

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME OLLISON, JR.,

Defendant-Appellant.

UNPUBLISHED

October 21, 2003

No. 241426

Oakland Circuit Court

LC No. 2001-179048-FC

Before: Kelly, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for first-degree premeditated murder, MCL 750.316(1)(a), and first-degree felony murder, MCL 750.316(1)(b). Defendant was sentenced to life in prison for both counts. We affirm but remand for amendment to the judgment of sentence.

Defendant first argues that the trial court erred in denying his motion to suppress his confession because the confession was not made after a voluntary, knowing, and intelligent waiver of *Miranda*¹ rights. We disagree. When reviewing the denial of a motion to suppress a confession, this Court reviews the record de novo, but will not disturb a trial court's factual findings following a suppression hearing unless they are clearly erroneous. *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999), quoting *People v Cheatham*, 453 Mich 1, 29-30; 551 NW2d 355 (1996).

A statement of an accused made during a custodial interrogation is inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). Whether the defendant's statement was knowing, intelligent, and voluntary is a question of law that the court must determine under the totality of the circumstances. *People v Snider*, 239 Mich App 393, 417; 608 NW2d 502 (2000). The burden is on the prosecutor to establish a valid waiver by a preponderance of the evidence. *Abraham, supra* at 645.

¹ *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

First, we consider whether the statement was voluntary, which is generally determined by examining police conduct. *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). Absent police coercion, a defendant's mental state alone does not render a confession involuntary. *Cheatham, supra* at 15-16, citing *Colorado v Connelly*, 479 US 157, 164; 107 S Ct 515; 93 L Ed 2d 473 (1986). After review of the record, we agree with the trial court that defendant was not coerced into making a statement. During the course of the interviews, police treated defendant fairly and did not engage in coercive behavior. The police verified that defendant was not hungry or ill. They made sure he had recently slept. And when defendant informed police that he was thirsty, the police gave him a soda. When asked about police treatment, defendant wrote that the police had treated him well. When asked if the detective had treated him fairly, defendant wrote, "Yes very kind person." The facts do not show police coercion which would negate the voluntary nature of his confession.

Next, we consider whether defendant's waiver was knowing and intelligent. An objective standard must be applied through an inspection of the circumstances involved, including the education, experience, age, background, and intelligence of the defendant. *People v Daoud*, 462 Mich 621, 633-634; 614 NW2d 152 (2000). To intelligently and knowingly waive *Miranda* rights, defendant did not need to comprehend the ramifications and consequences of waiving his rights. *Cheatham, supra* at 28. The prosecution must only "present evidence sufficient 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 what he said in a later trial against him." *Id.* at 29.

Here, after giving defendant his *Miranda* rights, the officer asked defendant if he had any questions. Defendant first replied no, then changed his answer to yes. Defendant did not ask a question regarding his rights, but instead asked the officer what the charges or penalties would be, to which the officer replied, "that is not formally decided yet." The detective admitted that one reason he did not speculate on the possible charges was so that defendant would not be afraid to talk, but the detective also indicated that he did not want to mislead defendant because it is the prosecutor's office, and not the detective, that charges a defendant. "[T]he United States Supreme Court has 'never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights.'" *Abraham, supra* at 647-648, quoting *Moran v Burbine*, 475 US 412, 422; 106 S Ct 1135; 89 L Ed 2d 410 (1986). Thus, the detective's inability to answer defendant's question regarding the specific charges did not impact the validity of defendant's waiver.

Further, during the first police interview, the detective used a form to advise defendant of his constitutional rights and, learning defendant could read, had him initial each right as an indication he understood them. The detective noted that defendant was taking two medications, Zoloft and Zyperxa, and that there was no evidence he suffered from a mental impairment. Defendant indicated that he had taken the medications that day. Defendant's emotional state during the questioning ranged from stoic and conversational, to friendly with slight kidding, to sad and crying. The detective testified that defendant did not appear to be under the influence of alcohol or drugs. Defendant had stated that he slept in the previous day, was not hungry, injured, or sick. Defendant, however, was thirsty and was given a soda. The detective believed that defendant was of sound mind and testified, "[e]verything the defendant told me was precisely consistent with physical evidence at the scene." Defendant even asked the detective what the

charges would be – an indication that defendant understood and waived the *Miranda* rights read to him. In addition, a second interview was conducted, following *Miranda* warnings. Both interviews were reduced to writing and signed by defendant, with two separate writings produced from the second interview. Considering the totality of the circumstances, the evidence was sufficient to support the trial court’s finding that defendant’s confession was voluntarily, knowingly, and intelligently given and, thus, the trial court did not err in denying defendant’s motion to suppress the confession.

Next, defendant argues that two murder convictions based on the death of one victim violate the double jeopardy clauses of the federal and state constitutions and that the judgment of sentence should be amended to show one conviction and sentence for first-degree murder under two alternative theories. We agree, as does the prosecution.

Convictions of first-degree premeditated murder and first-degree felony murder arising from the death of a single victim violate the constitutional prohibitions against double jeopardy found in both the federal and state constitutions, US Const, Am V; Const 1963, art 1, § 15. *People v Adams*, 245 Mich App 226, 241-242; 627 NW2d 623 (2001). Here, the judgment of sentence reflects convictions and sentences for both first-degree premeditated and first-degree felony murder. However, there is a statement at the bottom of the judgment which reads, “defendant is sentenced for 1st degree murder with alternative theories of premeditation and felony murder. Defendant is sentenced to natural life on both counts with a credit of 381 days and both counts are to run concurrently.” Although this language provides that defendant was sentenced for one count of first-degree murder under alternative theories, it imposes separate sentences for both first-degree premeditated murder and first-degree felony murder. Defendant’s sentences for multiple murder convictions for the death of one victim violate his double jeopardy protections. *Id.* The appropriate remedy is amending the judgment of sentence to reflect one conviction and sentence for first-degree murder supported by two theories: felony murder and premeditated murder. See *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001).

Affirmed, but remanded for entry of an amended judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot