STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JESSE LEE ANDERSON,

Defendant-Appellant.

UNPUBLISHED
May 27, 1997

Delta Circuit Court
No. 193227
LC No. 95-5774 FH

Before: O'Connell, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree criminal sexual conduct (CSC 2nd), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant was sentenced to five years of probation with the first year to be served in the county jail. He now appeals as of right. We affirm.

Defendant first argues that the trial court erred in failing to suppress his inculpatory statements where he was interrogated in a custodial setting without first being advised of his *Miranda*[1] rights, and where the statements were involuntarily made. The duty to give *Miranda* warnings attaches when a defendant has been placed under arrest, taken into custody, or otherwise deprived of freedom of action in a "significant manner." *People v Mayes (After Remand)*, 202 Mich App 181, 190; 508 NW2d 161 (1993). In determining whether the defendant was in custody, the key factor is whether he reasonably could have believed that he was not free to leave. *Id*.

After conducting an independent review of the record, *Thompson v Keohane*, 516 US ___; 116 S Ct 457, 465; 133 L Ed 2d 383 (1995), we conclude that defendant was not entitled to receive *Miranda* warnings because his interview was not "custodial." Defendant went to the police station voluntarily and was told that he was not under arrest and that he was free to leave at any time. When defendant completed the interview, he returned home. He was not deprived of his freedom of movement to the degree associated with a formal arrest. *New York v Quarles*, 467 US 649; 104 S Ct 2626; 81 L Ed 2d 550 (1984). Given these facts, we are not convinced that the interviewing officer had a duty to furnish *Miranda* warnings before conducting the interview. Consequently, defendant's inculpatory statements were properly admitted at trial. See also MRE 801(d)(2)(A).

Defendant also submits that the circumstances surrounding his interview were so coercive as to render his statements involuntary. In evaluating the voluntariness of a confession, this Court is guided by the Michigan Supreme Court's decision in *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). *Cipriano* suggests a number of factors to be considered when determining whether a confession is "voluntary," including:

> 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 the 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*.]

In the present case, the trial court observed that defendant has a "very high intelligence level," that the questioning was short, that defendant was not detained, and that he was not denied food, sleep, or medical attention. Defendant's testimony also indicated that he was not physically abused or threatened with abuse. Although defendant stated that he felt uncomfortable during the interview, he also testified that he did not feel nervous or threatened. Additionally, defendant was aware that his statements could be used against him; the officer explained to defendant that the report would be forwarded to the prosecutor's office and that a warrant would be issued for his arrest. After considering this evidence, we conclude that the trial court's decision was not clearly erroneous. *People v Cheatham*, 453 Mich 1, 29-30; 551 NW2d 355 (1996).

Defendant also argues that the trial court erred by refusing to instruct the jury on the misdemeanor offenses of assault and battery and accosting a child. The trial court has an obligation to instruct on lesser included misdemeanors if there is an "appropriate relationship" between the charged offense and the misdemeanor and if the requested misdemeanor is supported by a "rational view" of the evidence. *People v Stephens*, 416 Mich 252, 261-265; 330 NW2d 675 (1982). The trial court correctly held that the requested instructions were not appropriate given the nature of the crime with which defendant was charged and the nature of the evidence presented at trial.

First, the requested instructions for both offenses include elements that are not required for proof of CSC 2d. The offense of accosting a child includes as an essential element the act of enticing, soliciting, or suggesting that the child commit an immoral act. *People v Wheat*, 55 Mich App 559, 564; 223 NW2d 73 (1974). The crime of CSC 2d has none of these elements. Similarly, proof of assault requires that a prosecutor establish criminal intent; CSC II, however, is a general intent crime which does not require such proof. *People v Corbiere*, 220 Mich App 260, 266; ___NW2d___ (1996).

Second, Michigan courts have consistently held that the offenses of assault and battery and criminal sexual conduct are aimed at the protection of distinct interests. As this Court recently stated:

> [T]he societal interests furthered by the criminal sexual conduct statutes are distinct from the interests associated with statutes criminalizing assaults in general. In enacting the criminal sexual conduct statutes the Legislature chose not to have sexual misconduct prosecuted under general assault statutes or to identify criminal sexual conduct as a heightened degree of assault. [*Corbiere*, *supra*, 220 Mich App at 264.]

Finally, the evidence presented at trial indicates that defendant lacked the requisite intent to commit either the offense of assault and battery or that of accosting a minor. The trial court found that defendant did not intend to injure or frighten the victim and that he did not have the requisite intent to "induce or force the child to commit an immoral act." Defendant's own testimony indicates that he thought the victim was asleep when he touched her vaginal area. This factor alone indicates that he did not intend to put her in fear of an immediate battery, and that he did not intend to communicate to the victim his intent to have her commit an immoral act.

In sum, an examination of the record does not indicate that the trial court's determination was based on a faulty view of the evidence presented. Accordingly, we cannot find that the trial court's decision to refuse defendant's requested instructions constituted an abuse of discretion. *People v Malach*, 202 Mich App 266, 276; 507 NW2d 834 (1993).

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Stephen J. Markman

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