STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 20, 2012
v	No. 305270 Muskegon Circuit Court
RONALD LEE GARDNER, Defendant-Appellant.	LC No. 10-059185-FH

Before: M. J. KELLY, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MCL 750.520b(2)(b) (victim less than 13 years of age). Defendant was sentenced to concurrent terms of 25 to 38 years' imprisonment for each conviction. Because we conclude that the trial court did not err by denying defendant's motion to suppress his statements to police, we affirm.

On appeal, defendant contends that the trial court erred in denying his motion to suppress statements he made to a police detective who was investigating a young girl's allegations of criminal sexual conduct against defendant. The recorded statements were made when the detective questioned defendant in the front seat of an unmarked police car sitting in the driveway of defendant's home. Defendant contends that he was in custody during the questioning and therefore, the detective's failure to advise him of his *Miranda*[1] rights rendered his statements inadmissible. Defendant moved the trial court to suppress his statements to the detective before trial; however, the trial court denied defendant's motion. Thereafter, defendant waived his right to a jury trial, and elected to proceed with a bench trial. The tape recording of defendant and the detective's conversation was admitted into evidence during the bench trial. Defendant was convicted of two counts of first-degree criminal sexual conduct, and acquitted of a third count of first-degree criminal sexual conduct. Defendant now appeals as of right.

Defendant first challenges the trial court's factual findings regarding the circumstances surrounding his interrogation. We review a trial court's factual findings for clear error. *People v*

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

Roberts, 292 Mich App 492, 502; 808 NW2d 290 (2011). "A decision is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Rasmussen*, 191 Mich App 721, 724; 478 NW2d 752 (1991).

In this case, defendant specifically challenges the trial court's determination that he willingly came back to his home to talk to the detective. Defendant maintains that he did not intend to talk to police when he arrived at his home; however, the police were waiting for him and prevented him from going inside. Defendant maintains that the detective who interrogated him grabbed him by the arm, escorted him to the police car, told him to have a seat, and closed the door behind him. The detective's testimony contradicted defendant's version of the events. The detective maintained that defendant knew police would be waiting for him when he arrived home, and that defendant agreed to come home in order to talk to the police. The detective testified that he did not grab defendant's arm, that defendant voluntarily agreed to get into the police car, and that defendant closed the door himself.

Both defendant and the detective testified during the suppression hearing. The trial court considered the conflicting testimony and concluded that the detective's testimony was more credible in regard to the conflicting testimony about what occurred when defendant's wife came up to the police vehicle to tell defendant he had to move his vehicle. In light of its superior opportunity to evaluate witness credibility, we defer to the trial court when resolution of a disputed factual question turns of the credibility of witnesses. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). Accordingly, in light of the fact that there was testimony in support of the trial court's factual findings, and the deference afforded to the finder of fact in regard to credibility determinations, we cannot conclude that the trial court's factual findings were clearly erroneous.

Defendant also challenges the trial court's ultimate conclusion that he was not in custody at the time of the interrogation. We review the trial court's legal conclusions and its ultimate decision on a motion to suppress de novo. *Roberts*, 292 Mich App at 502; *People v Harrington*, 258 Mich App 703, 706; 672 NW2d 344 (2003).

It is not disputed that defendant was never given a *Miranda* warning. However, *Miranda* warnings are required only when the suspect is subject to a custodial interrogation. *People v Anderson*, 209 Mich App 527, 532; 531 NW2d 780 (1995). "Generally, a custodial interrogation is a questioning initiated by law enforcement officers after the accused has been taken into custody or otherwise deprived of his or her freedom of action in any significant way." *People v Steele*, 292 Mich App 308, 316; 806 NW2d 753 (2011) (citations omitted). "To determine whether a defendant was in custody at the time of the interrogation, we look at the totality of the circumstances, with the key question being whether the accused reasonably could have believed that he was not free to leave." *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). "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.*

This Court has recognized certain circumstances that weigh against a finding of custody, including situations where the individual being questioned is told he is not under arrest or in custody, and the duration of the questioning is brief. See *Id.* at 450. This Court has also noted

that "[c]ourts are less willing to find custodial circumstances where interrogation occurs in familiar or neutral surroundings" and therefore, "interrogation in a suspect's home is usually viewed as noncustodial." *People v Mayes*, 202 Mich App 181, 196; 508 NW2d 161 (1993) (citation omitted). Further, this Court concluded that a defendant was not in custody when he drove himself to the police station for questioning, which lasted approximate an hour and a half, and was informed that he was not under arrest. *People v Mendez*, 225 Mich App 381, 383; 571 NW2d 528 (1997).

In this case, the trial court considered all the evidence and found that while the testimony of defendant and his wife regarding the detective's actions when defendant tried to leave the police vehicle during the interrogation to move his car weighed in favor of finding that defendant was in custody, the totality of the circumstances supported the conclusion that defendant was not in custody. The trial court focused on the fact that defendant voluntarily went to his home to talk to the police. The trial court further noted that the detective informed defendant that he was not going to arrest him when they spoke on the telephone before defendant returned. Further, the trial court found that defendant got into the police vehicle voluntarily, and at the outset of the interrogation the detective informed defendant that he was not under arrest and was free to leave at any point. Defendant was not handcuffed, and was in the front seat of the vehicle. The interrogation was conducted by only one officer, and it lasted for less than an hour. Accordingly, in light of the totality of the circumstances, we agree with the trial court's finding that defendant was not in custody when he was interrogated by the detective because a reasonable person would believe that he was free to leave under the circumstances of this case. Because we conclude that defendant was not in custody at the time of the interrogation, defendant was not entitled to *Miranda* warnings, and his Fifth Amendment right to counsel was not violated. *People v Marsack*, 231 Mich App 364, 374; 586 NW2d 234 (1998).

Defendant also argues that his Sixth Amendment right to counsel was violated. However, the Sixth Amendment right to counsel "attaches only at or after the initiation of adversarial judicial proceedings." *People v Hickman*, 470 Mich 602, 607-608; 684 NW2d 267 (2004). Here, it is undisputed that formal proceedings had not been initiated at the time of any of defendant's purported invocations of his right to counsel. Thus, even assuming defendant unequivocally requested an attorney, his Sixth Amendment right to counsel was not violated.

Affirmed.

/s/ Michael J. Kelly
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens