

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMMY ORLANDO COLLIER,

Defendant-Appellant.

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UNPUBLISHED

April 27, 2001

No. 215573

Oakland Circuit Court

LC No. 98-157225-FC

Before: Bandstra, C.J., and Wilder and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548. Defendant was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to natural life in prison. Defendant appeals as of right. We affirm.

Defendant was tried for the murder of Nancy Billiter whose body was found in a park in Flint on November 14, 1997. An autopsy revealed that she had been beaten, injected with a substance that caused chemical burns at the injection sites, and smothered. Billiter had been living in a house in West Bloomfield Township rented by Carol Giles. When the police interviewed Giles, she confessed that she was present when defendant, her live-in boyfriend, killed Billiter. After being arrested by the West Bloomfield police, defendant initially denied any involvement in Billiter's death; however, in subsequent statements to the police, defendant voluntarily admitted being present when Billiter was killed, but claimed that Giles was the one who killed her.

On appeal, defendant argues that the trial court erred by denying his motion to suppress statements he made to police on the grounds that they were the tainted fruits of an unlawful arrest and obtained in violation of his fifth amendment right to counsel. Defendant alternatively argues that his statements were involuntary because, at the time they were given, he was sleep deprived and under the influence of cocaine and alcohol. This Court reviews a trial court's findings of fact regarding a motion to suppress evidence for clear error and reviews the trial court's ultimate decision on a motion to suppress de novo. MCR 2.613(C); *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999).

Defendant argues that the statements made to the police at the time of his arrest should have been suppressed as tainted fruits of a warrantless arrest made without probable cause. We disagree. A police officer may arrest an individual without a warrant if a felony has been committed and the officer has probable cause to believe that the individual committed the felony. MCL 764.15(c); MSA 28.874(c); *People v Champion*, 452 Mich 92, 115-116; 549 NW2d 849 (1996). The facts must create an actual belief in the mind of the arresting officer. *People v O'Neal*, 167 Mich App 274, 280-281; 421 NW2d 662 (1988). Mere suspicion is not sufficient grounds for an arrest. *O'Neal, supra* at 281. However, the mere fact of an illegal arrest does not automatically require a court to suppress a custodial confession. *People v Kelly*, 231 Mich App 627, 634; 588 NW2d 480 (1998). It is only when an “unlawful detention has been employed as a tool to directly procure any type of evidence from a detainee” that the evidence is suppressed under the exclusionary rule. *People v Mallory*, 421 Mich 229, 240-241, 365 NW2d 673 (1984); *Kelly, supra* at 634. In reviewing a challenged finding of probable cause, this Court must determine whether the facts available to the arresting officer, at the moment of the arrest, would justify a fair-minded person of average intelligence in believing that the suspect had committed a felony. *Kelly, supra* at 631-632.

In denying defendant’s motion to suppress his statements, the trial court held that the particularity of Giles’ statement regarding the details surrounding Billiter’s death and the fact that Giles implicated defendant gave the police probable cause to believe that a felony had been committed and that defendant committed it.

Defendant argues that, while Giles’ statement may have given the police grounds to suspect that he was involved in Billiter’s death, the police did not have sufficient evidence to raise that suspicion to probable cause. We disagree and find that the facts and circumstances surrounding defendant’s arrest do not support his claim that the police arrested him as a subterfuge for obtaining additional information to aid in their investigation of Billiter’s death.

At the moment the police arrested defendant, the facts available to the police constituted reasonable grounds for an actual belief that defendant committed a felony. The condition of Billiter’s body was undeniable proof that a felony had been committed. Giles confessed to the police that defendant killed Billiter and she assisted him in disposing of Billiter’s body. The details included in Giles’ statement lent reliability to her accusations against defendant, as they were consistent with the facts available to the police at that time. For example, Giles told the police that defendant had wrapped Billiter’s body in a blanket and dumped it in Flint, which was consistent with information the West Bloomfield Township police had already received from the Genesee County Sheriff’s Department. In addition, the special relationship between Giles and defendant (defendant was Giles’ live-in boyfriend) also lent reliability to her statement. Thus, Giles’ statement was sufficient to give a fair-minded person of average intelligence more than a mere suspicion that defendant committed a felony. *Kelly, supra*. Cf *People v Martin*, 94 Mich App 649, 652-653; 290 NW2d 48 (1980). Given Giles’ statement, the officer who ordered defendant’s arrest could justifiably believe that defendant had committed a felony associated with Billiter’s death. Further, the officer who ordered the arrest testified that, based on the information Giles gave concerning Billiter’s death, he actually believed that defendant was involved in the murder and, as a result of that belief, he ordered that defendant be arrested for that crime. Therefore, the totality of the circumstances indicates both that the police had

probable cause to arrest defendant and that they arrested him based on that probable cause, rather than as a means to procure from him information to aid in their investigation. Accordingly, the trial court did not err in finding that the police had probable cause to arrest defendant.

## II

Defendant next argues that the statements he made to the police were inadmissible because they were obtained in violation of his right to counsel. Specifically, defendant contends that his *Miranda*<sup>1</sup> rights were violated when he was interrogated after invoking his fifth amendment right to counsel by requesting an attorney. Following a *Walker*<sup>2</sup> hearing, the trial court denied defendant's motion to suppress, finding that defendant had made the statements voluntarily after waiving his *Miranda* rights.

The United States Supreme Court has held that an improperly admitted statement or confession is a nonstructural constitutional defect. *Arizona v Fulminante*, 499 US 279, 295; 111 S Ct 1246; 113 L Ed 2d 302 (1991); *People v Whitehead*, 238 Mich App 1, 7; 604 NW2d 737 (1999). As such, any error in admitting a constitutionally infirm statement is subject to a harmless error analysis and an automatic reversal is not justified. *Fulminante, supra*; *People v Anderson (After Remand)*, 446 Mich 392, 406; 521 NW2d 538. Assuming without deciding that the trial court erroneously admitted defendant's statements into evidence, we next must determine whether any such error in this regard was harmless. In order to find a nonstructural constitutional violation harmless, this Court "must be able to declare a belief that it was harmless beyond a reasonable doubt." *Whitehead, supra* at 8, quoting *Chapman v California*, 386 US 18, 24; 87 S Ct 824; 17 L Ed 2d 705 (1967). As stated in *Anderson, supra*, "this requires the beneficiary of the error to prove, and the court to determine, beyond a reasonable doubt that there is no 'reasonable possibility that the evidence complained of might have contributed to the conviction.' *Chapman, supra* at 87." Applying this standard to the instant case, we find that defendant's statements were harmless beyond a reasonable doubt; therefore, reversal is not warranted in the instant case.

A review of the entire record in this case leaves us with the belief that, absent defendant's statements, no "honest, fair-minded" jury would have found defendant not guilty. See *Whitehead, supra* at 9; *Chapman, supra* at 26. Here, defendant testified on direct examination that after he and Giles tied Billiter to the bed, Giles asked him what to do and he responded by stating, "[s]uffocate her. Put a towel over her head." Defendant also admitted on cross examination that he told Giles she should "suffocate her because she is not dead yet." In addition, Dr. Dragovic testified that despite being beaten and injected with chemical substances, the cause of death was asphyxia. Based on this properly admitted evidence, we find that there was no "reasonable possibility" that the jury would have acquitted defendant of first-degree murder. *Whitehead, supra* at 9. As the prosecutor stated during his rebuttal argument, "[t]hat's it. That right there is a [sic] first degree murder. It's the intent to kill, it's premeditated, it's deliberated,

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

<sup>2</sup> *People v Walker (On Rehearing)* 374 Mich 331; 132 NW2d 87 (1965).

it caused the death of Nancy Billiter.”<sup>3</sup> Accordingly, we hold that any error in the admission of defendant’s statements was harmless error because it is evident to this Court that a reasonable jury would have convicted defendant on the remaining, admissible evidence. See *Fulminante, supra* at 310.

### III

Finally, defendant argues that his statements were not voluntary because, as a result of the cocaine and alcohol he had ingested before being arrested and his lack of sleep, he was incapable of intelligently waiving his rights. We disagree. Credibility is crucial in determining a defendant’s level of comprehension, and the trial court is in the best position to make that assessment. *People v Cheatham*, 453 Mich 1, 30 (1998). In assessing the credibility of the witnesses at the *Walker* hearing, the trial court concluded that defendant’s testimony, that he was unable to voluntarily waive his *Miranda* rights because he was sleep deprived and under the influence of cocaine and alcohol, lacked credibility.

Further, considering the factors enunciated in *Cipriano, supra* at 334, we agree with the trial court’s conclusion that, under the totality of the circumstances, defendant’s incriminating statements were voluntarily made. The record reveals that, during questioning defendant: (1) was informed of his constitutional rights and stated that he understood them; (2) voluntarily waived those rights and made a statement to the officer; (3) conversed normally with and responded appropriately to questions asked by the interviewing officer; (4) did not appear to be drowsy or impaired in any way; (5) did not complain of being tired or of any other physical distress; (6) was not deprived of food or drink; (7) was not promised anything in exchange for his statement; (8) was not threatened; (9) was never interviewed for more than an hour and a half at a time; and (10) had previous experience with the police, having been arrested three times on unrelated charges. Under these circumstances, the trial court properly found that defendant’s incriminating statements were voluntarily made and were admissible at trial.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Kurtis T. Wilder  
/s/ Jeffrey G. Collins

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<sup>3</sup> In addition, testimony was provided by Sammy Upchurch, defendant’s uncle, that defendant had brought a gas can and lighter fluid to his home, took a bath, and changed clothes. The gas can and lighter fluid were admitted into evidence as People’s Exhibits Seven (7) and Eight (8). Both pieces of evidence are relevant and probative because Billiter’s body smelled of gasoline at the time of its discovery. Further, Officer Fedoronko testified that defendant informed him of the exact location of a gun that had been used during Billiter’s murder.