

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK JOHN BUNDRIDGE,

Defendant-Appellant.

UNPUBLISHED

October 3, 2006

No. 262069

Oakland Circuit Court

LC No. 2004-199465-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his bench-trial convictions of forgery, MCL 750.248, and uttering and publishing, MCL 750.249. Pursuant to MCL 769.12, defendant was sentenced as a fourth habitual offender to 3 to 30 years in prison. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

Defendant was arrested on November 30, 2003, upon suspicion of stealing a vehicle. While being transported by a state police officer to a nearby post for questioning, defendant sobbed and repeatedly told the officer that he did not want to go back to prison. Defendant also asked the officer to kill him. The officer stated that he read defendant his *Miranda*¹ rights twice, once in the patrol car and once inside the post. The officer stated that he asked defendant each time whether he understood his rights. According to the officer, both times defendant answered in the affirmative.

Defendant cried throughout his interview. During the interview, the officer asked defendant about an investigation regarding a fraudulent check. Defendant admitted stealing his brother's checkbook to write checks to himself in order to open bank accounts and then subsequently withdraw cash.

Prior to trial, defendant moved to suppress his confession. The trial court conducted a *Walker*² hearing to determine the voluntariness of defendant's confession. Defendant testified at

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

² *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

the hearing that, several days prior to his arrest, he had ingested large amounts of crack cocaine, marijuana, and alcohol and had passed out. Defendant testified that he had asked the officer for an attorney twice, but that in response the officer threatened him with a weapon and threatened the life of his girlfriend. Defendant also testified that the officer did not read him his *Miranda* rights inside the state police post, but could not remember whether the officer had read him his *Miranda* rights in the patrol car.

The trial court found that defendant's confession was voluntarily, knowingly and intelligently made and that it should be admitted at trial. Defendant now argues that the trial court erred in denying his motion to suppress the confession.

On appeal from a trial court's ruling at a suppression hearing, we review the record de novo. *People v Harris*, 261 Mich App 44, 53; 680 NW2d 17 (2004). However, this Court will not disturb the trial court's factual findings unless they are clearly erroneous. *Id.* A finding is clearly erroneous when, after reviewing the entire record, the appellate court has a definite and firm conviction that a mistake has been made. *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003).

Statements of an accused made during a custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waives his Fifth Amendment right. *Miranda*, *supra* at 444. Whether a defendant's statement was knowing, intelligent, and voluntary is a question of law, which this Court must determine under the totality of the circumstances. *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000); *People v Cheatham*, 453 Mich 1, 27-28; 551 NW2d 355 (1996). Under the totality of the circumstances analysis, we first consider whether the waiver was voluntary; second we consider whether the waiver was knowing and intelligent. *Daoud*, *supra* at 639.

In determining voluntariness, we consider all the circumstances including: "the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse." *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).³ No single factor is determinative. *People v Tierney*, 266 Mich App 687, 708; 703 NW2d 204 (2005).

³ Defendant suggests that reliance on *Cipriano* is erroneous because that case does not constitute binding precedent. However, under the rules of stare decisis, a decision of the majority of the Justices of the Michigan Supreme Court binds all lower courts in this state. *Felsner v McDonald Rent-a-Car*, 193 Mich App 565, 569; 484 NW2d 408 (1992).

Considering the facts of this case in light of the *Cipriano* factors, and giving deference to the trial court's credibility determinations, we conclude that the court did not err in finding that defendant's confession was voluntary.

Defendant was 37 years old at the time of questioning. He gave appropriate and clear answers in response to the questions posed to him. He had previous experience with the police as evidenced by his stating that he "did not want to go back to prison," his giving the police an assumed name, and the trial court's notation of his extensive previous experience with the law. The questioning by the police was not repeated and prolonged. Indeed, the entire interview lasted only between 45 minutes and one hour. The length of detention before questioning is not at issue given that defendant was arrested and then immediately taken to the police post for questioning. Defendant was twice advised of his constitutional rights. Although defendant claimed he was intoxicated and drugged at the time of his confession, the trial court rejected that claim as not credible. Further, when he complained that his mouth was dry, defendant was provided a beverage. Finally, there was no evidence that defendant was injured or that he had been deprived of sleep or medical attention.

To establish that a defendant's *Miranda* waiver was knowingly and intelligently made, the state must 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. *Cheatham, supra* at 29. A defendant need not fully understand the ramifications and consequences of waiving his rights. *Daoud, supra* at 636. Moreover, the test is not whether it was wise or smart to admit culpability; rather, a defendant need only know of his available options and make a rational decision, not necessarily the best decision. *Cheatham, supra* at 28-29.

The evidence indicated that defendant was informed of his *Miranda* rights on two separate occasions. The evidence also showed that each time defendant's *Miranda* rights were read, defendant affirmatively indicated that he understood his rights. The officer had no trouble communicating with defendant. Although defendant was noticeably upset, the record establishes that he still possessed the capability to knowingly and intelligently waive his rights, and that he in fact did so.

Considering the totality of the circumstances, we hold that the trial court did not err in finding that defendant's statement was voluntarily, knowingly, and intelligently made.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper