

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARKUS WOODHAVEN, a/k/a RICHARD
DE'MARIUS,

Defendant-Appellant.

UNPUBLISHED

July 29, 2003

No. 239325

Wayne Circuit Court

LC No. 01-006551

Before: Wilder, P.J., and Griffin and Gage, JJ.

PER CURIAM.

Defendant appeals as of right his convictions, following a bench trial, of carjacking, MCL 750.529a, armed robbery, MCL 750.529, and felony-firearm, MCL 750.227b. The trial court sentenced defendant to concurrent terms of eight to twenty-five years' imprisonment for the carjacking and armed robbery convictions and a consecutive two-year term for the felony-firearm conviction. We affirm.

The victim testified that his van was taken from him at gunpoint. Defendant was found with the van a week later. Defendant testified that he knew the van was stolen, but that he was not the one who stole it. The victim was unable to identify defendant in a lineup and the description he provided the police varied somewhat from defendant's actual appearance. Defendant gave two statements to the police. In the first statement, he did not confess, but rather, implicated someone else. However, in the second statement, he did confess and also made a written apology to the victim. Defendant moved to suppress the second statement on the ground that it was involuntary because he was coerced into making the confession. The motion was denied.

Defendant now contends that the circuit court erred by determining that defendant voluntarily confessed. We disagree.

This Court reviews de novo a trial court's decision not to suppress evidence. *People v Taylor*, 253 Mich App 399, 403; 655 NW2d 291 (2002). However, this Court reviews the trial court's underlying factual findings for clear error. *Id.* This Court may find clear error if it has "a definite and firm conviction that the trial court made a mistake." *People v Manning*, 243 Mich App 615, 620; 624 NW2d 746 (2000).

If the State uses a defendant's confession as evidence to prove the defendant's guilt of committing a crime, then the United States Constitution requires that the defendant must have voluntarily provided that confession.¹ *People v Wells*, 238 Mich App 383, 386; 605 NW2d 374 (1999); see also *Dickerson v United States*, 530 US 428, 433; 120 S Ct 2326; 147 L Ed 2d 405 (2000). The test of voluntariness is 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.'" *Wells*, *supra* at 386, quoting *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988), quoting *Culombe v Connecticut*, 367 US 568, 602; 81 S Ct 1860; 6 L Ed 2d 1037 (1961). Therefore, the ultimate test for determining whether a statement was voluntarily made depends on the totality of the circumstances surrounding the statement. *Wells*, *supra* at 387; see also *Dickerson*, *supra*.

The factors to be considered in determining voluntariness have been set forth in *Cipriano*, *supra* at 334.² However, defendant does not contend that the trial court erred in its assessment of any of those factors. Instead, defendant contends that, at the hearing, the trial court impermissibly deprived defense counsel of an opportunity to question Sergeant Benjamin Wagner, the officer who took the second statement, about the purported lack of evidence existing prior to the confession. Defendant argues that his intended line of questioning would have affected the credibility of Sgt. Wagner. According to defendant, Sgt. Wagner's credibility was crucial to the trial court's determination that Sgt. Wagner did not, as defendant claimed, tell defendant that he would "be slammed" and "get life" if defendant did not confess.

At the outset, we note that defendant fails to acknowledge that the trial court did allow some inquiry into Sgt. Wagner's knowledge of the case at the time he took defendant's second statement. At the hearing, defense counsel inquired whether, at the time of the second statement, Sgt. Wagner had been aware that defendant had given the first statement in which he implicated another person. Sgt. Wagner responded affirmatively. Defense counsel also inquired whether Sgt. Wagner had been aware that defendant did not match the description given by the victim, to which Sgt. Wagner responded in the negative. It was after this inquiry that defense counsel sought to inquire whether the victim had picked defendant out of a line-up and the prosecution objected.

¹ The Michigan Constitution also mandates that the defendant must have voluntarily confessed in order for the State to use that confession as evidence of guilt. *People v Wright*, 441 Mich 140, 147; 490 NW2d 351 (1992), citing *People v Louzon*, 338 Mich 146, 153-154; 61 NW2d 52 (1953).

² These factors include: 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; the lack of any advice to the accused of his constitutional rights; whether there was unnecessary delay in bringing the accused 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 he was physically abused; and whether he was threatened with abuse. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

Defendant contends that his proposed line of questioning was relevant to Sgt. Wagner's credibility. We disagree. Evidence is relevant if it tends to make the existence of a material fact more or less probable. MRE 401. Here, assuming that Sgt. Wagner would have testified that he knew of the paucity of evidence against defendant, that testimony would not tend to detract from the believability of his testimony concerning the purportedly coercive statements. An opposite conclusion requires an inference that police interrogators have a reason to coerce confessions when faced with a lack of inculpatory evidence. Without evidence specifically tailored to Sgt. Wagner, we will not assume the existence of the inference, and find that defendant's proposed line of questioning was not relevant to Sgt. Wagner's credibility. Nevertheless, at the time of the prosecution's objection, defense counsel had already elicited testimony that Sgt. Wagner knew about defendant's first statement and that he did not know that defendant did not match the description of the assailant given by the victim. Therefore, relevant or not, the trial court was aware of this information.

Regarding the court's ultimate decision that defendant's confession was voluntary, deference must be given to the trial court's opportunity to evaluate the evidence and the witness's credibility. See *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). We are not left with a definite and firm conviction that a mistake was made regarding any of the trial court's factual determinations. Therefore, defendant's argument that the trial court erred in denying his motion to suppress is without merit.

Defendant also argues that, without the confession, the prosecution did not offer sufficient evidence to convict defendant. However, because we have concluded that defendant's confession was properly admitted, we need not address this issue.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Hilda R. Gage