STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 18, 2008
v	No. 279772 Oakland Circuit Court
JOHN JORDAN ANDERSON, Defendant-Appellant.	LC No. 2006-211491-FC

Before: Servitto, P.J., and Owens and Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317, and sentenced to a prison term of 20 to 50 years. He appeals as of right. We affirm.

I. Facts

Defendant's conviction arose from the strangulation death of 19-year-old Natasha Miller, whose body was found floating in a lake at Proud Lake Recreation Center in Milford in April 2006. A few days after the victim's body was discovered, defendant was identified as a possible suspect in her death. The police went to defendant's trailer at approximately 2:00 a.m. and defendant voluntarily agreed to accompany them to the police station for an interview. According to the police, defendant was not under arrest and was free to leave at any time, but the police advised defendant of his *Miranda*[1] rights because of the nature of the investigation. For several hours, defendant denied any involvement in the victim's death. At one point, while discussing defendant's relationship with the victim, defendant remarked, "You'll have to form your opinions, I think I'm done talking." The questioning continued. Eventually, in response to further questioning, defendant remarked, "It just happened," and then described the events surrounding the victim's death. The interrogating officer later confiscated defendant's cell phone, which defendant had previously been allowed to use to receive and make telephone calls. After further questioning, defendant stated, "I'm done talking." The interrogating officer then left the room. As he was leaving, defendant remarked, "Well, you're not going to believe me anyway." Two senior officers then sent the interrogating officer back into the interrogation

[1] *Miranda v Arizona*, 384 US 436, 477; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

room, believing that defendant had re-initiated the interview with this comment, and the questioning continued.

Before trial, defendant moved to suppress his statements, arguing that he was unlawfully seized under circumstances amounting to an arrest without probable cause, and that his subsequent statements should be suppressed as the product of this illegal detention. Defendant further argued that the police improperly continued to question him after he initially remarked, "I think I'm done talking." Defendant also argued that his statements were involuntary.

Following a *Walker*[2] hearing, the trial court found that none of defendant's statements were coerced or involuntary. Additionally, the court found that defendant was not seized for Fourth Amendment purposes, or in custody for *Miranda* purposes, until the police confiscated defendant's cell phone, which the court found was the point where it would have become apparent to an objective person in defendant's position that he was no longer free to leave. Lastly, the court found that defendant's subsequent statement, "I'm done talking," was a clear and unequivocal assertion of his right to silence and, therefore, the police were required to cease further questioning at that point. Accordingly, the court suppressed any statements defendant made after the latter statement, but allowed defendant's previous statements to be admitted at trial. Defendant challenges each of these rulings on appeal.

II. Standards of Review

The trial court's findings of fact regarding a motion to suppress evidence are reviewed for clear error. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). However, the "ultimate decision regarding a motion to suppress" is reviewed de novo. *Id.* Similarly, in considering whether a custodial suspect's statement is voluntary, this Court must "examine the entire record and make an independent determination of voluntariness," but the court's factual findings will not be disturbed unless they are clearly erroneous. *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997).

III. Seizure

First, defendant argues that he was unlawfully seized before making any inculpatory statements and, therefore, his subsequent statements were required to be suppressed as the fruit of his unlawful detention. We disagree.

"The United States Constitution and the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). A person is "seized" within the meaning of the Fourth Amendment "only if, in view of all the circumstances, a reasonable person would have believed that he was not free to leave." *Id.* at 32. Thus, "a seizure occurs when a police officer by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *People v Bolduc*, 263 Mich App 430, 441; 688 NW2d 316 (2004) (internal quotations and citation omitted). In the context of an interrogation, this determination depends on the objective

[2] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999).

The evidence indicated that defendant voluntarily agreed to accompany the police to the police station and submit to an interview. He was not told that he was under arrest, was not patted down for weapons, was not handcuffed, and was transported to the police station in a non-police vehicle with no sirens, lights, or security cage. The police thanked defendant several times for agreeing to assist the police. At the station, defendant was placed in an interrogation room, but the room did not have a functional door lock and the door was left open. At times, defendant was left alone in the room, with the door open, and was allowed to use the bathroom unsupervised. Defendant was also allowed to use his cell phone to make and receive telephone calls. When arrangements were made for defendant to take a polygraph examination the next day, the officers advised him that they could pick him up at his house to take him to the examination. When defendant asked at one point, "When am I out of here?", he was told "Whenever you want to be." Defendant asserts that he did not feel that he was free to leave after the police told him that they thought he was lying and that he had killed the victim. However, defendant's subjective belief is not dispositive. The objective circumstances indicate that defendant was not restrained or prohibited from leaving, was never told that he could not leave or end the interview, and there was no change in defendant's physical surroundings that would cause a reasonable person to believe he was no longer free to leave.

Viewing the objective circumstances surrounding the interrogation, the trial court did not err in determining that defendant was not seized until after he confessed to killing the victim. The trial court identified the point of seizure as being when the police confiscated defendant's cell phone, which it found was the point when it would have become apparent to an objective person in defendant's position that he was no longer free to leave. According to the detective who interviewed defendant, however, defendant would not have been allowed to leave once he admitted responsibility for the victim's death. Even if defendant is considered to have been seized at this earlier point, however, his continued detention beyond that point was not unlawful because at that point his admissions gave the police probable cause to arrest him. *Jenkins, supra* at 32-33; *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996) (probable cause to arrest exists where the facts and circumstances within an officer's knowledge are sufficient to allow a reasonably cautious person to believe that an offense has been committed and the defendant committed it). Accordingly, the trial court did not err in refusing to suppress defendant's statements on the basis that they were the result of an unlawful seizure.

IV. Suppression of Statements

Defendant next argues that his statements should have been suppressed because the police improperly continued to question him after he initially stated, "I think I'm done talking." As defendant correctly observes, a critical safeguard of *Miranda* is that when a person who is subject to custodial interrogation asserts his right to remain silent, that request must be "scrupulously honored" and further questioning must cease. *Michigan v Mosley*, 423 US 96, 103-104; 96 S Ct 321; 46 L Ed 2d 313 (1975); *People v Adams*, 245 Mich App 226, 230-231; 627 NW2d 623 (2001). However, this *Miranda* safeguard applies only to custodial interrogation. *People v Coomer*, 245 Mich App 206, 218-219; 627 NW2d 612 (2001). The safeguards of the constitution do not apply when a person has not been seized, *Bolduc, supra* at 430, and *Miranda*

rights may not be invoked "anticipatorily." *McNeil v Wisconsin*, 501 US 171, 182 n 3; 111 S Ct 2204; 115 L Ed 2d 158 (1991). In this case, defendant was not in custody when he made the foregoing statement because, as previously explained, the totality of the objective circumstances did not reasonably suggest that defendant was not free to leave. *Coomer*, *supra* at 219-220. Therefore, the *Miranda* safeguards had not attached and the continued questioning did not violate defendant's rights.

Defendant also argues that his statements should have been suppressed because they were not voluntary. Use of an involuntary statement violates a defendant's right to due process. *Peerenboom*, *supra* at 198. 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." *Id.* (internal quotations and citation omitted). The following factors should be considered by the court in evaluating the voluntariness of a statement:

> [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. [*People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).]

In this case, defendant was 23 years old and had earned a GED. He voluntarily agreed to submit to an interview and was advised of his rights under *Miranda*. Although he had no prior criminal record, he had been questioned once before by the police in a domestic matter. He was taken to the police station at 2:00 a.m., but he had received approximately 11 hours of sleep in the previous 24 hours. There was no evidence of injury, illness, or intoxication, and he was offered food and water. There were no allegations of abuse or threatened abuse. Although defendant emphasizes that the total period of interrogation was 15 hours, as explained previously, defendant was not under arrest or in custody before admitting responsibility for the victim's death, and was free to leave if he wanted. In addition, there were frequent breaks in the questioning. Defendant also asserts that he was isolated from his family and friends, but he was allowed to retain his cell phone and was permitted to make and receive telephone calls.

Defendant argues that it was coercive for the police to show him a sketch and photograph of the victim. However, the mere display of these items was not accompanied by any threats and does not resemble the extreme conduct found to be improper in the cases cited by defendant. See *Davis v United States*, 32 F2d 860, 861 (CA 9, 1929) (the police took the defendant into a morgue room where the body of the victim "was being drained" and made him examine the wounds); *Stevenson v Boles*, 221 F Supp 411 (ND W Va, 1963) (the police told the defendant that he had to make a statement or they were going to take him to the scene where the decedent's bloody body was still present), and *State v Cook*, 47 NJ 401; 221 A2d 212 (1966) (the police

held the low-IQ defendant's face six inches from a dead child, and then beat him with a rubber hose).

Considering the totality of the circumstances, the trial court did not clearly err in finding that defendant's statements were voluntarily made.

V. Sufficiency of the Evidence

Lastly, defendant argues that although he was charged with open murder, there was insufficient evidence of premeditation or deliberation to support submitting a charge of first-degree murder to the jury. Defendant maintains that although he was only convicted of second-degree murder, he was prejudiced by the submission of the higher charge to the jury without proper evidentiary support because it may have led to a compromise verdict. We disagree.

In reviewing a challenge to the sufficiency of the evidence, this Court reviews the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). The standard of review is deferential and this Court is required to draw all reasonable inferences and make credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

As explained in *People v Youngblood*, 165 Mich App 381, 387; 418 NW2d 472 (1988):

> Premeditation and deliberation may be inferred from the facts and circumstances surrounding the killing including: motive, as the result of a prior relationship between the parties, a weapon acquired and positioned in preparation for the homicide, circumstances and events surrounding the killing, and organized conduct prior to or subsequent to the killing suggesting the existence of a plan.

The evidence indicated that defendant considered the victim to be his girlfriend, but discovered a few days before her death that she was engaged to another man. There was evidence that defendant no longer believed that he could trust the victim, that he had scraped off a tattoo of her initials from his arm, and that he confronted her with his knowledge that she was involved with someone else. Even if defendant did not set out to kill the victim in advance, premeditation and deliberation does not require advance planning. The interval between the initial thought and the ultimate action need only be long enough to afford a reasonable person time to take a "second look." *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003). Here, the manner of death was strangulation and the evidence indicated that defendant would have had to strangle the victim for at least 45 seconds or longer, and there were indications that she had struggled to stay alive. After he killed the victim, defendant took steps to discard evidence and to establish an alibi.

The evidence of motive, defendant's relationship with the victim, the circumstances surrounding the killing, and defendant's conduct after the event, viewed in a light most favorable to the prosecution, were sufficient to support a finding of premeditation and deliberation. Therefore, the trial court did not err in submitting the charge of first-degree murder to the jury.

Affirmed.

/s/ Deborah A. Servitto
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly