

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON GARCIA,

Defendant-Appellant.

UNPUBLISHED

May 26, 1998

No. 192782

Wayne Juvenile Court

LC No. 95-323313

Before: Hood, P.J., and MacKenzie and Doctoroff, JJ.

MEMORANDUM.

Following a bench trial, defendant, a juvenile, was found guilty of fourth-degree criminal sexual conduct, MCL 750.520e(1); MSA 28.788(5)(1), and was placed on probation. Defendant appeals as of right. We affirm.

Defendant challenges the trial court's decision to admit into evidence statements he made about the sexual assault when he was at a police station reporting an unrelated automobile accident. Defendant contends that he was in custody at the time he made the statements and that he was not advised of his *Miranda* rights [*Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966)]. The ultimate question whether a person was "in custody" for purposes of *Miranda* warnings is a mixed question of fact and law that must be answered independently by the reviewing court after a de novo review of the record. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). *Miranda* warnings are required when a person is interrogated by police while in custody or otherwise deprived of freedom of action in any significant manner. *Id.* To determine whether a defendant was "in custody" at the time of the interrogation, this Court looks at the totality of the circumstances, with the key question being whether the defendant reasonably believed that he was not free to leave. *Id.* at pp 382-383.

Defendant was not in custody for *Miranda* purposes when he was questioned at the police station. He voluntarily came to the police station on an unrelated matter the day after the victim reported the assault. Coincidentally, the same police officer prepared both reports and recognized defendant's name from the victim's report. After answering the police officer's questions, defendant

was allowed to leave the police station. Because defendant was not in custody, he was not entitled to be advised of his *Miranda* rights and his statements were not secured in violation of *Miranda*.

Defendant argues that he is entitled to a new trial because the trial court did not secure a knowing and voluntary waiver of his right to a jury trial in accordance with MCR 6.402. However, the right to a jury at trial in juvenile court is governed by MCR 5.911. Because defendant failed to file a written demand for a jury trial in accordance with MCR 5.911(B), he has waived appellate review of this issue.

Defendant also argues that he was denied a fair trial when the trial court improperly characterized his testimony. Defendant failed to preserve this issue for appellate review by objecting to the trial court's comments. *People v Sardy*, 216 Mich App 111, 117-118; 549 NW2d 23 (1996). We decline to consider defendant's argument because he has failed to demonstrate the existence of plain error that was outcome determinative. *People v Grant*, 445 Mich 535, 553-554; 520 NW2d 123 (1994).

Affirmed.

/s/ Harold Hood

/s/ Barbara B. MacKenzie

/s/ Martin M. Doctoroff