STATE OF MICHIGAN

COURT OF APPEALS

In re MOUHAMED SAMMY MEZHER, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MOUHAMED SAMMY MEZHER,

Respondent-Appellant.

UNPUBLISHED
December 12, 2017

No. 335261
Wayne Circuit Court
Family Division
LC No. 16-001805-DL

Before: GLEICHER, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

The family division of the circuit court adjudicated respondent responsible for second-degree home invasion in violation of MCL 750.110a(3). Respondent's sole challenge on appeal is that his confession was involuntary and should have been excluded at trial. We affirm.

I. BACKGROUND

At 7:00 a.m. on April 1, 2016, a neighbor spotted a group of young men illegally entering the Dearborn home of Cerise Denne. The boys ransacked the house and caused significant damage, but ultimately stole only $208. Denne's neighbor summoned the police, who located four teenaged boys on bicycles matching the description of the suspects. The boys fled and the police were able to capture three, including respondent's younger brother. Respondent made it home undetected. However, respondent's compatriots gave him up and Denne, who was familiar with respondent's family, separately identified respondent as a possible subject.

Dearborn police Sergeant Glenn Cariveau and Detective Guerino Ceroni travelled to respondent's home. The officers had previous experience with the Mezher family as respondent had committed a previous infraction as a juvenile. The parties gave very different accounts of what happened at the Mezher home. The officers claimed that respondent's grandfather answered the door and granted them entrance. The grandfather summoned respondent's father from the basement and the police asserted that the father gave them permission to speak to respondent. While respondent's grandparents and father remained in the front room, the officers moved respondent "kind of away from the father . . . down the hall way" to question him. The

officers noted that in the past, they found respondent "would talk a little bit more freely outside his family." Sergeant Cariveau believed respondent to be in police custody and therefore read respondent his *Miranda*[1] rights. Respondent waived his rights and agreed to speak to them. Respondent initially denied any involvement in the home invasion. When the sergeant told respondent that his accomplices identified him, respondent admitted that he entered Denne's home through the unlocked front door and acted as "look-out." Respondent indicated that he fled the scene on a bicycle.

Respondent's grandmother, on the other hand, testified that the officers came into the house uninvited while her husband went to the basement to get respondent's father. The grandmother described that the officers handcuffed respondent's father and forced the family to wait outside on the porch while they questioned respondent. The officers eventually allowed the grandmother to reenter the home and go to her bedroom. From her bedroom, the grandmother could overhear the police interrogating respondent. She never heard respondent admit involvement in the home invasion. She did hear the officers repeatedly insist that respondent was involved in the home invasion despite his denials.

Respondent claimed innocence at trial, asserting that he was asleep at the time of the home invasion. Respondent did not recall Sergeant Cariveau reading him his *Miranda* rights. During police questioning, respondent denied his involvement "five or six" times. He claimed that he eventually told the police he was involved "after they said they going [sic] to search my house and everything. I didn't want my grandmother to get into this." Respondent described that "they said they're going to destroy the house." Respondent was uncertain whether he saw his father in handcuffs. And although he briefly saw his family outside the home, he believed the officers allowed them to reenter and that his father went back downstairs.

In closing argument, respondent's attorney argued his client's innocence. He further asserted, "There is nothing voluntary about what went on in this so-called confession." Counsel contended that the police entered without permission while respondent's grandfather went to the basement to find respondent's father, handcuffed the father without cause, and then forced respondent's family to wait outside while they interrogated the teenaged suspect. Counsel further posited that the officers badgered respondent until he admitted the offense. If the encounter "was so voluntary and everyone was so cooperative, smiling and all this other stuff, why was it necessary for a police officer to explain, as he said, the Miranda Rights to" respondent, counsel pondered.

At the conclusion of the trial, the court found that the prosecutor established beyond a reasonable doubt that respondent committed second-degree home invasion. The court did not directly answer respondent's claim that his confession was involuntary, but ruled, "There's some conflicting testimony about what exactly went on in the home of [r]respondent, but, I don't believe that [respondent's] admission was gotten because of police misconduct."

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

II. LEGAL PRINCIPLES

Respondent now contends that the trial court should have excluded his alleged confession to the police as it was coerced, the police lacked permission to enter his house, and his father did not actually consent to the questioning. These circumstances rendered his confession involuntary, respondent contends. Respondent further contends that he "did not make a voluntary, knowing, and intelligent waiver of his Fifth Amendment rights."

"A motion to suppress evidence must be made prior to trial or, within the trial court's discretion, at trial." *People v Carroll*, 396 Mich 408, 412; 240 NW2d 722 (1976). "Generally, a [respondent] must challenge the admissibility of a confession in the trial court or the issue is unpreserved." *People v McCrady*, 244 Mich App 27, 29; 624 NW2d 761 (2000). Rather than moving to suppress his confession in the trial court, respondent tried to discredit the confession and denied that he was involved in the home invasion. His challenge is therefore unpreserved. We review unpreserved issues for plain error affecting a defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). "Reversal is warranted only when plain error resulted in the conviction of an actually innocent [respondent] or seriously affected the fairness, integrity, or public reputation of judicial proceedings." *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

"Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Gipson*, 287 Mich App 261, 264; 787 NW2d 126 (2010). Respondent's substantive argument focuses solely on the element of voluntariness. "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." *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997). Voluntariness "depends on the absence of police coercion." *Gipson*, 287 Mich App at 264. When a juvenile is involved, the court must consider several factors to judge the admissibility of a confession:

> (1) whether the requirements of *Miranda v Arizona* . . . have been met and the defendant clearly understands and waives those rights, (2) the degree of police compliance with MCL 764.27[2] . . . and the juvenile court rules, (3) the presence of an adult parent, custodian, or guardian, (4) the juvenile defendant's personal background, (5) the accused's age, education, and intelligence level, (6) the extent of the defendant's prior experience with the police, (7) the length of detention before the statement was made, (8) the repeated and prolonged nature of the questioning, and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention . . . . [*Givans*, 227 Mich App at 121.]

[2] The statute requires the police to immediately petition the family division to take jurisdiction over a child after the child is placed under arrest.

Although we "conduct an independent review," we cannot pretend that we are working from a blank slate. *In re SLL*, 246 Mich App 204, 209-210; 631 NW2d 775 (2001). We must give deference to the trial court's factual findings and only disturb them if they are clearly erroneous. *Id*. A finding is clearly erroneous if we are "left with a definite and firm conviction that a mistake was made." *Gipson*, 287 Mich App at 264. "Deference is given to a trial court's assessment of the weight of the evidence and the credibility of the witnesses." *Id*.

III. ANALYSIS

We begin by noting that the trial court could have, and should have, more thoroughly considered respondent's challenge to the voluntariness of his confession before rendering judgment in this case. Although respondent did not seek to exclude or suppress his statement, his attorney made his objection clear during closing argument. It would have imposed little inconvenience to address the issue head on. However, a trial court's finding in a bench trial is sufficient "as long as it appears that the trial court was aware of the issues in the case and correctly applied the law." *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). The court's brief statement demonstrates that it was aware of respondent's complaint and that the issue revolved around the credibility of the witnesses. The court understood that respondent discredited the police witnesses' version of events. The court rejected respondent's evidence in impliedly determining that his confession was voluntary and admissible.

We discern no clear error in the trial court's judgment. With regard to *Givans*' first factor, the police witnesses testified that Sergeant Cariveau read respondent his *Miranda* rights and that respondent waived them. Respondent, on the other hand, simply did not recall the police reading him these rights. The court clearly credited the official version of events as it found that respondent's confession was not the result of "police misconduct." We may not interfere with the lower court's resolution of this credibility contest.

In regard to *Givans*' second factor, respondent never alleged that the police violated any statute within the Juvenile Code or any juvenile court rule.

Respondent does challenge the sufficiency of his father's grant of permission for the police interrogation, as well as the officers' decision to separate him from his father and grandparents before questioning him. In *SLL*, 246 Mich App at 210, the juvenile respondent was separated from his mother for his police interrogation. This Court held:

> In addition, we find that the separation of respondent from his mother, although potentially troublesome in an analysis of the voluntariness of a statement, under the totality of the circumstances here, does not merit a finding that respondent's statement was involuntary. Respondent knew his mother had consented to his talking alone with the officer and that she was readily available to him. No manipulation of respondent or his mother by the police is established by the circumstances. To the contrary, everything was done openly and with the knowledge and consent of respondent and his mother. [*Id*.]

Sergeant Cariveau testified that he "asked the father's permission to talk to his son about the incident and the father gave me permission to question him." Although respondent's

grandmother testified that the officers handcuffed respondent's father, she never stated that the police did not ask his permission to question respondent. Accordingly, the record supports that permission was granted. The officers decided to move respondent down the hallway to question him. Sergeant Cariveau indicated that respondent's family members remained in the home. Although respondent's grandmother testified that the adults who lived in the home were held on the porch, respondent corroborated the police testimony that his family members were near at hand. And despite that there is no evidence that the police advised respondent that his father "was readily available to him," respondent was aware that his father was. By simply raising his voice respondent could have summoned his father at any time.

Factors four through six are interrelated. Respondent was 16 years old in April 2016. This Court has found that even younger individuals may voluntarily waive their *Miranda* rights and give a voluntary statement to the police. See *People v Eliason*, 300 Mich App 293, 305, 307; 833 NW2d 357 (2013) (14-year-old), remanded on other grounds by *People v Carp*, 496 Mich 440 (2014), vacated by *Davis v Michigan*, ___ US ___; 136 S Ct 1356; 194 L Ed 2d 339 (2016); *SLL*, 246 Mich App at 205, 210-211 (13-year-old); *People v Abraham*, 234 Mich App 640; 599 NW2d 736 (1999) (11-year-old). Further, the police testified that respondent appeared to understand the warnings. In terms of educational background, respondent regularly attended school and maintained a C average. Respondent has had academic and social difficulties in the past and is currently enrolled in an alternative school. But respondent was not new to the criminal justice system. He had been questioned by police in the past and had admitted liability to a prior juvenile offense. Although respondent had some academic difficulties, his age and prior experiences support that he understood his rights and voluntarily waived them.

Furthermore, respondent's "detention" in the hallway of his home was brief. Respondent initially denied any involvement in the home invasion, but after being advised that his friends had already identified him as their accomplice, respondent admitted his role. Respondent claimed that the officers threatened to search and destroy his house, but the officers testified that they made no such threats. Again, we may not interfere with the trial court's decision to credit the police officers' testimony over respondent's. See *Gipson*, 287 Mich App at 264. And there is no evidence that respondent was ill, under the influence, or otherwise physically or mentally indisposed at the time of the questioning.

Considering the totality of the circumstances, we discern no ground to invalidate respondent's waiver of his *Miranda* rights. Respondent's subsequent confession was admissible and the lower court did not err in considering it as part of the evidence at trial.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Michael F. Gadola
/s/ Colleen A. O'Brien