STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN LEE KERR,

Defendant-Appellant.

UNPUBLISHED
October 1, 1996

No. 188951
LC No. 94-006706-FC

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

PER CURIAM.

Defendant pleaded guilty to first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and was sentenced to thirty to sixty years' imprisonment. The plea was conditioned on defendant being allowed to withdraw his plea if all three of his statements, which the trial court ruled would not be suppressed as evidence, were suppressed on appeal. Further, pursuant to a plea bargain agreement, a charge of home invasion was dismissed. Defendant now appeals as of right from his conditional plea and the sentence. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

For reasons discussed below, the trial court properly ruled to deny defendant's motion to suppress evidence based on the grounds raised in defendant's first four issues on appeal.

The magistrate's issuance of the search warrant on December 7, 1994, for evidence of the crime in Apartment No. 14, was supported by probable cause. *People v Sloan*, 450 Mich 160, 168; 538 NW2d 380 (1995); *People v Russo*, 439 Mich 584; 487 NW2d 698 (1992); *People v Stumpf*, 196 Mich App 218; 492 NW2d 795 (1992); *People v Young*, 89 Mich App 753; 282 NW2d 211 (1979). The information provided by the crime victim to the affiant was presumptively reliable. *People v Powell*, 201 Mich App 516, 521; 506 NW2d 894 (1993). Moreover, the personal knowledge requirement of MCL 780.653; MSA 28.1259(3) was not violated because the search warrant reflects

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

that the crime victim's opinions regarding the voices were based on her opportunity to hear the voices. See *Stumpf, supra*, p 223. Having read all the information in the search warrant affidavit in a common-sense and realistic manner, we believe that there was a substantial basis for the magistrate's finding of probable cause.

Next, the trial court did not clearly err in finding that the search team complied with the knock-and-announce statute, MCL 780.656; MSA 28.1259(6), by knocking and announcing its presence at the front door to Apartment No. 14. It was not necessary that the search team knock and announce its presence at the bedroom door after lawfully entering the apartment to conduct the search. Moreover, the entry into the bedroom did not offend the reasonableness standard of the Fourth Amendment. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983); *People v Williams (After Remand)*, 198 Mich App 537; 499 NW2d 404 (1993); *People v Polidori*, 190 Mich App 673; 476 NW2d 482 (1991). See also *United States v Crawford*, 657 F2d 1041 (CA 9, 1981).

Nor did the trial court clearly err in finding that defendant was lawfully detained at the time he gave his initial statement to Detective Monroe inside of Apartment No. 14. *Burrell, supra*, p 448. Although *Michigan v Summers*, 452 US 692; 101 S Ct 2587; 69 L Ed 2d 340 (1981), concerned a search for contraband, the Supreme Court did not preclude the possibility of the rationale in *Summers* being applied to justify similar police conduct. *People v Bloyd*, 416 Mich 538, 550; 331 NW2d 447 (1982). Here, defendant was a suspect at the time that the search warrant for his apartment was executed. Moreover, the search team had concerns for its safety inasmuch as one of the items sought in the search warrant was the pistol which the crime victim claimed was used to perpetrate the sexual assault. In view of these facts and the other circumstances surrounding defendant's detention, the trial court did not clearly err in finding that he was lawfully detained, but not arrested. See *People v Zuccarini*, 172 Mich App 11; 431 NW2d 446 (1988); *United States v Ritchie*, 35 F3d 1477 (CA 10, 1994).

We also uphold the trial court's determination that defendant's statement to Detective Monroe inside of Apartment No. 14 was voluntarily made. Giving due deference to the trial court's assessment of credibility and upon making an independent review of the record, we agree with the trial court's determination that defendant's statement was voluntarily made under the totality of the circumstances test set forth in *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). See also *People v Haywood*, 209 Mich App 217, 226; 530 NW2d 497 (1995); *People v Mack*, 190 Mich App 7, 17; 475 NW2d 830 (1990). Assuming for purposes of our review that *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), was applicable to this statement, we also hold that the trial court did not clearly err in finding that defendant understood and knowingly waived his *Miranda* rights. *People v Garwood*, 205 Mich App 553; 517 NW2d 843 (1994).

Because defendant has not shown error in his first four issues, we do not decide his claim that his subsequent statements made to Detective Monroe should have been suppressed as fruit of the poisonous tree. Moreover, since defendant has failed to establish that all three of his statements should have been suppressed, he is not entitled to withdraw his conditional plea.

Finally, the trial court did not abuse its discretion in departing from the guidelines' minimum sentence range. In imposing a thirty-year minimum sentence, the trial court considered the circumstances of both the offense and the offender. The trial court found circumstances, such as defendant's planning of the offense, which were not adequately accounted for in the guidelines. Upon considering the circumstances surrounding defendant and the offense, we conclude that his sentence does not violate the principle of proportionality. *People v Merriweather*, 447 Mich 799; 527 NW2d 460 (1994); *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ John H. Gillis
/s/ Glenn S. Allen, Jr.
/s/ Joseph B. Sullivan