

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOSEPHINE PARKER,

Defendant-Appellee.

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UNPUBLISHED

June 21, 2002

No. 234389

Wayne Circuit Court

LC No. 00-004792

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

NEFF, J. (*dissenting*).

I respectfully dissent and would affirm. The prosecution appeals as of right from the trial court's order dismissing the charges of manslaughter with a firearm pointed intentionally but without malice, MCL 750.329, and possession of a firearm during the commission of a felony, MCL 750.227b, brought against defendant.

I

Defendant was arrested at her home by Detroit police officers on October 3, 1999, in connection with the shooting death two days earlier of her boyfriend, which she had reported as a probable suicide. According to the investigating officer, Officer Fields, who ordered defendant's arrest, she was brought in for questioning. Defendant was held and questioned over several days, but was not charged in the shooting. On October 5, 1999, defendant took a polygraph test and subsequently made statements<sup>1</sup> to the police, following which she was charged in the shooting. She was arraigned on October 7, 1999.

Defendant filed a motion to suppress evidence on the basis that her statements were the product of an illegal arrest and were made involuntarily. The trial court granted defendant's motion to suppress, resulting in a dismissal of charges against defendant. The prosecution argues

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<sup>1</sup> Defendant apparently gave six statements to the police. However, the statements are not included in the record on appeal, and there is no indication of the specific nature of the statements.

on appeal that the trial court erred in determining that defendant's arrest was illegal and that her statements to the police were involuntary. I disagree.

## II

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). Further, we review a trial court's conclusions of law de novo. *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000).

The prosecution contends that defendant's statements were made voluntarily and that defendant was arrested legally and advised of her constitutional rights. However, I find no error in the trial court's conclusion that defendant's arrest was illegal.

Police officers may arrest an individual without a warrant if a felony has been committed and the officers have probable cause to believe that the individual committed the felony. MCL 764.15(1)(c); *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998). Probable cause to arrest exists where "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. Nonetheless, even if the police have probable cause to arrest a suspect, they may not enter the suspect's residence to make the arrest without a warrant, absent consent or exigent circumstances. *Snider*, *supra* at 413-414; *People v Adams*, 150 Mich App 181, 184; 388 NW2d 254 (1986), citing *People v Oliver*, 417 Mich 366, 377; 338 NW2d 167 (1983). The prosecutor bears the burden of proving that an exception to the warrant requirement exists. *People v Mayes (After Remand)*, 202 Mich App 181, 184; 508 NW2d 161 (1993).

## A

In the hearings concerning the motion to suppress, the prosecutor presented testimony from the police officers involved with defendant's case. After hearing the testimony, the trial court concluded that the police did not have probable cause to arrest defendant.

According to Officer Fields, he ordered defendant's arrest, *for questioning*, because there was evidence that the shooting was a homicide and his investigation led him to believe that defendant was the only person in the house with the boyfriend at the time of the shooting. Officer Fields testified that he had no witnesses to the fact that defendant was in the house at the time of the shooting, but a neighbor, Mr. Ogilvie, stated that he saw defendant at the house before the shooting and he never saw her leave the house or come back to the house.

The trial court found that the police had no evidence to connect defendant with the shooting other than that she found the body. Regarding Officer Fields' testimony that Ogilvie's statements placed defendant at her boyfriend's house at the time of the shooting, contrary to defendant's claims that she was not there, the court found that this testimony was inconclusive and was insufficient to link defendant with the shooting. The court noted that the testimony was *not* that the neighbor saw the boyfriend arrive home after seeing defendant there, and then watched the boyfriend's home continuously, and no one came or went, thus placing her at the

home at the time of the shooting. Further, there was testimony that the neighbor had mental and physical disabilities.

The court found that the evidence at the time of defendant's arrest was the boyfriend's body found in his home, no sign of forced entry, the autopsy conclusion that the shooting was not a suicide, and evidence that the boyfriend's ex-wife and daughter heard a woman at his house during a telephone call to his home before the shooting. However, the court noted the lack of testimony identifying the voice, i.e., connecting it to defendant.

I find no clear error in the court's findings. A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001). I am not so persuaded. If the trial court was in a superior position to assess the evidence, this Court will defer to the trial court's resolution of factual issues, especially when it involved the credibility of witnesses. MCR 2.613(C); *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999). Although other testimony may have been inconsistent with that cited by the court, witness credibility is a matter for the trial court. The findings support the court's conclusion that the police lacked probable cause to arrest defendant.

Moreover, a review of the record reveals additional, direct support for the trial court's conclusion that the police lacked probable cause to arrest defendant. Officer Fields testified that defendant was picked up, i.e., arrested, *for questioning*. Officer Harris, who took over the investigation from Officer Fields and "interviewed" defendant during her detention, testified that the reason defendant was not arraigned on October 4, 1999, two days after her arrest, was that he did not believe he had sufficient evidence for a warrant. By the police officers' own admissions, defendant's arrest was an "arrest for questioning," something our Courts have condemned and held illegal. *Kelly, supra* at 633-634.

## B

Even if I conclude that the police had probable cause to arrest defendant, I would nevertheless concur with the trial court's conclusion that defendant's arrest was illegal. The prosecutor failed to show justification for the warrantless arrest of defendant in her home. *Snider, supra* at 413-414; *Adams, supra* at 184.

Four officers dressed in plain clothes knocked on defendant's door and placed defendant under arrest when she answered the door. The trial court concluded that the arrest was improper because it was a warrantless arrest in defendant's home. I agree.

It was undisputed that the police arrested defendant when she opened the door at her home. Although plaintiff argues that no warrant was necessary in this case because the outside of a defendant's front door is a public place, *Adams, id.*, I disagree that the reasoning of *Adams* applies. In *Adams, id.* at 183-184, the defendant was arrested on the front steps of the entrance to an apartment building, which he had voluntarily left at the request of his sister. The steps were a public place. *Id.* at 184. In this case, there is no evidence that defendant left her home before she was arrested. Because the prosecutor failed to show an exception to the warrant requirement, the arrest was illegal. *Mayes, supra* at 184.

## C

The question remains whether the suppression of defendant's statements was proper. "The mere fact of an illegal arrest 'does not per se require the suppression of a subsequent confession.'" *Kelly, supra* at 634, quoting *People v Washington*, 99 Mich App 330, 334; 297 NW2d 915 (1980). Evidence is suppressed under the exclusionary rule only if the unlawful detention by the police was used to directly procure evidence necessary to establish probable cause. *Kelly, supra* at 634-635. Intervening circumstances, such as independent evidence, can break the causal connection between the illegal arrest and inculpatory statements, thereby rendering a confession an act of free will sufficient to purge the primary taint. *Id.* at 634.

The trial court held that defendant's statements were not voluntary. Whether a statement is voluntary is determined by the totality of the circumstances. *People v Manning*, 243 Mich App 615, 634-635; 624 NW2d 746 (2000); *Snider, supra* at 417. The test is whether the confession was the product of an essentially free and unconstrained choice, or whether the accused individual's will was overborne and the capacity for self-determination critically impaired. *Manning, supra* at 635.

In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), the Court set out various factors for determining whether a statement was voluntary: the age of the accused; the lack of education or intelligence level; the extent of 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 the 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. *Manning, supra* at 635.

Finding the circumstances of this case extreme, the trial court concluded that defendant was detained for the sole purpose of obtaining a statement—and that there was no probable cause without it:

[The police] took her from her home without a warrant. They locked her up. They prepared a statement, they gave her an advice of rights form, and she refused to sign them....

\* \* \*

They kept her.... One questioned her, then another one questioned her, ... over and over again. They didn't have probable cause until after they finally wore her down and she told them what they wanted to hear, how they wanted to hear it.

She was detained for the sole reason of getting the statement. That was the sole reason she was picked up in the first place, it's the sole reason why she was held. They didn't have probable cause without it. It was clearly, clearly, not freely given, not voluntarily given. There were no intervening causes by which they would have come up with probable cause. They sweated it out of her.

I cannot disagree with the trial court's basic characterization of the circumstances in this case.

Although an unreasonable delay in arraigning a suspect is not automatic grounds for excluding a statement obtained while the defendant was held, the longer the delay, the greater the probability that the confession will be found involuntary. *Manning, supra* at 643. In applying the balancing process under the factors set out in *Cipriano*, "a trial court is free to give greater or lesser weight to any of the *Cipriano* factors, including delay in arraignment." *Id.* A court cannot, however, give preemptive weight to any one factor, so as to adopt a rule of automatic suppression. *Id.*

If a person is arrested without a warrant, that person must be brought before a magistrate for arraignment without unnecessary delay. *Id.* at 622. Absent a showing by the government of a bona fide emergency or other extraordinary circumstances, a prearrest delay of more than forty-eight hours is unreasonable per se. *Id.* at 631. In this case, defendant was arrested without a warrant on Sunday, October 3, 1999, "for questioning." She was not arraigned until four days later, on October 7. This delay, approaching some 90 hours, was unreasonable.

Officer Harris, the police officer that obtained post-polygraph statements, testified that defendant was not arraigned on October 4, the day following her arrest, because he "didn't feel there was sufficient evidence to type a warrant on her at that time." She wasn't arraigned the following day, October 5, according to Officer Harris, because "the facts of the case weren't adding up ...." By the time the police accumulated enough evidence to seek a warrant on October 6, defendant had already been held beyond a reasonable period of forty-eight hours. The next day, October 6, 1999, the request for a warrant was typed and approved, however, because the "cut-off time" for defendant to go to court had passed, defendant was not arraigned until October 7, 1999.

In deciding to suppress defendant's statements, the trial court clearly gave great weight to the length of defendant's detention before the police obtained the statements to support probable cause, and the prearrest delay following her arrest without a warrant. However, those were not the only factors considered. The trial court also heavily weighed the repeated and prolonged nature of the questioning by the police over several days, in light of defendant's initial refusal to sign an advice of rights waiver form.

During her detention, defendant was questioned repeatedly, by a number of police officers. She was taken into custody at 5:15 p.m., October 3, 1999. Sergeant Visbara questioned defendant on October 4 in an interrogation room at the homicide section of the police department. Visbara presented, but defendant refused to sign, an advice of rights form. He interviewed defendant and completed a "witness statement" form, which defendant likewise declined to sign.

At least three other police officers interrogated defendant at various times over the next two days. According to Harris, defendant "volunteered" to take a polygraph "to show that she was telling the truth," although he was not the one with whom defendant initially discussed taking the polygraph and did not know which officer first discussed the polygraph examination with defendant. None of the other testifying officers acknowledged defendant discussing the polygraph with defendant.

Sometime on the morning of October 5, 1999, defendant was transported for a polygraph examination, which subjected her to preexamination and postexamination interviews. According to Officer Sims, who conducted the polygraph, defendant signed a polygraph waiver form at 9:50 a.m. Sims informed defendant that she did not have to take the polygraph examination; however, he did not tell her that she was free to leave. Over the next two hours, Officer Sims conducted a preexamination interview with defendant, asking her to tell him everything that happened, her entire story, so that he could formulate the exam questions. Sims did not make a record of the interview. Officer Sims began the polygraph examination at 11:49 a.m.; he finished it at 12:15 p.m.

After the examination, Officer Sims informed defendant that she was not telling the truth. According to Officer Sims, defendant then gave him a statement, which he recorded and defendant signed. Officer Harris, who had been watching the interview from an observation room, then interviewed defendant, taking notes of her statements. Defendant was returned to the homicide division, to an interview room, and interrogated over the course of the afternoon and evening, signing page one of a statement at 3:30 p.m., page two at 4:45 p.m., and another statement at 6:00 p.m.

In deciding whether defendant's statements were voluntary, the trial court weighed heavily the repeated and prolonged nature of the police questioning in this case, along with defendant's illegal arrest, her refusal to sign an advice of rights waiver form, and the unreasonable delay in arraignment. Although plaintiff argues that at no time was defendant denied food, water, bathroom privileges or threatened, no force or coercion was employed by any of the officers, and the officers repeatedly advised defendant of her rights, these factors do not undermine the trial court's weighing under *Cipriano*. In applying the balancing process outlined in *Cipriano*, a trial court is free to give greater or lesser weight to any factor. *Manning, supra* at 643.

The trial court's reasoning and conclusion, that defendant's statements were not voluntary and resulted from her illegal arrest and unlawful detention, are sound. The trial court properly considered not only the delay in arraignment, but also "what occurred during the delay and its effect on the accused." *Cipriano, supra* at 334-335. Further, there were no intervening circumstances, such as new evidence, to break the causal chain between the unlawful arrest and the inculpatory statements. *Kelly, supra* at 634-637. Nothing in the record otherwise breaks the causal chain, such as that defendant made a "free and unconstrained choice" to make the statements.

I would affirm.

/s/ Janet T. Neff