STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 2, 2001
v	No. 222464 Kent Circuit Court
LARRY WAYNE CHICKLAN, Defendant-Appellant.	LC No. 99-002246-FC

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendant was charged and convicted of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3), after a trial by jury. As a second habitual offender, MCL 769.10; MSA 28.1082, defendant was sentenced to an enhanced sentence of 9 to 22½ years' imprisonment for each conviction. Defendant's sentences are to be served concurrently. Defendant now appeals by right. We affirm.

Defendant first contends that his confession was improperly admitted at trial because it was involuntary. We disagree. We must examine the entire record and make an independent determination concerning the voluntariness of a confession. *People v DeLisle*, 183 Mich App 713, 719; 455 NW2d 401 (1990). "However, the trial court's findings will not be reversed unless they are clearly erroneous. A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

> The test of voluntariness should be 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 . . . ." The line of demarcation "is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession."
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> In determining whether a statement is voluntary, the trial court should consider, among other things, the following factors: 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.
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> The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." [*People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988) (citations omitted).]

In this case, defendant claims that his confession was involuntary because he had less than three hours of sleep, had a severe headache, and had been "pressured" by Kent County Sheriff's Lieutenant Robert Start after Start told defendant that there were problems with defendant's polygraph examination. We disagree. The testimony at the *Walker*[1] hearing established that defendant agreed to take the polygraph examination and voluntarily appeared at the sheriff's department. Before the interview by Lieutenant Start, defendant was read his *Miranda*[2] rights and a polygraph waiver. Lieutenant Start, Grand Rapids police Detective Carl Holzhueter, and defendant all testified that defendant stated that he understood his rights, signed the waiver of rights form, and agreed to talk with Lieutenant Start. Lieutenant Start and Detective Holzhueter testified that although defendant stated he had slept little and had a headache, defendant understood what was happening. In fact, Detective Holzhueter described defendant as "rational" and "lucid" and stated that defendant "seemed quite explicit about what he was saying." Furthermore, the entire interview lasted, at most, 2½ hours. Defendant even testified at the hearing that Lieutenant Start never threatened him with arrest or physical violence, and he was not coerced to say anything. Defendant admitted that he had said everything that Lieutenant Start had written down and that he was allowed to go home after the interview.

We find that defendant's lack of sleep did not make his confession involuntary. As our Supreme Court has noted, defendant's "lack of sleep was principally attributable to his 'being scared' rather than any coercive tactics on the part of the police." *People v Sexton*, 458 Mich 43, 68; 580 NW2d 404 (1998). This is particularly true where, as here, defendant was not in custody before the interview and had spent the night at his own home. Similarly, the fact that defendant had a headache does not render defendant's confession involuntary. See *People v Price*, 112 Mich App 791, 798; 317 NW2d 249 (1982). We are also not persuaded that Lieutenant Start's statement to defendant regarding the problematic polygraph examination was coercive and

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[1] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

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

caused him to involuntarily confess to the crime. See *People v Emanuel*, 98 Mich App 163, 180-181 & n 5; 295 NW2d 875 (1980). As previously stated, defendant agreed to take the polygraph examination. This decision was, presumably, with the understanding that he could fail. This is certainly not a case where there is evidence that Lieutenant Start was lying when he told defendant that there were problems with the polygraph examination. Moreover, we find that defendant's own testimony does not support his contention that Lieutenant Start's statement caused him to confess. Although defendant initially testified that he felt Lieutenant Start was "pushing" him, defendant later stated that he was not coerced or threatened to say anything.

Therefore, after examining the totality of the circumstances, we find that the trial court correctly concluded that defendant's confession was voluntary and admissible at trial. Moreover, to the extent that defendant challenges the veracity of Lieutenant Start's and Detective Holzhueter's testimony, this argument is also without merit. This Court will defer to the "trial court's superior ability to view the evidence and witnesses . . . ." *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997).

Next, defendant claims that the trial court inappropriately limited his cross-examination of the victim and her mother, two prosecution witnesses. We disagree. We review a constitutional question de novo.[3] *People v Conat*, 238 Mich App 134, 144; 605 NW2d 49 (1999).

"A primary interest secured by the Confrontation Clause is the right of cross-examination." *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). "A limitation on cross-examination that prevents a defendant from placing before the jury facts from which bias, prejudice, or lack of credibility of a prosecution witness might be inferred constitutes a denial of the constitutional right of confrontation." *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998). However, "[t]he right of cross-examination is not without limit; neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject." *Adamski, supra*. Indeed, "[t]he Confrontation Clause guarantees only 'an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *People v Chavies*, 234 Mich App 274, 283; 593 NW2d 655 (1999), quoting *United States v Owens*, 484 US 554, 559; 108 S Ct 838; 98 L Ed 2d 951 (1988), quoting *Kentucky v Stincer*, 482 US 730, 739; 107 S Ct 2658; 96 L Ed 2d 631 (1987). For instance, a defendant does not have the right to cross-examine a witness on irrelevant issues. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). Moreover, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Adamski, supra*, quoting *Delaware v Van Arsdall*, 475 US 673, 679; 106 S Ct 1431; 89 L Ed 2d 674 (1986).

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[3] But see *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992) ("[t]he scope of cross-examination is within the discretion of the trial court").

Here, defendant's claim that the trial court erred when it limited his cross-examination of the victim and her mother is without merit. Indeed, after having reviewed the record, we find the factual predicate necessary to support defendant's claim of error is noticeably absent.

First, defendant argues that the trial court erred when it refused to allow him to cross-examine the victim about false charges she had filed previously. However, defendant fails to recognize, as the trial court did, that there was no evidence that the victim ever filed false charges or fabricated a story to police. To the contrary, the police report indicated that the victim's mother had informed police that a man in a truck had confronted the victim after school. Grand Rapids police were able to verify that a man had indeed stopped his truck, opened his truck door, and talked with the girl. The victim's statement that the man had tried to abduct her was not untrue and was a reasonable interpretation of the man's actions. Thus, there is simply no support for defendant's argument that questioning the victim about this incident would have demonstrated that she had a propensity to lie or fabricate false charges.

Second, defendant claimed that the trial court erred when it refused to allow defendant to question the victim's mother about her relationship with Randy Write. Defendant claimed that the questioning was necessary to demonstrate to the jury the victim's mother's bias. In particular, defendant claimed that the victim's mother had encouraged the victim to fabricate these allegations against defendant to get even with defendant for appearing as a witness in another, unrelated child molestation case against Randy Write. However, defendant has failed again to sufficiently demonstrate the relevancy of this questioning. As the trial court noted, there was no support for defendant's theory that the victim's mother and Randy Write had a relationship. Indeed, the victim's mother, and even defendant, testified at trial that she had a relationship with John Bennett. There was only speculation that Randy Write had a relationship with her. Further, as the trial court noted, the alleged incident involving Write occurred in another household, with another girl, and was unrelated to this case.

Additionally, defendant's alternative argument, that this questioning would have established that Randy Write, a known child molester, resided in the same home, is equally without merit. Defendant did indirectly inform the jury of this fact. Several witnesses testified at trial that Randy Write lived in the home with the victim, her mother, and defendant. Further, defendant was allowed to testify that Randy Write had recently been accused of molesting another girl and that defendant had reported witnessing the incident to police. Thus, the jury was aware of these facts, and the trial court did not err when it limited defendant's cross-examination of the victim's mother.

We affirm.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Jane E. Markey