STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 30, 2004
v	No. 248288 Ottawa Circuit Court
COREY JAMES VAN SUILICHEM, Defendant-Appellant.	LC Nos. 02-026195-FH ; 02-026196-FH ; 02-026197-FH

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

PER CURIAM.

Following a bench trial, defendant was convicted of three counts of home invasion, MCL 750.110a(2), and one count of larceny from a motor vehicle, MCL 750.356a(1). Defendant was sentenced to three terms of 51 to 240 months' imprisonment for his home invasion convictions and 24 to 60 months' imprisonment for his larceny conviction, to be served concurrently. Defendant appeals as of right. We affirm.

I. Basic Facts

On June 28, 2002, the Kentwood Police Department sent to Detective Roger Dreyer of the Ottawa County Sheriff's Department an e-mail indicating that defendant was a suspect in numerous break-ins in Kentwood and that he would be relocating to Georgetown Township around July 1, 2002. From July 2, 2002 to July 10, 2002, there were several reports of break-ins near defendant's new residence. At the location of the last of these reported break-ins, blood was found near where a DVD player had been taken from a motor home, which DNA testing later confirmed belonged to defendant.

Ottawa County police officers several times visited defendant's residence to question him in regard to the recent break-ins. Further, because defendant was a suspect in the break-ins, Detective Dreyer and Sergeant Brookhouse began surveillance of defendant's residence on July 16, 2002. That night they observed defendant climb out his bedroom window at around 11:30 p.m., and drive away in his mother's car without turning on the lights. Defendant returned the next morning at 5:00 a.m., and entered the house through his bedroom window. A break-in was reported on July 17, 2002, that had occurred the previous night. The following night, July 17, 2002, Detective Dreyer and Sergeant Brookhouse began surveillance at about 10:00 p.m. Around 11:00 p.m., defendant was seen exiting his bedroom window and riding away on his

bicycle. He returned the next morning at about 4:45 a.m. At this time, Detective Dreyer and Sergeant Brookhouse confronted defendant. Also, two back-up police officers were present, but quickly left after defendant was detained. The police officers were all wearing plain clothes and driving unmarked vehicles.

At this point, the testimony conflicts. Defendant testified that, upon first being confronted by police, an officer said, "[t]he DNA test came back, it's positive . . . . There's no way to deny it." Defendant replied, "[o]kay, you got me," and was placed in handcuffs until he got to Sergeant Brookhouse's unmarked car. Defendant inquired as to whether he was under arrest, and an unnamed officer replied, "[n]o." Defendant then asked why he was handcuffed, and the handcuffs were removed. An unnamed officer opened the back door of his car and defendant stepped inside. Defendant testified that Detective Dreyer and Sergeant Brookhouse took him to the locations of the break-ins. Defendant testified that, "[a]fter they showed me the places and said what the crime was, I agreed to what they said." The officers drove defendant back to his home after defendant requested to speak to his mother and girlfriend. After arriving at defendant residence, defendant fled from the police car. Defendant testified that "[t]hey haven't told me I was under arrest, no handcuffs, no nothing. I took off. I ran out the car and I got away from them." Defendant turned himself in later that day.

The investigating officers gave a different account of the events of the early morning of July 18, 2002. Detective Dreyer testified that he and Sergeant Brookhouse confronted defendant when he returned home around 4:45 a.m., and defendant "was told he was not under arrest, however, we would like to speak with him, to which he stated that was okay." A search of defendant for weapons revealed that he possessed a pair of fur-lined, leather gloves. Detective Dreyer testified that, "I told him that we had been watching his home and watching his activity for the last two nights due to the fact that we believed that he was involved in numerous breaking and enterings of homes in the neighborhood . . . . I further told him that there was DNA evidence removed from a motor home which had been submitted to the crime lab and I was confident that the match to his DNA would be positive when the results came in." Detective Dreyer testified that defendant was asked if he would sit in the back seat of Sergeant Brookhouse's car where they began to talk about the break-ins. Detective Dreyer testified that defendant was never handcuffed on the morning of July 18, 2002. However, Sergeant Brookhouse testified, "I don't recall if he was. He was not in handcuffs in my car. So – possibly from the time that we had a conversation with him by a tree to the point where he walked over to my car, was just a very short distance, but he did not have them on in my car."

Detective Dreyer acknowledged that when defendant began to incriminate himself, about five to ten minutes after stepping into the car, he tried to match defendant's statements to specific open complaints. Defendant was asked whether he would be willing to "drive around to the break-ins that had been reported and see if those are the ones he was responsible for." Detective Dreyer testified that defendant's descriptions of those offenses matched the reported complaints. When speaking to defendant about the vehicular break-in, Detective Dreyer testified that he asked defendant "if he was aware that he left blood at that scene. I asked him if he recalls getting cut, to which he stated – or, he actually showed me his thumb and stated he cut his thumb while in the motor home trying to get some of the stereo equipment or DVD player out." Detective Dreyer, Sergeant Brookhouse and defendant also drove to the locations where defendant stated he had disposed of the stolen property. "[H]e showed us where he threw the

purse in the bushes. We were unable to find the purse. However, we did find numerous papers with the victim's name." At least two times, defendant and the officers exited the vehicle and looked for the stolen goods. At each stop, defendant was able to freely enter and exit the car without the assistance of an officer. Detective Dreyer testified that when defendant took him to the places where the property had been thrown, defendant was not physically controlled in any way. Detective Dreyer testified that defendant requested to be taken back to his mother's home. When they arrived, defendant ran from the vehicle, but was arrested later that day.

I. Admission of Defendant's Confession

On appeal, defendant generally argues that his state and federal fifth amendment rights were violated when the trial court denied his motion to suppress his statements to police.

A. Custodial Interrogation

Although defendant presents only one issue on appeal, his argument appears based on the voluntariness of his confession, and that his statements to police should be suppressed because of a failure to give *Miranda*[1] warnings. Whether defendant was in custody, and thus entitled to *Miranda* warnings before being interrogated by law enforcement officers, and whether his confession was voluntary, present two distinct questions. See *Thompson v Keohane,* 516 US 99, 102 n 2; 116 S Ct 457, 465; 133 L Ed 2d 383, 394 (1995). However, defendant's brief on appeal does not address relevant authority regarding whether an accused is in custody at the time of interrogation by police office. Specifically, defendant's brief on appeal does not mention "the key question, [] whether the accused reasonably could have believed that [he] was not free to leave." *People v Coomer,* 245 Mich App 206, 219; 627 NW2d 612 (2001), quoting *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). Thus, because defendant does not cite to appropriate authority to establish that he was in custody for *Miranda* purposes, we conclude that defendant has abandoned the claim that he was entitled to *Miranda* warnings. MCR 7.212(C)(7) (To properly present an appeal, an argument must be supported by citation to appropriate authority or policy); *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001), quoting *People v Kelly,* 231 Mich App 627, 640-641, 588 NW2d 480 (1998) ("[a]n appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority.") Defendant's failure to cite any supporting legal authority constitutes an abandonment of the issue whether he was entitled to *Miranda* warnings.

Moreover, even if defendant had not abandoned this issue, we would nonetheless find no basis for reversal. Generally, the prosecutor may not use custodial statements as evidence unless he demonstrates that, prior to any questioning, the accused was warned that he had a right to remain silent, that his statements could be used against him, and that he had the right to retained or appointed counsel. *Dickerson v US*, 530 US 428; 120 S Ct 2326, 2331; 147 L Ed 2d 405, 414 (2000). But "*Miranda* warnings are due only when a suspect interrogated by the police is 'in

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

custody.'" *Thompson v Keohane*, 516 US 99, 102; 116 S Ct 457, 465; 133 L Ed 2d 383, 394 (1995).

Here, defendant has failed to establish the trial court erred in denying defendant's motion to suppress his statements to police because of failure to give *Miranda* warnings. Defendant focuses his argument on whether he was in custody before he was in the car. However, the relevant question is whether defendant was in custody *at the time* of interrogation. *Zahn, supra* at 449 (emphasis supplied). Defendant admitted that he was told he was not under arrest and that he did not believe he was under arrest before voluntarily stepping into the unmarked police car. In addition, the objective circumstances of the interrogation indicate that defendant was free to leave the unmarked police car anytime while being interrogated. See *Coomer, supra*, at 220-221; *Zahn, supra.* This Court is "less willing to find [custody] where interrogation occurs in familiar or neutral surroundings. *People v Mayes (After Remand),* 202 Mich App 181, 196; 508 NW2d 161 (1993) (Corrigan, P.J., concurring). The interview in this case did not take place inside defendant's home, but outside at the end of the driveway, where he could have easily returned to the house. In the car, defendant sat in the backseat by himself while the plain-clothed officers sat in the front seats. There was no barrier between the front and back seats. Also, the backseat doors could be opened by defendant at any time, and he was not prevented from going into the house. Indeed, defendant several times opened the door and stepped out of the car to search for remnants of the property he had stolen and actually fled from the car when police returned him to his home.

While defendant's testimony raised a question whether he was briefly detained by police before he voluntarily entered the backseat of the car, the totality of the circumstances do not support a conclusion that a reasonable person would have believed he was unable to leave the car during the interview. Accordingly, the trial court did not err in denying defendant's motion to suppress on the basis that the police failed to give defendant *Miranda* warnings.

B. Involuntary Confession

Defendant argues that his statements to police were involuntary, and that the trial court's decision to allow them into evidence violated his state and federal fifth amendment rights.

1. Standard of Review

> [The Court of Appeals] review of the issue of voluntariness must be independent of that of the trial court. However, we will affirm the trial court's decision unless we are left with a definite and firm conviction that a mistake has been made. Further, if resolution of a disputed factual question turns on the credibility of witnesses or the weight of the evidence, we will defer to the trial court, which had a superior opportunity to evaluate these matters. [*People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000), quoting *People v Sexton (On Remand)*, 236 Mich App 525, 543; 601 NW2d 399 (1999) (Murphy, J. dissenting) (internal citations omitted).]

2. Analysis

In *Sexton (After Remand)*, *supra* at 752-753, our Supreme Court quoted with approval *People v Sexton (On Remand)*, *supra* at 543-544 (Murphy, J. dissenting), which stated:

> In evaluating the admissibility of a particular statement, we review the totality of the circumstances surrounding the making of the statement to determine whether it was freely and voluntarily made in light of the factors set forth by our Supreme Court in *People v Cipriano*, 431 Mich. 315, 334, 429 N.W.2d 781 (1988):
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> [T]he 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.
>
> The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made. [Citations omitted.]

Here, after reviewing the circumstances surrounding the making of the confession, we conclude that it was freely and voluntarily made. While defendant was only seventeen at the time of he made his statements, the record reflects that he had considerable experience with the police. Although only seventeen, defendant had been arrested several times, and interviewed by police on many occasions. "[A] defendant's previous experience with police is 'an important consideration in determining whether an inculpatory statement was made voluntarily and understandingly.'" *People v Cheatham*, 453 Mich 1, 35; 551 NW2d 355 (1996), quoting *State v Fincher*, 305 SE2d 685, 697 (NC 1983). Defendant confessed to the crimes within five to ten minutes of questioning, and was not formally detained before he gave the statements in question. While evidence was presented that defendant may have earlier in the day been under the influence of crack-cocaine and marijuana, the interrogating police officers both testified that defendant did not appear to be under the influence of controlled substances. That defendant was able to direct the interrogating officers to locations where stolen property was recovered underscores that defendant was not under the influence of controlled substances. Further, at each location where defendant directed the officers, defendant alighted from the car without assistance, walked away from the car and retrieved goods or items associated with the goods he had stolen. Defendant did not complain during the brief interview, did not appear tired, and did not request that the interview stop. While defendant claims the interrogating officers did not advise defendant of his constitutional rights, there is undisputed evidence that defendant was told he was not under arrest, and therefore free to leave. Finally, there is no allegation that defendant was physically abused or threatened with abuse. Under the circumstances, we are not left with a definite and firm conviction that a mistake has been made, and therefore affirm the trial court's decision denying defendant's motion to suppress evidence.

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra