

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRANDON DAVIS,

Defendant-Appellee.

UNPUBLISHED

July 25, 1997

No. 194547

Recorder's Court

LC No. 95-009313

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order dismissing a charge against defendant of assault with intent to rob while armed, MCL 750.89; MSA 28.284. We affirm.

Plaintiff contends that the trial court erred in concluding that defendant's confession was not voluntary. We disagree. This Court reviews the trial court's determination of voluntariness in light of the entire record and makes an independent determination of the question. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). However, great deference is given to the trial court's assessment of the credibility of witnesses, and its findings of fact will not be reversed unless clearly erroneous. *Id.* A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *People v Jobson*, 205 Mich App 708, 710; 518 NW2d 526 (1994).

In the present case, the trial court did not err in finding that defendant's confession was not voluntary. The prosecutor has the burden of proving the voluntariness of a statement by a preponderance of the evidence. *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). The totality of the circumstances surrounding the confession permits a conclusion that the confession was not freely made. See *People v Good*, 186 Mich App 180, 189; 463 NW2d 213 (1990). Defendant was only briefly detained, was not repeatedly questioned, and was informed of his constitutional rights. There is no indication in the record of noncompliance with applicable statutes and juvenile court rules. However, there are other factors that permit a conclusion that the confession was not voluntary. No other adult was present during the interrogation, and the sixteen-year-old defendant

had no previous police contact. Defendant claimed that his interrogator swore at him, told him that he was making her sick, and then told him all that he had to do was sign the statement and he could go home. As the trial court noted, there was some question about whether defendant was abused, given his testimony that his arm was chained to a railing over his head. We defer to the court's superior ability to judge the credibility of the witnesses. *People v Cheatham*, 453 Mich 1, 30; 551 NW2d 355 (1996); *Etheridge, supra* at 57. On these facts, we find that the trial court's ruling was not clearly erroneous.

Affirmed.

/s/ Hilda R. Gage

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald