STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED March 30, 2001
v	No. 230476 Wayne Circuit Court
ERIC KNOTT, Defendant-Appellee.	LC No. 99-007892

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

PER CURIAM.

The prosecution appeals by leave granted from the circuit court's order granting defendant's motion to suppress a statement defendant made while in police custody. Following a *Walker*[1] hearing, the trial court held that defendant's statements must be suppressed because defendant invoked his right to counsel and because his waiver of his *Miranda*[2] rights was not voluntary. We reverse and remand.

On review of the trial court's determinations regarding a motion to suppress, we must examine the entire record and make an independent determination. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000); *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). Deference is given to the trial court's assessment of the credibility of witnesses and the weight of the evidence, it having a superior opportunity to evaluate these matters, and the trial court's findings will not be reversed unless they are clearly erroneous. *Sexton*, *supra*; *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). A finding is clearly erroneous if it leaves the reviewing 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). Conversely, questions of law, such as whether a defendant's waiver was "knowing and intelligent" or whether a waiver was "voluntary," are reviewed de novo. *Daoud*, *supra* at 629-630.

[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).

First, the prosecution argues that defendant's waiver of rights was voluntary, knowing, and intelligent. Statements of a defendant made during a custodial interrogation are inadmissible unless the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). This inquiry has two distinct dimensions: (1) the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception; and (2) the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. *Daoud*, *supra* at 633, quoting *Moran v Burbine*, 475 US 412, 421; 106 S Ct 1135; 89 L Ed 2d 410 (1986). The prosecutor must establish a valid waiver by a preponderance of the evidence. *Daoud*, *supra* at 634.

We note, initially, that the trial court implicitly ruled that defendant's waiver of rights was knowing and intelligent.[3] A determination of whether a suspect's waiver was knowing and intelligent requires an inquiry into the suspect's level of understanding, irrespective of police behavior. *Id.* at 636. A defendant may knowingly waive his *Miranda* rights without understanding the ramifications and consequences of choosing to waive or exercise the rights that the police have properly explained to him. *Id.*

> To waive rights intelligently and knowingly, one must at least understand basically what those rights encompass and minimally what their waiver will entail. The mental state that is necessary to validly waive *Miranda* rights involves being cognizant at all times of the State's intention to use one's statements to secure a conviction and of the fact that one can stand mute and request a lawyer. [*Id.* at 640-641, quoting *In re WC*, 167 Ill 2d 307, 328; 212 Ill Dec 563; 657 NE2d 908 (1995).]

Viewing the objective circumstances surrounding defendant's waiver, we conclude that the waiver of rights was knowing and intelligent. Although defendant was only seventeen years old at the time of the arrest, he was a high school graduate with a 2.5 grade point average and he was not under the influence of any drugs or alcohol when he made the waiver. It is not disputed that defendant read his constitutional rights, nor that after he read each right the interrogating officer, Wilma Clark Price, asked him if he had any questions and whether he understood the right. Defendant said he had no questions, put his initial next to each constitutional right, and signed the bottom of the form.

The prosecution argues that not only was defendant's waiver knowing and intelligent, but it was also voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.

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[3] The trial court said that it was "not quite so sure" that defendant understood his rights. However, its reasons for suppressing defendant's statement did not include a holding that his waiver was unknowing and unintelligent.

In evaluating the admissibility of a particular statement, we review the totality of the circumstances surrounding the making of the statement to determine whether it was freely and voluntarily made in light of the factors set forth by our Supreme Court in *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988):

> "[T]he 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. [Citations omitted.]" [*Sexton, supra* at 752-753.]

The prosecution specifically challenges the trial court's consideration of two circumstances the court emphasized as impacting the voluntariness of defendant's waiver. First, the prosecution contends that the court clearly erred in finding that handcuffing defendant to a desk constituted mistreatment or physical coercion. The record demonstrates that after his arrest in the early hours of the morning, and on his arrival at the police station, defendant was taken to a small holding room where he was left alone, handcuffed to a desk, for some four hours.[4] Defendant was then removed, fingerprinted and processed, and taken to a cell where he remained for another four hours until Officer Price arrived and took defendant out for interrogation. The trial court noted that defendant was a seventeen-year-old with no prior contact with the legal system. It suggested that the act of leaving him handcuffed to a desk in a small room was akin to "shakl[ing] . . . a dog to a stick." The court found that it was done to "dehumanize" and "demoralize" defendant. While we have serious concerns regarding the need to secure prisoners such as defendant in this manner, we do not believe that this circumstance merits suppression.

The prosecution essentially argues that the court erred by even considering the handcuffing, citing cases approving and counseling the use of handcuffs to restrain prisoners during arrest, transport, detainment, and even interrogation. However, such circumstances are a far cry from the situation at issue in this case. Defendant was in custody at the police station.

[4] Testimony indicated that the reason for the lengthy detainment before defendant's processing probably concerned the fact that a juvenile codefendant was arrested at the same time. Extra initial paperwork is required when dealing with juveniles, and defendant would likely not have been processed until after his codefendant. Nevertheless, testimony also indicated that generally the extra work should take a maximum of two hours.

Though policy perhaps dictates that suspects not be held in a cell until after processing, it seems unlikely that the manner in which defendant was secured for such a lengthy time was wholly necessary. We conclude, therefore, that contrary to the prosecution's assertion the trial court did not err by considering the fact that defendant was handcuffed to a desk. Nevertheless, because it is not clear that defendant's handcuffing was so coercive as to overcome his will and destroy his capacity for self-determination, we find that the court clearly erred to the extent that it found this circumstance so oppressive as to render defendant's waiver of rights involuntary.

Second, the prosecution contends that the trial court clearly erred in finding that defendant's waiver was not the product of a free and deliberate choice in part because defendant was refused the opportunity to call his mother. We agree with the prosecution that neither the state nor the federal constitution grants a criminal defendant the right to call his mother. In *People v Wright*, 441 Mich 140, 170 (Brickley, J.); 490 NW2d 351 (1992), Justice Brickley noted that under federal law a defendant's request to speak with family members need not be honored, even if the defendant does not know an attorney to call. Nonetheless, under certain circumstances refusing such a request may affect the voluntariness of a waiver of *Miranda* rights. *Id.* at 170-172. Many Michigan cases recognize that incommunicado interrogation, which is the practice of consciously isolating a suspect from all friendly contact with outsiders to coerce a waiver of the right to remain silent, can undermine a person's will and make him highly susceptible to police assertiveness. *Id.* at 168. Incommunicado interrogation affects the voluntariness of a waiver because it suggests that cooperation will be advantageous, whether or not the statements are true. *Id.* at 169. Accordingly, the trial court also properly considered defendant's isolation and the police action of prohibiting him from making a phone call. We find, however, that unlike the facts of *Wright*, the evidence in this case does not support a finding that the police held defendant incommunicado for the purpose of coercing a waiver. *Id.* at 171.

Considering the totality of the circumstances, we find that the trial court erred by holding that defendant's waiver was not voluntary. Defendant was arrested just before 2:00 a.m. and in custody for approximately eight hours before he waived his rights and gave the statement in question. Although he was handcuffed to a desk for the initial four hours of his detainment, he was subsequently processed and moved to a cell with a place to sleep. Furthermore, though he neither slept nor ate during the eight hours, he never asked for sustenance. Defendant was admittedly isolated throughout his detainment, and was specifically prevented from calling his mother. However, this was standard procedure for suspects facing the charges lodged against defendant. Defendant was never threatened, and the interrogation leading up to his statement was only ten to fifteen minutes in length.

Given his young age and his inexperience with police, defendant was likely vulnerable to coercive police techniques. However, we cannot conclude that the tactics used by the police in this case, including the handcuffing and the isolation, were so extreme and coercive as to overcome defendant's will. After examining the totality of the circumstances surrounding defendant's waiver, and his concomitant decision to give a statement, we conclude that the trial court erred in finding that the waiver of rights was not freely and voluntarily given.

Finally, the prosecution argues that the trial court erred by finding that defendant asserted his right to counsel. A suspect in police custody must be informed specifically of the suspect's

right to remain silent and have an attorney present before being questioned. *Miranda*, *supra* at 479. If the suspect states that he wants an attorney, the interrogation must cease until an attorney is present. *Id.* at 474. In order to invoke the right to counsel, the suspect's request for counsel must be unambiguous. *People v Granderson*, 212 Mich App 673, 677-678; 538 NW2d 471 (1995). An ambiguous statement regarding counsel does not require the police to cease questioning or to clarify whether the accused wants counsel. *Davis v United States*, 512 US 452, 461-462; 114 S Ct 2350; 129 L Ed 2d 362 (1994); *Granderson, supra.*

In the instant case, defendant testified that at one point during the interrogation he said, "Don't I get a lawyer?" Defendant testified that he did not remember whether he asked this question before or after he signed the rights form. Officer Price denied that defendant ever mentioned that he wanted an attorney. The trial court found defendant's testimony to be credible and held that his words were enough to invoke his right to counsel. Although we must defer to the trial court regarding the credibility of the witnesses, see *Sexton, supra* at 752, we disagree with the trial court's ultimate conclusion and hold that defendant's words did not constitute an unambiguous request for counsel. Defendant did not actually request a lawyer, but rather asked if he was entitled to one. There is no evidence that, after he asked this question, he either requested that the interrogation cease or stated that he wanted a lawyer. Because defendant's statement was in the form of a question, and was not an unequivocal assertion that he wanted a lawyer, the trial court erred by holding that defendant invoked his right to counsel.

In sum, the trial court erred by holding that defendant invoked his right to counsel; defendant's waiver of his *Miranda* rights was knowing and intelligent; and the trial court's holding that defendant's waiver was not voluntary was erroneous. Accordingly, the court's order suppressing defendant's statement is reversed and this action remanded for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

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