

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

GERALD CLOUTIER,

Defendant-Appellant.

UNPUBLISHED

October 2, 2001

No. 225973

Wayne Circuit Court

LC No. 99-003598

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

Defendant appeals by right his conviction of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(a), entered after a bench trial. We affirm.

Defendant was accused of digitally penetrating complainant (DOB 3-11-95). He moved to suppress an inculpatory written statement he made after he took a polygraph test. The court conducted a combined bench trial and *Walker*¹ hearing. The officer who administered the test testified that he advised defendant of his polygraph and *Miranda*² rights and that defendant understood and freely waived those rights. The officer denied either threatening defendant or promising him leniency if he confessed. The officer noted that, contrary to defendant's contentions, defendant did not appear to be suffering a panic attack during the test.

Complainant, who was found competent to testify,³ stated that defendant touched her inside her body. When asked to which part of her body she was referring, complainant pointed to her genital area. Complainant's mother testified that complainant told her that defendant touched her "putt-putt," complainant's term for her vagina.

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).

³ 1998 PA 323, effective August 3, 1998, repealed MCL 600.2163, which required a hearing on the competency of a witness under the age of ten. MRE 601 provides that every person is competent to testify unless the court finds after questioning that the person lacks the physical or mental capacity or "sense of obligation" to testify in a truthful manner.

Defendant testified on his own behalf, and his testimony was incorporated into the *Walker* hearing. He denied touching complainant in an inappropriate manner. Defendant acknowledged that he agreed to take the polygraph test and that he waived his polygraph and *Miranda* rights. He maintained that the polygraph test indicated that he was untruthful because although he told the truth, the machine registered his reaction to his memories of the abuse his daughters suffered. He asserted that Sims threatened him and told him to write an inculpatory statement. Defendant stated that he did as Sims instructed because he was having a panic attack and wanted to get away from Sims.

The trial court denied defendant's motion to suppress his statement, finding that Sims' testimony was more credible than that given by defendant. Subsequently, the trial court found defendant guilty. In so finding, the court concluded that complainant's testimony was credible and that the evidence other than defendant's statement supported defendant's conviction.

A statement made by an accused during a custodial interrogation is inadmissible unless the accused voluntarily, knowingly, and intelligently waived his or her Fifth Amendment rights. *Miranda, supra*, 384 US at 444. A custodial interrogation is questioning initiated by law enforcement officers after the accused has been taken into custody or deprived of his or her freedom in a significant way. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). The ultimate question of whether a person is in custody and thus entitled to *Miranda* warnings is a mixed question of law and fact that we decide de novo on appeal. However, absent clear error, we defer to the trial court's historical findings of fact. *People v Mendez*, 225 Mich App 381, 382-383; 571 NW2d 528 (1997). Compliance with *Miranda, supra*, does not dispose of the issue of the voluntariness of a confession. *People v Godboldo*, 158 Mich App 603, 605-606; 405 NW2d 114 (1986). The voluntariness of a confession is evaluated under the totality of the circumstances, with consideration given to the duration of detention and questioning, the defendant's age, education, intelligence, and experience, the defendant's physical and mental state, and whether the defendant was threatened or promised leniency. No single factor is determinative. *People v Fike*, 228 Mich App 178, 181-182; 577 NW2d 903 (1998).

Defendant argues that the trial court erred by denying his motion to suppress his written statement. We disagree. Defendant was not under arrest when he took the polygraph test and acknowledged that he was aware that he could stop the test at any time and leave. In addition, defendant acknowledged that he was informed of his polygraph and *Miranda* rights and that he waived those rights. The officer and defendant gave vastly different accounts of the manner in which the officer conducted himself during the test. The trial court found the officer's testimony credible and simply did not believe defendant's account. This Court gives great deference to the trial court's assessment of the credibility of the witnesses. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). The trial court's findings are not clearly erroneous, *Mendez, supra*, and the totality of the circumstances demonstrates that defendant knowingly and voluntarily waived his rights and made an inculpatory statement, *Fike, supra*.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record,

but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), *aff'd* by equal division 462 Mich 71; 611 NW2d 783 (2000).

A person is guilty of CSC I if he engages in sexual penetration with another person who is under thirteen years of age. MCL 750.520b(1)(a). Defendant argues that absent his inculpatory statement, the evidence was insufficient to support his conviction of CSC I. We disagree and affirm defendant's conviction. Defendant's statement was properly admitted into evidence. However, we conclude that even if the statement were disregarded, the evidence was sufficient. Complainant testified that defendant touched her inside her body and indicated that she was referring to her vaginal area. In addition, complainant's mother testified that complainant reported that defendant touched her in her "putt-putt," complainant's term for her vagina. The trial court was entitled to find complainant's testimony credible. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), remanded on other grds 439 Mich 896; 478 NW2d 445 (1991). No corroboration of complainant's testimony was required. MCL 750.520h. The evidence viewed in a light most favorable to the prosecution was sufficient to support defendant's conviction. *Petrella, supra*.

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper