

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS MARVIN DESOTELL,

Defendant-Appellant.

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UNPUBLISHED

March 20, 1998

No. 192279

Delta Circuit Court

LC No. 95-005769 FH

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant was convicted by a jury of first-degree criminal sexual conduct and sentenced as an habitual offender, second offense. In this appeal of right, he contends that the trial court erred in ruling that his confession was admissible at trial following a three-day evidentiary hearing, pursuant to *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

To the extent the testimony was in dispute, the trial court's findings of historical fact are subject to appellate review for clear error only, given the trial court's superior ability to assess the credibility of the witnesses. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). The ultimate determination of both custodial status, *id.*; *Thompson v Keohane*, 516 US 99, 102; 116 S Ct 457; 133 L Ed 2d 383 (1995)—crucial to the determination of whether *Miranda* warnings were required, *People v Hill*, 429 Mich 382; 415 NW2d 193 (1987)—and voluntariness, *Miller v Fenton*, 474 US 104, 115; 106 S Ct 445; 88 L Ed 2d 405 (1985), being mixed questions of law and fact, is subject to de novo appellate review and determination.

Here, the historical facts are essentially undisputed in pertinent respects. Investigating a complaint of criminal sexual conduct, a state police detective and a trooper approached defendant outside his home, identified themselves, and stated the purpose of their visit, which was to interview him concerning the complaint. After a spontaneous incriminating response, the admissibility of which appears to be uncontested, the officers requested that defendant accompany them either to the nearest state police post or the local police headquarters to be interviewed. Defendant instead requested that he be interviewed in his home, and the officers agreed. At the *Walker* hearing, psychiatric testimony was adduced that defendant suffers from mental retardation of a mild or moderate degree, dislikes and fears the police, and would not have considered himself free to leave even though the objective, external indicia were that defendant was not, in fact, in custody.

The Fifth Amendment of the United States Constitution, as well as Article 1, § 17, of the Michigan Constitution of 1963, protects defendants from compelled self-incrimination. Thus, *Miranda* warnings are not required to be given unless a defendant is interrogated while in police custody or otherwise deprived of freedom of action. In evaluating a question of custodial interrogation, we look to the totality of the circumstances, with the key question being whether the defendant reasonably believed that he was not free to leave. *Hill, supra* at 399; *Mendez, supra* at 382-383. The objective circumstances of the interrogation are considered, not the subjective views harbored by either the interrogating officers or the person being questioned. *Stansbury v California*, 511 US 318; 114 S Ct 1526; 128 L Ed 2d 293 (1994). However, a defendant's subjective beliefs or feelings that are outwardly manifested may be relevant only to the extent they influenced the objective conditions surrounding the interrogation. *Id.*

Here, defendant was permitted to decline to be interviewed at police headquarters or otherwise to accompany the officers away from his home, he freely submitted to an interview in his home, and when the interview was concluded the officers did not take him into custody, despite his confession, but left his home and went to the prosecutor to present their case. Defendant's subjective dislike and fear of the police—which were not outwardly manifested—does not change these facts, and, given defendant's past criminal record, we find this attitude to be expected. Defendant was not in custody and, therefore, *Miranda* warnings were not a prerequisite to the admissibility of his confession.

Defendant next argues that his mental retardation rendered any statements involuntary under the Due Process Clause of the Fourteenth Amendment. We disagree. Although a defendant's mental condition is certainly relevant to a determination of his susceptibility to police coercion, mere examination of the defendant's subjective state of mind can never conclude the due process inquiry. *Colorado v Connelly*, 479 US 157, 163-165; 107 S Ct 515; 93 L Ed 2d 473 (1986). A showing of police coercion must also be made before a confession will be suppressed as involuntary. *Id.* Here, even defendant's expert witness admitted that coercion was not present, and our review of the interrogation transcript likewise reveals no such conduct on the part of the investigating officers. See *Purvis v Dugger*, 932 F2d 1413, 1422 (CA 11, 1991) (confession was voluntary where the defendant had a history of schizophrenia, was susceptible to authority figures, and had a childlike mentality, but where no evidence of police coercion was shown); *United States v Macklin*, 900 F2d 948, 951-952 (CA 6, 1990) (the defendants' confessions were voluntary where one defendant was "mildly mentally retarded" and the other was "borderline mentally retarded," but where no evidence of police coercion was shown).

Defendant's reliance on *People v Garwood*, 205 Mich App 553; 517 NW2d 843 (1994), is misplaced, as *Garwood* simply recognized the distinction between the voluntariness of the statement itself and whether the waiver of requisite *Miranda* rights was made voluntarily, knowingly, and intelligently. Since it has already been determined that defendant was not in custody, and therefore *Miranda* warnings were not required, the question whether his *Miranda* rights were voluntarily, knowingly, and intelligently waived simply does not arise, and *Garwood* is inapposite. Accordingly, we conclude that defendant's confession was voluntary. *People v Robinson*, 386 Mich 551, 558; 194 NW2d 709 (1972).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs