

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

APRIL LYNN DILLON,

Defendant-Appellant.

UNPUBLISHED

June 26, 2003

No. 235165

Jackson Circuit Court

LC No. 00-005866-FC

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.229, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in failing to suppress statements she made to the police while in custody. We disagree.

Before trial, defendant moved for a *Walker*¹ hearing, claiming that her inculpatory statements to the police were taken in violation of her Fifth Amendment rights. At this hearing, Deputy Scott Watson of the Jackson County Sheriff's Department testified that, shortly after responding to a report of a robbery in progress, he apprehended defendant and immediately advised her of her *Miranda*² rights from memory. Watson could not, however, recall whether defendant indicated an understanding of those rights and, when pressed on cross-examination by defense counsel, could only state that he was "fairly certain" that those rights were fully and accurately given. Watson testified, however, that he did not conduct questioning of defendant at that time.

Approximately one hour later, Watson took part in an interrogation of defendant by Sergeant Gerald Lee Johnson, also of the Jackson County Sheriff's Department, during which defendant confessed to committing the robbery. Watson stated that approximately one-half hour

¹ *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).

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

after beginning the hour-long interrogation, defendant was again advised of her *Miranda* rights, at which point she signed a written waiver of those rights. Watson also testified that he did not remember defendant specifically asking for a lawyer at any point during the interrogation.

Sergeant Johnson confirmed that he interrogated defendant, that Watson had been present at the interrogation, and that Watson again advised defendant of her *Miranda* rights approximately halfway through the interrogation, albeit after defendant had made a number of incriminating statements concerning the robbery. Johnson also testified that during the course of the interrogation, defendant did not specifically ask for a lawyer.

Defendant testified that she did not remember whether she was given *Miranda* warnings at the time she was apprehended by Watson. Defendant also stated that much of the subsequent interrogation was “fuzzy,” and that she remembered “just parts” of the interrogation. Defendant testified, however, that she specifically remembered requesting a lawyer, although she could not recall exactly what words she used.

The trial court found that defendant was fully advised of her *Miranda* rights, both at the time of her arrest and during her subsequent interrogation. The trial court further found that defendant did not at any time request an attorney, and that no threats or promises designed to elicit a statement from defendant were made by the police. In reaching these conclusions, the trial court expressly stated it found the testimony of both officers to be credible, while defendant’s ability to recall only those circumstances that were favorable to her rendered her testimony suspect. The trial court further stated that it was satisfied “from the totality of the evidence and circumstances” that defendant knew and understood her rights, and voluntarily chose to speak with the officers. Accordingly, the trial court ruled that all statements made by defendant would be admissible at trial.

In challenging the subsequent admission of her inculpatory statements at trial, defendant argues that, because there was a question whether the *Miranda* warnings issued to her at the time of her arrest were fully and accurately given, and because there was no evidence that she indicated an understanding of those rights before being questioned, the trial court erred in admitting her statements during interrogation at trial. We disagree.

Statements of an accused made during a custodial interrogation are inadmissible unless the accused knowingly, intelligently, and voluntarily waived her Fifth Amendment rights. *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). “Whether a defendant’s statement was knowing, intelligent, and voluntary is a question of law that a court must determine under the totality of the circumstances.” *People v Snider*, 239 Mich App 393, 417; 608 NW2d 502 (2000). This Court reviews de novo the entire record, but we will not disturb the trial court’s factual findings unless they are clearly erroneous. *Id.*; *Abraham, supra*.

The custodial statements of an accused are not admissible at trial unless it has been demonstrated that, prior to questioning, the accused was informed of her *Miranda* rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). In this case, the trial court found that the police twice informed defendant of her *Miranda* rights – once at the time of her arrest, before any questioning, and again during her interrogation. In doing so, the trial court specifically noted its belief of the arresting officer’s testimony that, although he had recited the advice of rights from memory, he fully informed defendant of her *Miranda* rights at

the time of the arrest. Giving deference to the trial court's ability to assess the credibility of the witnesses who testify before it, see *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000), we find no error in the trial court's conclusion in this regard.

Defendant further argues, however, that even if she were properly advised of her rights she did not comprehend those rights and could not, therefore, knowingly and intelligently waive them. In *People v Daoud*, 462 Mich 621, 644; 614 NW2d 152 (2000), our Supreme Court determined that all that is required for a knowing and intelligent waiver of *Miranda* rights is "a basic understanding" by the defendant of her rights. Here, other than her own testimony, which the trial court expressly rejected as incredible, there is no evidence suggesting that defendant did not comprehend her rights. To the contrary, testimonial evidence exists indicating that, although somewhat distraught over her situation, defendant was able to coherently converse with the police and at no time had any difficulty understanding them. Moreover, we note that before making any incriminating statements during questioning by the police, defendant was informed by Sergeant Johnson that she did not have to speak with the officers, to which she responded, "I know I don't" Defendant was also told by Johnson, prior to her having made any incriminating statements, that if she were to indicate that she wished to speak with a lawyer, the interrogation would be stopped. Defendant nonetheless continued to speak with the officers. Given these facts, we find no error in the trial court's conclusion that defendant opted to speak with the officers while in full comprehension of her *Miranda* rights.

Defendant also argues that her execution of a written waiver of her *Miranda* rights did not serve to "save" the confession because she was not read her rights immediately before being questioned, and thus the waiver was "tainted" by the prior statements made without the benefit of *Miranda* warnings. However, as discussed above, there was no error in the trial court's conclusion that defendant was fully apprised of her *Miranda* rights at the time of her arrest only one hour earlier. Moreover, that defendant was not again fully advised of her rights before her subsequent interrogation is irrelevant. This Court has previously determined that the police are not required to read *Miranda* rights every time a defendant is questioned. See *People v Godboldo*, 158 Mich App 603, 605; 405 NW2d 114 (1986). In *Godboldo*, the defendant was read his *Miranda* rights at 6:00 p.m. and was questioned again at 8:00 p.m. without being reread his *Miranda* rights. Noting that "the *Miranda* rights are not a liturgy which must be read each time a defendant is questioned," this Court found that the failure to again advise the defendant of his rights was not a violation of the defendant's Fifth Amendment rights. *Id.* at 606-607. In the instant action, defendant was given her rights upon arrest and had been in custody until she was questioned and confessed to the charged crimes approximately one hour later. In accordance with *Godboldo*, the one-hour delay between defendant having been read her rights and police questioning was not fatal.

Defendant further argues that her statement was the result of coercive tactics by the police and was, therefore, involuntary. Whether a statement was voluntary is determined by examining police conduct. *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). In determining voluntariness, our Supreme Court has determined that a court should consider the totality of the circumstances surrounding the statement, including: the duration of the defendant's detention and questioning; the age, education, intelligence and experience of the defendant; the lack of any advice to the accused of his constitutional rights; the defendant's mental and physical state; whether the defendant was threatened or abused; and any promises of

leniency. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). However, “[t]he absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made.” *Id.*

The totality of the circumstances in this instance do not support a finding that defendant’s statement was involuntary. As previously discussed, defendant was fully apprised of her constitutional rights at the time of her arrest, before any questioning by police. Moreover, there is no evidence of a particularly prolonged interrogation. Furthermore, as discussed above, there is evidence showing that, although upset, the thirty-five-year-old defendant understood her rights and was able to clearly communicate with the police. Also, as noted, there is evidence in the form of a signed waiver that defendant voluntarily waived her rights, as well as a corresponding lack of evidence of threats or promises by the police. Based on the foregoing, we find that the trial court was correct in its determination that defendant’s statements were voluntary.

Defendant also argues that she was denied her Fifth Amendment right to an attorney. However, the law is clear that the police need not stop their interrogation when the defendant merely makes an ambiguous request for an attorney. *People v Adams*, 245 Mich App 226, 238-239; 627 NW2d 623 (2001). For example, in *Adams, supra*, this Court held that the statement, “Can I talk to [a lawyer] right now,” was not a clear request for an attorney. Also, we note that in *People v Granderson*, 212 Mich App 673; 538 NW2d 471 (1995), the defendant was questioned about the murder of the victim and was advised of his *Miranda* rights. After the officer stated that the defendant was entitled to appointed counsel if he could not afford to pay for counsel himself, the defendant responded that he would need a court-appointed lawyer. *Id.* at 676. The defendant subsequently signed a statement that he did not want a lawyer at that time, and spoke with the police about the murder. This Court held that the defendant’s ambiguous reference to the need for court-appointed counsel in the future did not require the police to cease questioning him. *Id.* at 676-677.

In this case defendant did not unequivocally or unambiguously request an attorney. In fact, the two instances wherein defendant contends she requested a lawyer were equivocal and ambiguous at best. In the first instance defendant merely stated, “I don’t know what I am supposed to do. I don’t know if I’m supposed to talk to you guys,” to which Sergeant Johnson responded, “Well, you know you don’t have to do that.” In the second instance, the transcript of defendant’s statements during interrogation merely indicates the following comments: “[inaudible] talk to anybody. [Inaudible] get an attorney.” Even when generously viewed in defendant’s favor, these comments do not indicate an unambiguous request for counsel. In any event, at the *Walker* hearing both officers specifically testified, and the trial court, in its assessment of the weight and credibility of that testimony, believed, that defendant failed to specifically request an attorney. Because the trial court’s determinations regarding credibility are to be given deference, and because there is no evidence to the contrary aside from defendant’s own testimony, which the trial court chose not to believe, we uphold the trial court’s assessment that defendant was not denied her right to an attorney. *Sexton, supra*.

Finally, defendant argues that her felony-firearm conviction should be vacated because the firearm used by her during the robbery lacked a firing pin and was, therefore, inoperable. Again, we disagree. This Court has expressly determined that “[o]perability is not and has never

been an element of felony-firearm.” *People v Thompson*, 189 Mich App 85, 86; 472 NW2d 11 (1991). Accordingly, defendant’s argument is without merit.

We affirm.

/s/ Richard A. Bandstra

/s/ Hilda R. Gage

/s/ Bill Schuette