handing a lawyer's business card to the police. Handing a business card to the police at the close of an interview does not constitute an unambiguous assertion of the right to counsel. *Berghuis v Thompkins*, ___ US ___; 130 S Ct 2250, 2261; 176 L Ed 2d 1098 (2010). Further, even if presenting the card constituted a request for counsel, 17 days passed before defendant was next questioned, sufficient to eliminate any coercive effect from a denial of counsel. *Maryland v Shatzer*, ___ US ___; 130 S Ct 1213, 1223; 175 L Ed 2d 1045 (2010). Also, as noted above, the police contacted the lawyer in question, who was not retained by defendant and did not expect to be retained in the future.

Affirmed.

/s/ Jane E. Markey
/s/ Douglas B. Shapiro
/s/ Amy Ronayne Krause