

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE SCOTT BOYER,

Defendant-Appellant.

UNPUBLISHED

September 24, 1996

No. 163550

LC No. 92-062843-FC

Before: Young, P.J., and Corrigan and Callahan,* JJ.

PER CURIAM.

Defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, and was sentenced to life imprisonment. He appeals as of right. We affirm.

Defendant argues that his confession was illegally obtained, and the subsequent use of his confession at trial violated his constitutional rights. Specifically, defendant contends that he was not advised of his constitutional rights while in police custody, and that the interrogating officer unlawfully induced defendant into making a statement with promises of leniency. We disagree.

The right against compelled self-incrimination is guaranteed by both the United States and Michigan Constitutions, US Const, Am V; Const 1963, art 1, § 17. Statements by an individual made while in police custody are inadmissible unless he voluntarily, knowingly, and intelligently waives his constitutional rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). Thus, *Miranda* warnings are required whenever a person is in custody or otherwise deprived of his freedom in any significant way. *Miranda, supra*, 384 US 444; *People v Hill*, 429 Mich 382, 384; 415 NW2d 193 (1987). The totality of circumstances must be examined to determine whether a person was in custody at the time of the interrogation. *People v Williams*, 171 Mich App 234, 237; 429 NW2d 649 (1988). The key question is whether a person reasonably could have believed that he was not free to leave. *Id.*

* Circuit judge, sitting on the Court of Appeals by assignment.

At defendant's *Walker*¹ hearing, the investigating officers who interviewed defendant testified to the circumstances surrounding defendant's interview. Defendant did not testify at the hearing. The following summarizes these events as described by the officers' testimony.

Defendant spoke voluntarily with Detective Shiley the day before he confessed. Detective Shiley returned to defendant's house the next day with a uniformed officer, and defendant voluntarily accompanied the officers to the police station for additional questioning. Another detective, Detective Roberts, met with defendant in the second interview and tape-recorded their conversation. Before the tape recording began, Detective Roberts emphasized to defendant that he was not in custody and that he could stop the conversation at any time. Defendant acknowledged at the start of the interview that he was not in custody and that he agreed to speak with Detective Roberts regarding the murder. Detective Roberts then informed defendant that he had reason to believe that defendant was involved with the murder based on his conversation with defendant's girlfriend. In response to this news, defendant appeared tense, but was able to relax and speak freely after a few minutes. Defendant then made incriminating statements about his involvement in the murder.

Defendant contends that Detective Roberts forced defendant to choose between talking or face being charged as the sole person responsible for the murder. However, the transcript of the tape-recorded interview is consistent with the description that Detective Roberts gave at the *Walker* hearing.² According to the transcript, defendant was never threatened with arrest or criminal charges, and at the start of the conversation, defendant acknowledged that he was not in custody. Detective Roberts told defendant that his girlfriend accused defendant of the murder and denied any involvement. Detective Roberts explained to defendant that he wanted to give defendant an opportunity to respond to her allegations that he was *the* murderer. Defendant asserted that he was going to tell Detective Roberts "who did this," and even asked Detective Roberts to confirm that the tape recorder was "on." Defendant then spoke at great length with Detective Roberts providing a detailed explanation of the planning and execution of the murder, confessing that he had helped stab and hide the body.

Based on the evidence introduced at the *Walker* hearing and the transcript of the interview, we conclude that defendant was not in custody when speaking with Detective Roberts. The evidence indicates that defendant was not under arrest or deprived of his freedom in any significant way at the time that he accompanied the officers to the police station or during his interview with Detective Roberts. *Hill, supra*.

We also reject defendant's argument that the trial court should have suppressed the statement on the ground that it was involuntary because it was induced by promises of leniency. The test for voluntariness is whether, after considering the totality of all the surrounding circumstances, the confession was freely and voluntarily made. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). The transcript of the interview belies defendant's contention that the statement was the product of an implied promise of leniency. According to the transcript, Detective Roberts expressly stated that he could not make any promises to defendant and emphasized that he was simply seeking the truth. Having examined the totality of the circumstances surrounding the making of the statement, we hold that that the statement was voluntarily made. See *People v Mack*, 190 Mich App 7, 17; 475 NW2d 830

(1991). Accordingly, we find the trial court did not err in denying defendant's motion to suppress, and subsequently, admitting defendant's statement at trial.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Maura D. Corrigan

/s/ Michael J. Callahan

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

² The tape recording of this conversation was not played at the *Walker* hearing, but brief excerpts were read into the record by the prosecution. However, the entire tape was played at trial before the jury during Detective Roberts' testimony.