

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAQUAVIS LURAY TAYLOR,

Defendant-Appellant.

UNPUBLISHED

October 16, 2007

No. 271635

Genesee Circuit Court

LC No. 05-017370-FC

Before: Wilder, P.J., and Borrello and Beckering, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit great bodily harm, MCL 750.84, assault with intent to rob while armed, MCL 750.89, conspiracy to commit armed robbery, MCL 750.157a and MCL 750.529, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant as an habitual offender, second offense, MCL 769.10, to 80 months to 15 years' imprisonment for assault with intent to commit great bodily harm, 240 to 480 months' imprisonment for assault with intent to rob while armed, 240 to 480 months' imprisonment for conspiracy to commit armed robbery, 47 months to 7 years and 6 months' imprisonment for felon in possession of a firearm, and 2 years' imprisonment for felony-firearm. Defendant appeals as of right. We affirm.

In October 2005, two teenagers attempted to rob Alex Powell, a pizza deliveryman, on West Dayton Street in Flint, Michigan. One of the teenagers shot Powell with a handgun. The following day, police officers brought defendant and his twin brother, Janarvis Taylor, to the police station for questioning. In the following hours, two officers interviewed defendant and Janarvis individually on three separate occasions. In his third interview, defendant, who had not been readvised of his *Miranda*¹ rights since his first interview, admitted to being present on West Dayton Street and tussling over the handgun when it fired.

On appeal, defendant claims that his trial counsel rendered ineffective assistance of counsel by failing to move to suppress his incriminatory statement. Specifically, defendant

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

argues that counsel should have moved to suppress his statement because his *Miranda* warnings grew stale or because he gave the statement involuntarily. Because defendant did not move for a new trial or a *Ginther*² hearing, our review of defendant's claim is limited to errors apparent on the record. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

To establish a claim of ineffective assistance of counsel, "a defendant must prove that his counsel's performance was deficient and that, under an objective standard of reasonableness, defendant was denied his Sixth Amendment right to counsel." *People v Mack*, 265 Mich App 122, 129; 695 NW2d 342 (2005). A defendant must also prove that counsel's deficient performance was prejudicial to the extent that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

The prosecution may not use a custodial statement against a defendant unless the defendant, prior to being questioned, was warned of his *Miranda* rights. *People v Harris*, 261 Mich App 44, 55; 680 NW2d 17 (2004). The police are not, however, required to readvise a defendant of his *Miranda* rights in every subsequent interview. *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992); *People v Godboldo*, 158 Mich App 603, 606-607; 405 NW2d 114 (1986). A statement given during a subsequent interview is admissible against a defendant if the statement was voluntary. *Godboldo*, *supra* at 607.

Whether a confession is voluntary is determined by examining the conduct of the police. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005). Absent police coercion or misconduct, the issue whether a confession was voluntary cannot be resolved in a defendant's favor. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997); *People v Garwood*, 205 Mich App 553, 555; 517 NW2d 843 (1994). "The test of voluntariness is whether, considering the totality of all the surrounding circumstances, the confession is the product of an essentially free and unconstrained choice by its maker, or whether the accused's will has been overborne and his capacity for self-determination critically impaired." *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997). Our Supreme Court set forth the following nonexhaustive list of factors that a court should consider in determining the voluntariness of a confession:

[T]he 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).]

² *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

No single factor is determinative. *Tierney, supra* at 708. The voluntariness test “is [not] concerned with moral and psychological pressures to confess emanating from sources other than official coercion.” *Oregon v Elstad*, 470 US 298, 304-305; 105 S Ct 1285; 84 L Ed 2d 222 (1985). Police coercion can be either psychological or physical.³

Based on the record before us, we believe that even if the interviewing officers engaged in objectionable interrogation tactics when they told defendant that, if he continued to “play silly,” they would book him in jail and charge him with armed robbery and assault with intent to murder and that, if he did not confess, another person would raise his child, it is not apparent from the record that, under the totality of the circumstances, defendant’s incriminatory statement in this instance was the result of police misconduct or coercion. *Givans, supra*

At the time of the questioning, defendant was 18 years old. He completed the 11th grade, received good grades, and had prior experience with the police. There is no evidence that defendant was injured, intoxicated, drugged, ill, deprived of food, sleep, or medical attention, physically abused, or threatened with physical abuse during the questioning. Nor did the officers make promises of leniency to defendant. The officers informed defendant that, if he told the truth, they would talk to the prosecutor on his behalf. This statement did not imply that defendant would not be charged with a crime or that he would be charged with a lesser crime and it cannot be deemed an improper promise of leniency. See *People v Carigon*, 128 Mich App 802, 809-811; 341 NW2d 803 (1983). Further, while the officers made false statements to defendant regarding their knowledge of the crime, false statements of fact are generally insufficient to render an otherwise voluntary statement involuntary. *People v Hicks*, 185 Mich App 107, 113; 460 NW2d 569 (1990).

Although four and a half hours passed between the time defendant was advised of his *Miranda* rights and when he made his incriminatory statement, there were no circumstances indicating to defendant that his *Miranda* rights no longer applied. All three of defendant’s interviews occurred in the room where the officers advised him of his *Miranda* rights. The interviews were all conducted by the same officers and involved the same subject matter, the attempted armed robbery of Powell. Further, before and after each interview, the officers returned defendant to the same holding cell.

Moreover, all of the police conduct of which defendant now complains occurred during his first two interviews. Defendant did not confess any involvement in the crime until his third interview. When the officers brought defendant into the interview room for the third time, they informed him that Janarvis “set the record straight.” Defendant then made his incriminatory statement. Accordingly, we cannot find that police misconduct or coercion, rather than the knowledge that Janarvis “set the record straight,” caused defendant to confess. Because it is not

³ *People v DeLisle*, 183 Mich App 713, 721; 455 NW2d 401 (1990); *People v Emanuel*, 98 Mich App 163, 180-181 n 5; 295 NW2d 875 (1980) (holding that an officer’s statement that the defendant would be arrested and charged with first-degree murder if he failed a polygraph test was objectionable); *People v Richter*, 54 Mich App 598, 604; 221 NW2d 429 (1974) (holding that an officer’s threat to remove the defendant’s child from her home if the defendant did not confess was inexcusable psychological coercion).

apparent from the record that defendant gave his incriminatory statement involuntarily and counsel is not ineffective for failing to make a futile motion, *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998), defendant has failed to establish his claim of ineffective assistance of counsel.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello
/s/ Jane M. Beckering