

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER K. STERN,

Defendant-Appellant.

UNPUBLISHED

March 20, 2001

No. 220744

Macomb Circuit Court

LC Nos. 98-000962-FC;

98-000964-FC;

98-000966-FC;

98-000972-FC

Before: Murphy, P.J., and Hood and Cooper, JJ.

PER CURIAM.

Charges were brought against defendant in four separate cases. The cases were consolidated and tried before a jury from May 4 through May 17, 1999. Following the jury trial, defendant was convicted of the following in each case: In 98-000962-FC, defendant was convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a) (person under thirteen years of age), and two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a) (person under thirteen years of age). In 98-000964-FC, defendant was convicted of two counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. In 98-000966-FC, defendant was convicted of two counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. In 98-000972-FC, defendant was convicted of one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. Defendant was sentenced to fifty to seventy-five years for each count of first-degree criminal sexual conduct and ten to fifteen years for each count of second-degree criminal sexual conduct. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court abused its discretion in refusing to authorize funds for defendant to hire a second psychiatric expert witness to support his insanity defense. The trial court ruled that one psychiatric expert witness was sufficient in light of the prosecution's determination to only call one expert witness in rebuttal. A trial court's decision whether to appoint an expert witness is reviewed by this Court for an abuse of discretion. *People v Carson*, 220 Mich App 662, 678; 560 NW2d 657 (1996), adopting the findings of the previously vacated opinion in *People v Carson*, 217 Mich App 801, 806; 553 NW2d 1 (1996).

MCL 768.20a; MSA 28.1043(1) governs the appointment of an expert witness for an indigent defendant, and provides, in pertinent part:

(3) The defendant may, at his or her own expense, or if indigent, at the expense of the county, secure an independent psychiatric evaluation by a clinician of his or her choice on the issue of his or her insanity at the time the alleged offense was committed. The defendant shall notify the prosecuting attorney at least 5 days before the day scheduled for the independent evaluation that he or she intends to secure such an evaluation. The prosecuting attorney may similarly obtain independent psychiatric evaluation. A clinician secured by an indigent defendant shall be entitled to receive a reasonable fee as approved by the court.

In *Ake v Oklahoma*, 470 US 68, 74; 105 S Ct 1087; 84 L Ed 2d 53 (1985), the United States Supreme Court held “that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, the Constitution requires that a State provide access to a psychiatrist's assistance on this issue if the defendant cannot otherwise afford one.” In so holding, the Court stated:

. . . , the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense. This is not to say, of course, that the indigent defendant has a constitutional right to choose a psychiatrist of his personal liking or to receive funds to hire his own. Our concern is that the indigent defendant have access to a competent psychiatrist for the purpose we have discussed, and as in the case of the provision of counsel we leave to the State the decision on how to implement this right. [*Id.* at 83.]

Additionally, the Court specifically limited its holding by noting that a state is only obligated to appoint one competent psychiatrist for a defendant. *Id.* at 78-79.

In the instant case, defendant was given funds to hire his first choice psychiatric expert witness. Defendant was able to fully present his insanity defense through this expert witness. Moreover, this is not a case where the prosecution had an advantage as a result of defendant's indigence. The prosecution limited itself to one expert witness. In sum, defendant had the services of one competent expert witness, and no more is required by law. *Id.* The trial court did not abuse its discretion in refusing to grant additional funds for a second expert witness. *Carson, supra.*

Defendant next contends that the trial court erred in determining that his statement to the police was voluntarily made. “Whether a defendant's statement was knowing, intelligent, and voluntary is a question of law that a court must determine under the totality of the circumstances.” *People v Snider*, 239 Mich App 393, 417; 608 NW2d 502 (2000). This Court will not reverse the trial court's findings unless they are clearly erroneous. *Id.* A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Specifically, defendant contends that his statement to the police was coerced by a promise that defendant would receive counseling if he cooperated with the police. A *Walker*¹ hearing was held on May 4, 1999. Officer Stephen Triner testified that he was the officer in charge of defendant's case. On February 18, 1998, Triner was informed that defendant had arrived at the Fraser Police Station at 10:10 p.m.² Triner arrived shortly thereafter to interview defendant. Triner testified that he did not notice any physical marks on defendant and defendant did not complain about a lack of sleep. Defendant did not make any statements concerning promises made by other authorities. Triner was unaware if defendant received any food on his journey. Triner did not make any promises to defendant or indicate that the prosecution would be easy on defendant if he made a statement.

Detective Mike White from the Charlevoix Police Department was also there for the interview. His interest stemmed from similar charges involving the same victims for incidents that occurred in Charlevoix. Defendant signed his rights form at 10:35 p.m. Defendant did not appear to be under the affects of medication or narcotics. Defendant did not complain of a lack of sleep. Defendant responded to questions and behaved appropriately during the interview. Detective White conducted most of the interview. The interview lasted until approximately 2:30 a.m. Defendant initially requested that a tape recorder not be used to record his statement. During the latter portions of the interview, defendant requested that the tape recorder be turned on so that defendant could express his thoughts on the case. Triner testified that defendant was told that defendant could stop the interview at any time. At the end of Triner's testimony, defense counsel indicated that on its face it appeared that there were no violations. The trial court agreed and determined that defendant's statement to the police was voluntary.

The test of voluntariness is "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 . . .'" *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1998), citing *Columbe v Connecticut*, 367 US 568, 602; 81 S Ct 1860; 6 L Ed 2d 1037 (1961). In *Cipriano*, the Michigan Supreme Court outlined the following list of non-exclusive factors to consider when determining the voluntariness of a defendant's statement:

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

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

² Defendant was arrested in Oklahoma and transported back to Michigan after waiving extradition.

was physically abused; and whether the suspect was threatened with abuse.
[*Cipriano, supra* at 334.]

The absence or presence of any of these factors is not conclusive on the issue of voluntariness. Rather, “[t]he 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.” *Id.* at 334.

In the instant case, we find no clear error in the trial court's determination that defendant's statement was voluntarily given. Although the *Walker* hearing transcript does not address defendant's educational history or his intelligence level, there is nothing in the record to suggest that defendant was incapable of understanding the proceedings. Triner testified that defendant was able to verbally communicate with the officers and did not indicate that he was unable to read or write. Defendant had a history of experiences with the criminal justice system, including two prior convictions as an adult. Accordingly, defendant had a basis for understanding the circumstances surrounding the interview.

Officers Triner and White interviewed defendant for approximately four hours. Defendant was only detained by the Fraser Police Department for approximately thirty minutes before giving his statement. Defendant was advised of his constitutional rights and signed the rights form after it was read to him and after he had time to review the form. Moreover, defendant was questioned shortly after his arrival at the Fraser Police Station, so there was no unnecessary delay in bringing him before a magistrate before he made his confession.

There was no evidence to suggest that defendant was injured, intoxicated, drugged, or in ill health when he gave his statement. Triner testified that defendant did not appear to be under the influence of any substances when he was questioned. Defendant was not in any observable pain and did not request medication. Moreover, defendant was not denied food, sleep, or medical attention. Triner testified that he offered defendant a beverage during the course of the interview. Defendant declined and did not request a beverage or food during the interview. According to Triner, defendant never appeared to lack energy or the capacity to focus on the purpose of the interview.

Furthermore, nothing in the record suggests that the officers coerced defendant's confession by withholding medical attention or making promises of counseling. There was also no evidence that defendant was abused in any manner or threatened with abuse. Accordingly, there is no evidence that defendant's statement was involuntary or obtained in violation of his due process rights.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Jessica R. Cooper