

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

T. J. JAMES TREMBLE,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2000

No. 208854

Arenac Circuit Court

LC No. 97-002455 FC

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant, then fifteen years old, was convicted of two counts of first-degree murder, MCL 750.316; MSA 28.548, one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424, and one count of unlawfully driving away an automobile, MCL 750.413; MSA 28.645. He was sentenced to life imprisonment without possibility of parole for the first-degree murder convictions, two years' imprisonment for the felony-firearm conviction, and two to five years' imprisonment for the UDAA conviction. Defendant appeals as of right. We affirm.

Defendant first argues on appeal that the trial court erred in denying his motion to suppress his confession. Defendant contends that suppression was required because after he was arrested, he was not immediately taken before juvenile authorities as required by MCL 764.27; MSA 28.886, and because his confession was not voluntary. Statutory interpretation is a question of law that we review de novo. *People v Sartor*, 235 Mich App 614, 618-619; 599 NW2d 532 (1999). When reviewing a trial court's determination of voluntariness, this Court examines the entire record and makes an independent determination. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). However, deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's findings will not be disturbed unless they are clearly erroneous. *Id.* A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Defendant, then fourteen years old, was arrested on April 19, 1997. MCL 764.27; MSA 28.886, as amended by 1996 PA 255 (effective January 1, 1997), provides in pertinent part as follows:

Except as otherwise provided in section 606 of the revised judicature act of 1961 . . . being section 660.606 of the Michigan Compiled Laws . . . if a child less than 17 years of age is arrested, with or without a warrant, the child shall be taken immediately before the family division of circuit court of the county where the offense is alleged to have been committed, and the officer making the arrest shall immediately make and file, or cause to be made and filed, a petition against the child as provided in . . . sections 712A.1 to 712A.31 of the Michigan Compiled Laws. [MCL 764.27; MSA 28.886.]

The statute, by its very terms, must be read in conjunction with MCL 600.606; MSA 27A.606, as amended by 1996 PA 260 (effective January 1, 1997), which provides that “[t]he circuit court has jurisdiction to hear and determine a specified juvenile violation if committed by a juvenile 14 years of age or older and less than 17 years of age.” First-degree murder in violation of MCL 750.316; MSA 28.548 is listed as a specified juvenile violation under MCL 600.606(2)(a); MSA 27A.606(2)(a). Under MCL 764.1f; MSA 28.860(6), the prosecutor has authority to proceed in *either* juvenile or circuit court when confronted with a juvenile who is charged with certain enumerated felonies, including first-degree murder. MCL 764.1f(2)(a); MSA 28.860(6)(2)(a).

There is no dispute that in this case the prosecutor opted to proceed in circuit court and charge defendant with first-degree murder. Defendant argues that because he was originally arrested only for a “zero tolerance” violation and possession of a stolen automobile, the police were required to comply with arrest procedures in the juvenile system and their failure to do so required suppression of his subsequent confession. However, the voluntary statement of a juvenile who is not immediately taken to the juvenile division of the probate court upon arrest is admissible if the juvenile is charged as an adult. *People v Good*, 186 Mich App 180, 185 n 2; 463 NW2d 213 (1990).

In any event, the failure to take an arrested juvenile immediately to the juvenile division of the probate court does not per se require suppression of a statement made by the defendant. *People v Rode*, 196 Mich App 58, 69; 492 NW2d 483 (1992), rev’d on other grounds 447 Mich 325; 524 NW2d 682 (1994). Rather, the proper test for determining the admissibility of a juvenile’s confession is whether, under the totality of the circumstances, the defendant’s statement was made voluntarily. *Id.* The factors that must be considered in applying the totality of the circumstances test to determine the admissibility of a juvenile’s confession include (1) whether the requirements of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), have been met and the defendant clearly understands and waives those rights, (2) the degree of police compliance with MCL 764.27; MSA 28.886 and the juvenile court rules, (3) the presence of an adult parent, custodian, or guardian, (4) the juvenile defendant’s personal background, (5) the accused’s age, education and intelligence level, (6) the extent of the defendant’s prior experience with the police, (7) the length of detention before the statement was made, (8) the repeated and prolonged nature of the questioning, and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. *Givans, supra* at 121; *Good, supra* at 189.

Here, defendant was given the *Miranda* warnings twice prior to his confession. He indicated that he understood his rights and he waived those rights. After reading defendant his *Miranda* rights,

Sheriff Mosciski asked defendant if he wanted to “talk now” and defendant said “[y]es.” As indicated above, because defendant was charged as an adult, the police were not required to comply with the requirements of MCL 764.27; MSA 28.886. Although neither defendant’s parents nor an attorney were present during the questioning, defendant, after being advised of his rights, did not request the presence of his parents or an attorney. While defendant was only fourteen-and-a-half years old and only had an eighth grade education, there is nothing in the record to indicate that he could not read and write or could not understand the serious nature of the charges against him. In fact, a juvenile corrections officer explained to defendant, prior to his confession, that the charges against him were very serious. Moreover, there is nothing in the record to indicate that defendant was intellectually challenged.

Defendant was not detained for a lengthy period before he made his statement. He was brought into the jail at approximately 3:00 a.m. Defendant went through the booking procedure and submitted to a breathalyzer test. Evidence technicians from the State Police Post collected evidence from defendant at approximately 6:45 a.m. Defendant’s parents appeared at the jail at 7:30 a.m. and consented to allow the police to talk to defendant. Defendant gave his statement at 8:30 a.m. We do not believe that defendant’s five-and-a-half hour detention prior to his confession was unreasonable under the circumstances.

Furthermore, defendant does not claim, and there is no indication in the record, that he was subjected to repeated or prolonged questioning in this case. There is no indication that defendant was injured or sick when he confessed to killing the victims in this case. Additionally, although defendant had two alcoholic beverages approximately eight hours prior to the confession and had a blood alcohol level of .05 at 3:15 a.m., there is no indication that he was intoxicated at 8:30 a.m. when he confessed to the murders. Moreover, although defendant had not slept or eaten for at least nine hours prior to the questioning, there is no evidence that he was not alert at the time of his confession. In fact, Sheriff Mosciski testified that defendant appeared to be alert and awake during questioning. Defendant, who had eaten a sandwich at 11:30 p.m. the previous day, declined the breakfast that was offered breakfast at 7:30 a.m. at the jail. Therefore, he was not deprived of food prior to the confession. Although defendant was handcuffed for a number of hours, those handcuffs were loosened upon defendant’s request. There is nothing in the record to indicate that defendant was mistreated in any way by the police.

Considering the totality of the circumstances, we conclude that the trial court did not err in finding that defendant’s confession was voluntary. Defendant has cited no factor or combination of factors that indicates that his will was overborne and his capacity for self-determination critically impaired, or that his confession was not the product of an essentially free and unconstrained choice. See *Givans, supra* at 124. Although defendant claims that he was absolutely exhausted and utterly confused prior to his confession, there is no support for those assertions in the record.

Defendant argues next on appeal that MCL 769.1(1); MSA 28.1072(1), as amended by 1996 PA 247, is unconstitutional. Specifically, defendant contends that the amended statute, which requires that juveniles convicted of certain specified offenses be sentenced in the same manner as an adult, deprived him of due process and violates the separation of powers doctrine. However, in *People v*

*Conat*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (1999) (Docket No. 218204, issued 10/19/99), this Court addressed due process, equal protection, and separation of powers challenges to the amended version of MCL 769.1(1); MSA 28.1072(1), and concluded that it is constitutional.

Defendant's final argument on appeal is that the trial court erred in denying his motion for change of venue. We disagree. The court's action in ordering or refusing a change of venue is discretionary and will not be disturbed on appeal unless there clearly appears to be a palpable abuse of discretion. *People v Jendrzejewski*, 455 Mich 495, 500; 566 NW2d 530 (1997).

Generally, defendants must be tried in the county where the crime is committed. *Jendrzejewski*, *supra* at 499. See also MCL 600.8312; MSA 27A.8312. However, a court may, in special circumstances where justice demands or statute provides, change venue to another county. *Jendrzejewski*, *supra* at 499-500. See also MCL 762.7; MSA 28.850. In *Jendrzejewski*, the Court noted that federal precedent has used two approaches to determine whether the failure to grant a change of venue is an abuse of discretion. "Community prejudice amounting to actual bias has been found where there was extensive highly inflammatory pretrial publicity that saturated the community to such an extent that the entire jury pool was tainted, and, much more infrequently, community bias has been implied from a high percentage of the venire who admit to a disqualifying prejudice." *Jendrzejewski*, *supra* at 500-501, citing *United States v Angiulo*, 897 F2d 1169, 1181-1182 (CA 1, 1990).

The killings in this case occurred in a small community of approximately 1,000 residents. Defendant claims, and plaintiff admits, that there was pretrial publicity in this case. However, juror exposure to newspaper accounts of the crime for which a defendant has been charged does not in itself establish a presumption that the defendant has been deprived of a fair trial because of pretrial publicity. *Jendrzejewski*, *supra* at 502. Rather, "the initial question is whether the effect of pretrial publicity on a relatively small jury pool . . . was such 'unrelenting prejudicial pretrial publicity [that] the entire community will be presumed both exposed to the publicity and prejudiced by it, entitling the defendant to a change of venue.'" *Jendrzejewski*, *supra* at 501, citing *Mu'Min v Virginia*, 500 US 415, 442, n 3; 111 S Ct 1899; 114 L Ed 2d 493 (1991).

A review of the exhibit prepared by defendant in connection with his motion for change of venue reveals that, over a five-month period, there were eight articles regarding this case in the *Arenac County Independent* and twenty articles in *The Bay City Times*. Further, there is some indication that there was minor television and radio coverage of this case. Although defendant claims that some of the articles were somehow sensational or tabloid-like, a review of the articles reveals that they are largely a factual recounting of news events, including the basic facts surrounding the killings, the court proceedings and side issues such as where defendant would be housed during the pendency of this matter. The fact that a few of the articles mentioned that there seemed to be no reason for the killings or that there was no readily discernible motive for the murders does not make the articles inflammatory or sensational. We conclude that the pretrial publicity in this case was not so unrelenting or prejudicial that the entire community can be presumed to have been exposed to and prejudiced by it. *Jendrzejewski*, *supra* at 501.

The next question is whether there was such a high percentage of the venire who admitted to a disqualifying prejudice that community bias may be inferred. In *Jendrzewski*, the Court found that even where twenty-five percent of the venire admits to a disqualifying prejudice, that does not constitute a community so prejudiced against the defendant as to impeach “the indifference of jurors who displayed no animus of their own.” *Id.* at 514. Our review of the record in this case shows that while many of the jurors admitted to having some prior knowledge of the incident in question, only about twenty-two percent admitted to having an opinion regarding the guilt or innocence of defendant.<sup>1</sup> We do not believe that this suggests a community poisoned against defendant or a community “so inflamed by pretrial publicity that it would overcome jurors’ assertions of impartiality.” *Id.* at 511. Therefore, we find that the trial court did not abuse its discretion in denying defendant’s motion for change of venue.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael R. Smolenski

/s/ Jeffrey G. Collins

<sup>1</sup> We note that many other jurors were excused for cause. However, those jurors were excused for reasons unrelated to knowledge of the case or the fact that they had already made a judgment regarding defendant’s guilt. Some of the jurors were excused because of their relationship to trial participants, because they or a close family member had been the victim of a serious crime, because of health concerns, because of employment issues, or because of religious or moral convictions.