STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KAFAN BAHJAT HANA,

Defendant-Appellant.

UNPUBLISHED
January 31, 1997

No. 172215
Macomb Circuit Court
LC No. 88-001054-FC
ON REMAND

Before: Hood, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted of possession of over 650 grams of cocaine, MCL 333.7403(2)(a)(i); MSA 14.15(7403(2)(a)(i), delivery of 225 to 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), conspiracy to deliver between 225 and 650 grams of cocaine, MCL 750.157c; MSA 28.354(2), and bribery of a public official, MCL 750.117; MSA 28.312. He was sentenced to mandatory life without parole on the possession charge, ten to thirty years in prison on the delivery charge, ten to thirty years in prison on the conspiracy charge, and two to four years in prison on the bribery charge.

We previously reversed defendant's convictions in an unpublished opinion per curiam, concluding that various statements by defendant were improperly admitted at defendant's juvenile waiver hearing. However, the Supreme Court reversed our decision and remanded the matter to this Court for consideration of defendant's remaining issues. *People v Hana*, 443 Mich 202; 504 NW2d 166 (1993). On remand, we affirm defendant's conviction, but modify his sentence.

First, we consider defendant's argument that the trial court erred in affirming the juvenile court's decision to waive jurisdiction. At a waiver hearing, the juvenile court must consider a number of factors in determining whether jurisdiction over a juvenile should be waived to circuit court. See MCR 5.950(B)(2)(c). In the case at bar, we are satisfied that the juvenile court in the first instance, and the circuit court on review, adequately considered these factors and did not err in concluding that defendant should be tried as an adult.

Next, defendant argues that the trial court erred in denying his motion for severance. Defendant and the codefendant, defendant's brother Durid Hana, had both moved for severance. Both motions were denied. In the original appeal, we affirmed with respect to Durid and did not address the issue with respect to Kafan Hana. In Durid's appeal to the Supreme Court, the Supreme Court also affirmed. *People v Durid Hana*, 447 Mich 325; 524 NW2d 682 (1994). After giving the matter a great deal of consideration and carefully reviewing defendant's supplemental brief on remand, we simply are not persuaded that there is a sufficient distinction between the brothers' cases to merit a different conclusion in the two cases. Simply put, the Supreme Court's analysis of the severance issue with respect to Durid Hana is equally applicable to Kafan Hana. Therefore, we conclude that the trial court did not err in denying defendant's motion for severance.

Defendant next argues that the trial court erred in denying his motion to suppress his statements. We disagree. In our earlier opinion, we held that defendant's statements were improperly admitted in the juvenile court waiver hearing because it failed to apply the special protections afforded juveniles under the previous version of MCR 5.906(B)(1), which required that a parent, guardian or custodian concur in the waiver of the right to counsel. The Supreme Court reversed on the basis that those protections do not apply to dispositional hearings, including a waiver hearing.

With respect to use of the statements in circuit court at trial, we note that the former MCR 5.906(B)(2) only restricted use of statements obtained in violation of MCR 5.906(B)(1) in use at juvenile court proceedings. Accordingly, the fact that defendant's parent or guardian did not concur in the waiver of the right to counsel did not restrict the use of defendant's statements at trial in circuit court. Furthermore, we are not persuaded that the trial court erred in concluding that defendant's statements were otherwise voluntary. We find nothing particularly reprehensible, misleading or devious in the interrogation methods of the police. Indeed, defendant even acknowledges that he was advised a number of times to not make a statement and wait until a parent or attorney was present, yet defendant proceeded to make statements. We are satisfied that the trial court properly considered the totality of the circumstances and correctly concluded that defendant's statements were admissible at the circuit court trial.

Defendant also argues that the trial court erred in denying his request for an instruction on the lesser included offense of possession of between 225 and 650 grams of cocaine. We disagree. It is undisputed that the amount of cocaine possessed was approximately 3 kilograms, well in excess of 650 grams. Accordingly, the trial court did not err in refusing to instruct on the lesser offense. See *People v Marji*, 180 Mich App 525, 531; 447 NW2d 835 (1989).

Finally, defendant challenges his sentence of life without parole on the possession conviction. After defendant's conviction, the Supreme Court ruled that the nonparolability feature of the life sentences for possession of over 650 grams of cocaine is unconstitutional. Accordingly, we modify defendant's sentence to provide that the sentence is a parolable life sentence on the possession conviction. See *People v Bullock*, 440 Mich 15, 42; 485 NW2d 866 (1992).

Defendant's convictions are affirmed and his sentence is modified.

/s/ Harold Hood
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald