

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KELLEY COLVIN,

Defendant-Appellant.

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UNPUBLISHED

December 20, 1996

No. 184014

LC No. 94-002083-FC

Before: Hood, P.J., and Neff and M. A. Chrzanowski,\* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), one count of armed robbery, MCL 750.529; MSA 28.797, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to life imprisonment for the felony murder convictions, twenty to forty years' imprisonment for the armed robbery conviction, and a two-year mandatory term in prison for the felony-firearm conviction. He appeals as of right and we affirm.

Defendant argues that his convictions should be reversed because his confession was improperly admitted in violation of his right to counsel under the Fifth and Sixth Amendments to the United States Constitution. This Court will not disturb a trial court's factual findings regarding the voluntariness of a defendant's statement unless the findings are clearly erroneous. *People v Marshall*, 204 Mich App 584, 587; 517 NW2d 584 (1994).

The right to counsel under *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966), implements the guarantee against self-incrimination of the Fifth Amendment to the United States Constitution and art 1, § 17 of the Michigan Constitution. *People v Crusoe*, 433 Mich 666, 683 n 26; 449 NW2d 641 (1989). Accordingly, statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly and intelligently waived the *Miranda* rights. *Miranda, supra*, at 444.

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

At the *Walker*<sup>1</sup> hearing, defendant admitted that the detectives had read him his *Miranda* rights and that he had waived them. However, defendant also testified that the detectives told him he did not need counsel and that the detectives threatened that defendant would not see his son again if he did not cooperate. The detectives denied defendant's allegations and testified that defendant never asked for an attorney during their interview.

The trial court determined that defendant understood his rights and voluntarily waived them. The trial court is in the best position to make this assessment of credibility. *People v Young*, 212 Mich App 630, 634; 538 NW2d 456 (1995). We conclude that the admission of defendant's confession did not violate the Fifth Amendment.

The Sixth Amendment to the United States Constitution and art 1, § 20 of the Michigan Constitution grant individuals the right to counsel, but this right does not attach until adversarial judicial proceedings are initiated for the specific crime for which the state has begun prosecution. *People v Smielewski*, 214 Mich App 55, 60-62; 542 NW2d 293 (1995). Here, the police detectives interrogated defendant on uncharged crimes, so defendant's Sixth Amendment right to counsel for the instant offenses had not attached at the time his statement was obtained. Defendant's subjective belief that he had counsel for this case because an attorney was present at the lineup would not cause defendant's right to counsel to attach any earlier. Neither would defendant's arraignment in an unrelated case, because the Sixth Amendment right is offense-specific. *Crusoe, supra*, at 691.

We find no clear error in the trial court's decision to admit defendant's confession.

Affirmed.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Mary A. Chrzanowski

<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).