STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED June 21, 2002
V	No. 234389 Wayne Circuit Court
JOSEPHINE PARKER, Defendant-Appellee.	LC No. 00-004792

Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

The prosecution appeals as of right from the trial court's order dismissing charges of statutory manslaughter, MCL 750.329, and possession of a firearm during the commission of a felony, MCL 750.227b. We reverse.

I. Nature of the Case

The trial court suppressed defendant's confession because it found, clearly incorrectly in our view, that the police lacked probable cause for defendant's arrest and coerced defendant's confession. The trial court's error precipitated a dismissal of the case with prejudice.[1] Because we find that the police clearly had probable cause to arrest defendant and that defendant's confession was voluntary, not coerced, we (1) reverse the trial court's order which suppressed defendant's statements, (2) reinstate the charges against defendant and (3) remand to the trial court for further proceedings.

II. Probable Cause to Arrest Defendant

The prosecution first alleges that the trial court erred in ruling that police arrested defendant illegally. It is well established that a police officer may arrest a person without a warrant if "[a] felony in fact has been committed and the [police] officer has reasonable cause to

[1] We review a trial court's findings of fact following a suppression hearing for clear error. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997), citing *People v LoCicero*, 453 Mich 496, 500; 556 NW2d 498 (1996). Further, we review a trial court's conclusions of law de novo. *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000).

believe the person committed it." MCL 764.15(c); *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998). Probable cause to arrest exists if "the facts available to the arresting officer at the moment of arrest would justify a fair-minded person of average intelligence in believing that the suspected individual had committed the felony." *Kelly, supra* at 631.

Here, the medical examiner told Officer Herlotha Fields that, in examining the victim, there was no sign that a gun was fired at close-range. The medical examiner also told Fields that the victim did not commit suicide and, indeed, firmly maintained that this death was a homicide. Moreover, Officer Fields strongly suspected that a homicide occurred because of the position of the victim's body and because the victim's finger was on the trigger of the gun. In Officer Fields' judgment, the evidence suggested that someone shot the victim and then tried to make the murder look like a suicide.

Defendant was *the* person who allegedly found the body in the position photographed. Yet, contrary to the police investigator and medical examiner's conclusions, defendant told the police that, when she arrived home after work, she found the victim in the bedroom, in the position shown to the police. Defendant did more than merely express a *belief* that the victim committed suicide; rather, she tried to *persuade* the police that the victim committed suicide, despite strong evidence to the contrary. Defendant told the police that the victim's suicide was likely because the victim's wife threatened to divorce him and take his house. Further, defendant told the police that the victim was a heavy gambler and may have had cancer. Defendant also suggested she had conversations that very day wherein the victim strongly hinted, by his choice of words, that he suffered from suicidal ideation.

Further, defendant tried to strengthen the suicide argument by explaining to the police that the victim had called her earlier to say good bye, and by giving the police numerous reasons why the victim had suicidal tendencies. Defendant's statements to the police, coupled with the medical examiner's conclusion that this was not a suicide and Officer Field's opinion that the manner of death was a homicide, established probable cause to arrest defendant for murder. Defendant was not merely an innocent bystander who happened upon a body -- she was the victim's girlfriend who implausibly, but repeatedly, made the case for suicide in the face of an obvious murder.

Additional facts convince us that the evidence was more than sufficient to find that the police acted with probable cause. Defendant stated that she had not seen the victim since 10:00 a.m. that morning. However, the victim's neighbor, Roy Ogilvie, stated that at approximately 1:00 p.m., he knocked on the victim's door and "the lady" answered and said that the victim was not home. The police were justified in inferring that "the lady" was defendant because defendant was admittedly the victim's girlfriend, and she "found" the victim.[2] Defendant also said that she left the victim's house to go to work and that she returned to the victim's house immediately

[2] Though the trial court improperly discredited this witness as being physically and mentally disabled, the evidence is directly contrary to that conclusion. When the trial court asked Officer Fields whether Mr. Ogilvie was disabled in any way, Officer Fields replied that he had a physical disability, but not a mental disability. Officer Fields further told the court that Mr. Ogilvie was "kind of slow," but that Mr. Ogilvie was coherent and merely appeared to have suffered a stroke.

after work: this strongly implies that she was living with the victim. Moreover, there was no sign of forced entry into the house. These facts further support the probable cause already established by defendant's statements and the observations of the medical examiner and Officer Fields. Further, it is important to note that the evidence at issue was offered to establish probable cause and not to convict defendant beyond a reasonable doubt.[3]

Additionally, Officer Fields testified that she spoke with both the victim's ex-wife and daughter individually, and both spoke with the victim on October 1, 1999, between 3:30 and 4:00 p.m. Both the victim's ex-wife and daughter heard an argument between the victim and a female, immediately before the shooting. Again, while not dispositive of who the "woman" may have been, this certainly creates a logical inference that defendant was with the victim shortly before the murder. After reviewing the record, we are confident that a fair-minded person of average intelligence could believe that defendant killed the victim and, therefore, the police clearly had probable cause to arrest defendant.

The trial court also incorrectly ruled that the arrest was illegal because of the *place* of the arrest. "The police must have an arrest warrant before *entering* a suspect's residence to conduct a routine felony arrest, absent the existence of exigent circumstances or consent." *People v Adams*, 150 Mich App 181, 184; 388 NW2d 254 (1986), citing *People v Oliver*, 417 Mich 366, 377; 338 NW2d 167 (1983). However, if, as here, probable cause exists to arrest, the police may apprehend a suspected felon in a public place absent a warrant. *Adams, supra*, 150 Mich App 184. Moreover, this Court has held that front steps to the entrance of an apartment building is a public place for purposes of a warrantless arrest. *Adams, supra* at 184.

Here, the police knocked on defendant's door and placed defendant under arrest after she answered the door. There was absolutely no testimony or evidence submitted at the hearing that the officers entered defendant's apartment. Certainly, defendant or her counsel had ample

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[3] As is well-established in our jurisprudence:

> It is the contrast of probable cause and proof beyond a reasonable doubt that inevitably makes for examinatorial differences between the preliminary hearing and the trial. Probable cause signifies evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. Proof beyond a reasonable doubt, on the other hand, connotes evidence strong enough to create an abiding conviction of guilt to a moral certainty. The gap between these two concepts is broad. A magistrate may become satisfied about probable cause on much less than he would need to be convinced. Since he does not sit to pass on guilt or innocence, he could legitimately find probable cause while personally entertaining some reservations. By the same token, a showing of probable cause may stop considerably short of proof beyond a reasonable doubt, and evidence that leaves some doubt may yet demonstrate probable cause. [*People v Justice*, 454 Mich 334, 344; 562 NW2d 652 (1997), quoting *Coleman v Burnett*, 155 US App DC 302, 316-317; 477 F2d 1187 (1973).]

opportunity to present evidence of an unlawful entry if such evidence existed. Therefore, the trial court clearly erred in ruling that defendant's arrest was illegal.

III. Voluntary Confession

The trial court erroneously held that defendant's statements were not voluntary because defendant refused to sign the advice of rights waiver form, and defendant was held for too long before her arraignment. "A trial court must view the totality of the circumstances in deciding whether a defendant's statement was knowing, intelligent, and voluntary." *People v Manning*, 243 Mich App 615, 620; 624 NW2d 746 (2000). " '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.' " *Id*. at 635, quoting *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988) (citation omitted). In determining whether a statement is voluntary, the trial court must consider the following, non-exhaustive list of 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. [*Cipriano, supra* at 334.]

A "[d]efendant's initial refusal to sign the waiver form is only one factor in the totality of the circumstances . . . ." and does not render the defendant's subsequent statements inadmissible. *People v Wirth*, 87 Mich App 41, 46; 273 NW2d 104 (1978). Here, during the evidentiary hearing, Officer Harris testified that on October 5, 1999, *after defendant had been advised of her rights for the fourth time*, defendant asked Officer Harris if he thought that she needed a lawyer. Officer Harris told defendant that it was her decision to make. This does not constitute a request for counsel: the United States Supreme Court has held that "maybe I should talk to a lawyer" is not a specific request for counsel. *Davis v US*, 512 US 452, 462; 114 S Ct 2350; 129 L Ed 2d 362 (1994).

Further, defendant gave her first statement on October 4, 1999, at 1:00 p.m. and *after police read defendant her Miranda*[4] *rights*. Defendant then requested a polygraph examination, which police administered the next day, on October 5, 1999. The police told defendant that she did not have to take the polygraph examination, but defendant wanted to do so. Officer Andrew Sims also re-advised defendant of her constitutional rights at that time. After the polygraph

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

showed that defendant was not being truthful, defendant gave another statement which she and Officer Sims both signed and dated.

Defendant *admitted* that at no time did police deny her food, water, bathroom privileges and that the police never threatened her. Furthermore, the police did not use force or coercion to elicit her statement. Defendant alleges that police should have re-read her *Miranda* rights after the polygraph examination. However, this Court held in *People v Hicks*, 185 Mich App 107, 114; 460 NW2d 569 (1990) that, where post-examination questioning occurs within 2 1/2 hours that encompasses the pre-interview conversation, the polygraph test itself and the post-examination questioning, the defendant's waiver expressly extends to the post-examination questioning. Similarly, here, the post-examination questioning, the polygraph test itself and the pre-interview questioning occurred over a span of approximately three to four hours, and thus, a new *Miranda* warning was not necessary during the post-examination questioning.

Finally, if the police arrest a person without a warrant, that person must be brought before a magistrate for arraignment without unnecessary delay. *Manning, supra*, 243 Mich App 622. Defendant's arraignment was not unnecessarily delayed. The police took her into custody on the evening of Sunday, October 3, 1999. The police interviewed defendant and requested a polygraph on October 4, 1999, which could not be scheduled until the next day, October 5. On October 5, 1999, defendant took a polygraph examination which involved pre-examination and post-examination interviews. The next day, October 6, 1999, the police prepared and obtained approval for a warrant; however, because the "cut-off time" to go to court had already passed, defendant was arraigned on October 7, 1999.[5] Reviewing the totality of the circumstances, we find the statements were clearly given voluntarily and were not coerced. The trial court clearly erred in holding otherwise and is therefore reversed.

For all the foregoing reasons, we reverse the trial court's ruling which suppressed defendant's statements; we reinstate the charges against defendant and remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Henry William Saad

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[5] Clearly, the two statements defendant made before police took her into custody should not have been suppressed. Further, on Monday, October 4 at 1:00 pm, defendant was fully advised of her constitutional rights *before* she made any in-custody statement. On October 4, defendant requested a polygraph which was scheduled for October 5, and, again, defendant was advised of her constitutional and polygraph rights before she took the polygraph test. Indeed, defendant was repeatedly advised of her rights and made her statements voluntarily.