

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WAYNE MICHAEL JEDYNAK,

Defendant-Appellant.

UNPUBLISHED
February 26, 2009

No. 282938
Wayne Circuit Court
LC No. 07-005084-FH

Before: Whitbeck, P.J., and O’Connell and Owens, JJ.

MEMORANDUM.

Defendant was convicted by a jury of third-degree home invasion, MCL 750.110a(4), and was sentenced to a term of 12 months in jail. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in concluding that his confession was voluntary and in denying his motion to suppress. Defendant asserted, in essence, that he was in fear of being assaulted by Detective Lazar because, allegedly in an intimidating way, Lazar suggested that defendant cooperate with another detective who “had come a long way.” “Whether a defendant’s statement was knowing, intelligent, and voluntary is a question of law that a court must determine under the totality of the circumstances.” *People v Snider*, 239 Mich App 393, 417; 608 NW2d 502 (2000). Factual findings in a suppression hearing are reviewed for clear error and will be affirmed absent a definite and firm conviction that a mistake was made. The trial court’s ultimate ruling is reviewed de novo. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002).

Preliminarily, we note that in defendant’s brief on appeal he discusses facts that were brought out at trial, but were not part of the *Walker*¹ hearing on the motion to suppress. Our review will be limited to “the information known to the trial court at the time it denied [the defendant’s motion] to suppress.” *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999), quoting *People v Burrell*, 417 Mich 439, 449; 339 NW2d 403 (1983).

¹ *People v Walker*, 374 Mich 331, 132 NW2d 87 (1965).

In denying the motion to suppress, the trial court took note of the circumstances surrounding defendant's arrest, including repeated taserings and defendant's allegations that he had been physically abused. The trial court noted that Lazar was not part of the arrest, and that allegations of intimidation were based only on Lazar's alleged facial expressions and the comment about cooperating. Assessing credibility, the trial court concluded that any apprehension of an assault by Lazar was unfounded. The trial court noted that based on the blood alcohol level near the time of arrest and the time that level would take to dissipate, defendant would have had a blood alcohol level of .06 when he gave the statement, below the legal level of intoxication. The trial court also noted the detectives' testimony that intoxication was not a factor, and defendant's acknowledgment that he was provided food and water after his arrest. Further, the trial court noted that defendant was of a suitable age and education level, and had acknowledged an understanding of his rights, which included the right to remain silent. Based on the totality of these circumstances, the trial court concluded that defendant's statement was freely and voluntarily made. We find no clear error in these findings and agree with the trial court's determination.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Donald S. Owens