

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHANIE ANN STEIN,

Defendant-Appellant.

UNPUBLISHED
February 25, 2010

No. 286678
Wayne Circuit Court
LC No. 07-015120

Before: Davis, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

Defendant, a teacher, appeals by right her jury trial convictions of two counts of criminal sexual conduct in the third degree (CSC III), MCL 750.520d(1)(a); one count of use of the internet or computer to communicate for the purposes of committing a crime, MCL 750.145d(1)(a); and one count of distributing sexually explicit material to a minor, MCL 722.675. Defendant, whose convictions were based upon an intimate relationship she had with a 15-year-old student at the school where she was employed, was sentenced to concurrent terms of 36 to 180 months for her CSC III convictions, 30 to 48 months for her use of the internet or computer to communicate for the purposes of committing a crime conviction, and 16 to 24 months for her distributing sexually explicit material to a minor conviction. Because there was no error in the admission of defendant's written statement, an exhibit, or the exhibit author's testimony, we affirm.

On appeal, defendant first argues that the trial court erred when it denied her motion to suppress her written statement. Specifically, defendant argues that she was not advised of her *Miranda*¹ rights before she gave her written statement, and that the statement was thus inadmissible.

We review a trial court's decision whether to grant or deny a motion to suppress evidence de novo. *People v Williams*, 240 Mich App 316, 319; 614 NW2d 647 (2000). However, the trial court's factual findings are reviewed for clear error. *Id.*

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

Criminal defendants have a constitutional right against self-incrimination. Const 1963, art 1, § 17; US Const, Am V. This right protects defendants from being compelled to provide incriminating evidence against themselves. *People v Geno*, 261 Mich App 624, 628; 683 NW2d 687 (2004). Where a defendant freely and voluntarily gives a statement to law enforcement officers, however, the statement is admissible against the defendant despite the incriminating nature of the statement. *People v Daoud*, 462 Mich 621, 632-633; 614 NW2d 152 (2000).

Law enforcement officers are not required to advise a person of his or her *Miranda* rights unless the suspect is subject to a custodial interrogation. *People v Kulpinski*, 243 Mich App 8, 25; 620 NW2d 537 (2000). In *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999), this Court described the circumstances in which *Miranda* warnings must be given:

The term “custodial interrogation” means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. To determine whether a defendant was in custody at the time of the interrogation, we look at the totality of the circumstances, with the key question being whether the accused reasonably could have believed that he was not free to leave. The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned. (Internal quotations and citations omitted).

Based on our review of this case, we find it unnecessary to determine whether defendant was entitled to *Miranda* warnings prior to giving her written statement because any error from the admission of the written statement was harmless beyond a reasonable doubt. A constitutional error is harmless if it is clear beyond a reasonable doubt that a jury would have convicted the defendant absent the erroneously admitted evidence. *People v Shepherd*, 472 Mich 343, 347; 697 NW2d 144 (2005).

Here, defendant does not dispute that she voluntarily gave an oral statement to officers admitting her relationship with a student. At trial, officers testified, in detail, about defendant’s oral statement. The victim’s testimony about his relationship with defendant mirrored that of defendant’s oral statement. Given the nature and the extent of the other admitted evidence, we find no reasonable probability that, but for the admission of the challenged statement, the result of the proceeding would have been different.

Defendant also argues that the trial court erred when it denied her motion to suppress her written statement because the statement was involuntary. Defendant contends that, among other things, she was promised leniency in exchange for her statement.

An incriminating statement given under the pretext of a promise of leniency may render the statement involuntary and inadmissible. *People v Conte*, 421 Mich 704, 751, 753; 365 NW2d 648 (1984). A promise of leniency is but one factor, though, to be considered in determining whether a defendant freely and voluntarily made a statement. *Id.* at 751, 755. A trial court must look to the totality of the circumstances surrounding the giving of the statement, which includes, but is not limited to, the nature of the inducement, the physical and mental state of the defendant (including age, mentality, and prior criminal experience), and the adequacy and frequency of the advice of rights. *Id.* at 754. If, after consideration of the totality of the

circumstances surrounding the giving of the statement, the court finds that a promise of leniency did not overcome the defendant's ability to voluntarily decide to make a statement, the statement will be admissible. *Id.* The burden is on the people to demonstrate, by a preponderance of the evidence, that the defendant voluntarily made the statement. *Id.* at 754-755.

The entirety of the testimony on this issue was as follows:

Q: And at anytime did they make you any promises about what would happen to you?

A: Yeah, they told me if I wrote the statement out that the prosecution would be more lenient towards me.

Q: Oh, they did tell you that?

A: Yes, they did.

Based on our review of the record, we agree with the trial court that defendant failed to present credible evidence that she was promised leniency in exchange for her written statement. The testimony on this issue consists of two questions and two answers with no further detail provided, the claim that a promise of leniency was made was raised for the first time at the hearing. Furthermore, defendant was never formally arrested after the statement, and the statement was made in defendant's home, during daytime hours, to a plainclothes detective. Looking at the totality of the circumstances, defendant is not entitled to relief on this issue.

Next, defendant argues that the trial court abused its discretion when it admitted, over her objection, people's exhibit 15.² We disagree.

The admission of evidence is generally reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). However, "when the decision regarding the admission of evidence involves a preliminary question of law, such as whether . . . a rule of evidence precludes the admissibility of the evidence, the issue is reviewed de novo." *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003).

Other than making generalized statements regarding the inadmissibility of people's exhibit 15, defendant has not provided this Court with any persuasive argument or citations to relevant authority to support her position. An appellant cannot merely announce his or her position and leave it to this Court to find a reason to justify or reject his or her claim. "The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). For that reason, we could decline to address defendant's argument. However, regardless of the lack of argument and citation to authority, defendant cannot demonstrate that she was prejudiced by the admission of

² People's exhibit 15 was a spreadsheet and a graph created by the victim's mother. The exhibit purportedly showed the number and frequency of text messages and telephone calls between defendant and the victim during a specified period of time.

the exhibit. The exhibit purportedly showed a spreadsheet and chart of defendant's telephone contact with the victim over a specific period of time. There was specific testimony at trial indicating that many telephone communications took place. Therefore, any error was harmless.

Defendant also argues that the trial court erred when it allowed the victim's mother to testify about exhibit 15. Defendant's argument seemingly focuses on her belief that only an expert could create and testify about exhibit 15. We disagree.

It is not improper for a lay witness to testify about matters that do not involve technical or specialized knowledge. *People v McLaughlin*, 258 Mich App 635, 657-658; 672 NW2d 860 (2003). Contrary to defendant's argument, it does not require any specialized knowledge or skill to be able to look at a cell phone record and add up the number of phone calls and/or text messages to a specific phone number over a given period of time. Once again, defendant has provided no support for her assertion that it requires specialized knowledge or skill to create a graph and spread sheet documenting those findings.

We similarly reject defendant's argument that the victim's mother could not properly testify about people's exhibit 15 because she lacked personal knowledge. The record clearly reflects that the victim's mother created people's exhibit 15. It also reflects that the victim's mother personally reviewed the victim's cell phone records, which were in her name, and created the exhibit based on what she found. Further, all of the cell phone bills that were used to create exhibit 15 were provided to defendant and were available during the trial. Moreover, as previously stated, we would find that any error in the admission of the exhibit was harmless because of independent testimony concerning the frequency and extent of telephone communication between defendant and the victim. The same holds true for any error in the admission of testimony from the victim's mother concerning the exhibit.

Affirmed.

/s/ Alton T. Davis
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto