

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAREL THEOPOLIS KING,

Defendant-Appellee.

UNPUBLISHED
December 5, 2000

No. 226118
Genesee Circuit Court
LC No. 99-004381-FC

Before: Zahra, P.J. and Hood and McDonald, JJ.

PER CURIAM.

Defendant was charged with open murder, MCL 750.316; MSA 28.548. After an evidentiary hearing, the trial court granted defendant's motion to suppress his statement to police. The prosecutor sought leave to appeal the trial court's order, and this Court denied the prosecutor's application for leave to appeal. *People v King*, unpublished order of the Court of Appeals, entered February 25, 2000 (Docket No. 225382). The prosecutor then filed an application for leave to appeal to the Michigan Supreme Court, and in lieu of granting leave to appeal, the Michigan Supreme Court remanded the case to this Court for consideration as on leave granted. *People v King*, 461 Mich 988; 610 NW2d 922 (2000).

The prosecutor argues that the trial court erred by granting defendant's motion to suppress his statement to police. We agree. When reviewing a trial court's grant of a motion to suppress, we review the entire record de novo, but will not disturb a trial court's factual findings regarding whether the waiver of *Miranda*¹ rights was knowing and intelligent unless that ruling was clearly erroneous. *People v Daoud*, 462 Mich 621, 629; ___ NW2d ___ (2000); *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). Clear error exists when we are left with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Whether a waiver of *Miranda* rights was voluntary and whether an otherwise voluntary waiver was knowingly and intelligently given constitute separate prongs of a two-part test for a valid waiver of *Miranda* rights. *Daoud*, *supra* at 635-639; *Abraham*, *supra* at 644-645. Both

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

inquiries are analyzed under the totality of the circumstances. *Abraham, supra* at 645. The voluntariness prong of the test examines the police conduct to determine whether the statement to police was the product of a free and unconstrained choice. *Id.*; *Givans, supra* at 121. Moreover, a knowing and intelligent waiver requires only that the prosecutor present sufficient evidence to demonstrate that the accused understood that he did not have to speak, that he had the right to the presence of counsel, and that the state could use his statements against him at trial. *Daoud, supra* at 643-644; *People v Cheatham*, 453 Mich 1, 29; 551 NW2d 355 (1996); *Abraham, supra* at 647. Factors to consider when determining the admissibility of a juvenile's confession include: (1) whether *Miranda* warnings were given and whether the defendant clearly understood and waived those rights; (2) the degree of police compliance with MCL 764.27; MSA 28.886 and the court rules pertaining to juveniles; (3) the presence of an adult parent, custodian, or guardian; (4) the juvenile defendant's personal background; (5) the juvenile's age, education, and intelligence level; (6) the extent of the juvenile'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; *People v Good*, 186 Mich App 180, 189; 463 NW2d 213 (1990).

Furthermore, once a defendant invokes his right to counsel, all interrogation must cease until the defendant is appointed an attorney, unless the defendant himself initiates further communication. *Edwards v Arizona*, 451 US 477, 484; 101 S Ct 1880; 68 L Ed 2d 378 (1981); *People v Kowalski*, 230 Mich App 464, 478; 584 NW2d 613 (1998); *People v McCuaig*, 126 Mich App 754, 759-760; 338 NW2d 4 (1983). Juveniles, as well as adults, may waive their rights through initiation of further communication with police officers. *People v Black*, 203 Mich App 428, 430; 513 NW2d 152 (1994). Merely advising the accused of the crime with which he is being charged and describing the events leading to the charge does not constitute interrogation by a police officer, and, generally, a mere inquiry into whether the accused has changed his mind about wanting to speak without an attorney present is not considered police-initiated interrogation. *Kowalski, supra* at 479-480; *McCuaig, supra* at 760.

The record reveals that, under the totality of the circumstances, defendant's statement to police was voluntary. After Sergeant Rick Warren read defendant his *Miranda* rights, defendant asserted his right to counsel, and all questioning ceased. Thereafter, Warren informed defendant that he would be booked and transported to the detention facility. Because Warren merely advised defendant of the crime with which he was being charged, the communication did not constitute interrogation. *McCuaig, supra* at 760. Warren also informed defendant that if he changed his mind about talking to him, Warren could be contacted through the people at the detention facility. This communication likewise did not constitute interrogation. *Kowalski, supra* at 479-480. Defendant, himself, initiated the conversation which led to his statement. Defendant asked Warren how soon he would be appointed an attorney, and, when Warren replied that he would probably be appointed an attorney the following day, defendant insisted that he wanted to talk "now." Defendant also notified Lieutenant Jody Matherly of his desire to talk and insisted on talking to Warren "right now" even though no attorney was present. Although Warren did not reread defendant's *Miranda* rights prior to taking defendant's statement, the failure to reread a defendant's rights before each interrogation does not render a defendant's statement inadmissible. *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992);

People v Godboldo, 158 Mich App 603, 607; 405 NW2d 114 (1986). In any event, defendant was undoubtedly conscious of his rights considering that Warren had read him his *Miranda* rights less than ten minutes before defendant initiated the conversation with Warren. Although he was a juvenile, defendant was capable of waiving his *Miranda* rights by initiating further communication with Warren and Matherly. *Black, supra* at 430. There was also no evidence that Warren or Matherly used coercion to force defendant to talk. Therefore, the record shows that defendant's statement to police was the product of a free and unconstrained choice, and, as such, the waiver was voluntary. *Abraham, supra* at 645; *Givans, supra* at 121.

Furthermore, under the second prong of the test, defendant knowingly and intelligently waived his *Miranda* rights under the totality of the circumstances. *Daoud, supra* at 635-639; *Abraham, supra* at 644-645. Defendant understood his rights as evidenced by his request for an attorney, however, he waived those rights when he initiated further communication with Warren. Although Bridget Boyd, defendant's mother, was not present when defendant gave his statement to Warren and Matherly, this factor alone is not determinative. *Givans, supra* at 121, 124. In any event, Sergeant Curnow attempted to locate Boyd, but was unable to do so, and defendant never requested Boyd's presence before making his statement. Although defendant did not have an extensive criminal history and had very little prior experience with the police, he was fifteen years of age at the time of his interrogation, he had gone to school through the ninth grade, and was able to read and write. No evidence was presented that the questioning was unduly prolonged or that he was detained for a lengthy period of time before making the statement. Moreover, defendant stated that he was not under the influence of any drugs or alcohol. Therefore, under the totality of the circumstances, it is clear that defendant knowingly and intelligently waived his *Miranda* rights. *Daoud, supra* at 643-644; *Givans, supra* at 121; *Good, supra* at 180.

In addition, although MCL 764.27; MSA 28.886 and MCR 5.933(C)(1) require that, upon arrest, a juvenile under age seventeen be brought immediately before the family division of the circuit court, defendant was eventually charged with open murder, MCL 750.316; MSA 28.548. *People v Strunk*, 184 Mich App 310, 315; 457 NW2d 149 (1990). Open murder is an enumerated offense under the automatic waiver provisions of MCL 600.606; MSA 27A.606, and original jurisdiction of such cases is vested in the circuit court. *People v Brooks*, 184 Mich App 793, 798; 459 NW2d 313 (1990). Therefore, under the automatic waiver provisions of § 606, it was not necessary that defendant be brought immediately before the family division of the circuit court. *Brooks, supra* at 797-798. Although defendant was not formally charged with violating § 316 at the time that he gave his statement, he was ultimately charged as such. Therefore, Warren and Matherly did not fail to comply with any statutes or court rules pertaining to juveniles. *Givans, supra* at 121; *Good, supra* at 180. Because defendant's waiver was voluntary, knowing, and intelligent, the trial court erred by granting defendant's motion to suppress his statement to police.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Harold Hood

/s/ Gary R. McDonald