STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 20, 2002
v	No. 233953 Muskegon Circuit Court
EDWARD WILLIAM HOUSTON, Defendant-Appellant.	LC No. 00-044188-FC

Before: Whitbeck, C.J., Zahra and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a), and second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a), stemming from an incident in which he allegedly digitally penetrated and touched the breasts of an eleven-year-old girl who was spending the night. The trial court sentenced defendant to ten to forty years' imprisonment for the CSC I conviction and thirty-eight months to fifteen years' imprisonment for the CSC II conviction. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant challenges the trial court's denial of his motion to suppress statements he made to police after a polygraph examination. We review a trial court's ruling on a motion to suppress evidence on legal grounds for clear error. *People v McElhaney*, 215 Mich App 269, 273; 545 NW2d 18 (1996). 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." *Id.*

Statements made before, during, or after a polygraph examination are not automatically inadmissible at trial. *People v Ray*, 431 Mich 260, 268; 430 NW2d 626 (1988). The admissibility of a post-polygraph examination statement is reviewed to determine whether the defendant's waiver of rights could be considered knowing and voluntary. *Id.* at 276. In determining whether a defendant's statement was knowing and voluntary, we apply an objective standard and examine the totality of the circumstances. *People v Fike*, 228 Mich App 178, 181; 577 NW2d 903 (1998).

Defendant argues that his post-polygraph examination statements were involuntary because he believed that he was required to waive his *Miranda*[1] rights before taking the examination. At the hearing, defendant testified that he did not recall, but he thought that the officer might have told him that he was required to waive his *Miranda* rights before taking the examination. Conversely, an officer testified that defendant was never told that he was required to waive his right to counsel before taking the examination. Furthermore, defendant signed an acknowledgement that he understood that he had the "right to talk with and have the assistance of a lawyer at any time during the polygraph test or questioning" and that he had the right to stop the test at any time and exercise that right. The trial court found that the officer's testimony was credible and did not believe defendant's testimony. We defer to the trial court's superior ability to assess the credibility of the witnesses and conclude that the trial court's finding of credibility was not clearly erroneous in this regard. *People v McElhaney*, 215 Mich App 269, 278; 545 NW2d 18 (1996).

Defendant also argues that he was coerced by the officer's promise that he would get probation and counseling if he signed the statement, but would go to jail and lose his children if he refused to sign the statement. An officer testified that probation or counseling may have been discussed during the interview, but defendant was not threatened or made any promises before he made the statement. The trial court believed the officer and found that defendant's statements were not made due to any threats or promises. Once again, we defer to the trial court's superior ability to assess the credibility of the witnesses. We will not disturb the trial court's credibility determination in regard to this issue. *McElhaney, supra* at 278.

Finally, defendant argues that his statement was involuntary because he was not readvised of his *Miranda* rights after the testing portion of the polygraph examination and before he made his statement. Defendant was advised of his *Miranda* rights before taking the polygraph examination and signed a waiver which expressly extended to post-examination questioning. Defendant was advised that he could stop the interview at any time and did not have to answer any of the questions. The only intervening circumstances between defendant signing the waiver and the post-examination questioning was the less than two-hour time period that included the pre-examination questions, the examination, and the post-examination questions. The same officer who advised defendant of his rights administered the examination, conducted post-examination questioning, and took defendant's statement. Furthermore, defendant took the examination at his own request and never requested the assistance of counsel during the examination or interview. Under such circumstances, the officer was not required to readvise defendant of his rights before asking him questions after the testing portion of the polygraph examination. See *Ray, supra* at 276-278; *People v Hicks*, 185 Mich App 107, 114; 460 NW2d 569 (1990). Considering the totality of the circumstances, we conclude that the trial court did not clearly err in denying defendant's motion to suppress evidence of the statement defendant made after his polygraph examination.

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

Affirmed.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Christopher M. Murray