STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 4, 2001
v	No. 221847 Wayne Circuit Court
DAYMONE ROGERS, Defendant-Appellant.	LC No. 98-013123

Before: Bandstra, C.J., and Whitbeck and Owens, JJ.

PER CURIAM.

Defendant was convicted of assault with intent to rob while armed, MCL 750.89, and first-degree felony murder, MCL 750.316(1)(b).[1] Defendant was sentenced to life imprisonment for the felony murder conviction and eighteen to thirty-five years' imprisonment for the assault with intent to commit armed robbery conviction, the sentences to run concurrently. Defendant now appeals as of right. We affirm in part, reverse in part, and remand.

Defendant contends that the trial court erred by denying his motion to suppress his statement to police. When reviewing a trial court's ruling on a motion to suppress a defendant's statement to police, this Court must give deference to the trial court's findings at the suppression hearing. *People v Kowalski*, 230 Mich App 464, 471; 584 NW2d 613 (1998). We review the entire record de novo, but will not disturb a trial court's factual findings on a motion to suppress a defendant's confession unless the findings are clearly erroneous. *Id.*, at 472. A finding is clearly erroneous only if we are left "with a definite and firm conviction that a mistake has been made." *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Defendant argues that he was not provided *Miranda*[2] warnings until he was on page eight of his ten-page written statement. The trial court opined, however, that the warnings were given before the written statement. The police officer who took defendant's statement testified that defendant was provided the requisite *Miranda* warnings before the statement was written. Accordingly, we are not persuaded that the trial court's finding was clearly erroneous.

[1] Defendant's first trial in this matter resulted in a hung jury.

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

Nevertheless, defendant also contends that his statement was inadmissible because it was involuntary. Whether a waiver of *Miranda* rights was voluntary and whether an otherwise voluntary waiver was knowingly and intelligently given constitute separate prongs of a two-part test for a valid waiver of *Miranda* rights. *People v Daoud*, 462 Mich 621, 635-639; 614 NW2d 152 (2000). The voluntariness prong of the test examines whether, under the totality of the circumstances, the statement was the product of a free and unconstrained choice. *Givans, supra* at 121. Factors to consider when assessing the totality of the circumstances include:

> [1] the age of the accused; [2] his lack of education or his intelligence level; [3] the extent of his previous experience with the police; [4] the repeated and prolonged nature of the questioning; [5] the length of the detention of the accused before he gave the statement in question; [6] the lack of any advice to the accused of his constitutional rights; [7] whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; [8] whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; [9] whether the accused was deprived of food, sleep, or medical attention; [10] whether the accused was physically abused; and [11] whether the suspect was threatened with abuse. [*People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).]

In the instant matter, defendant was twenty-one years old at the time of the questioning, and had experience dealing with the police through two prior arrests. In addition, defendant attended school through the twelfth grade, and demonstrated his ability to both read and write. Although defendant was detained for approximately thirty hours, a substantial amount of this time was caused by his outstanding warrants—which led to his overnight detention. In fact, defendant's own testimony established that he was not being questioned for most of the time he was at the police station, and that he was not subject to prolonged interrogation. Defendant further testified that he was allowed to sleep and eat, and that he was not abused or mistreated. Defendant also testified that he gave his statement to rebut allegations made by his co-defendant, who was also being questioned. Accordingly, we are not persuaded that, under the totality of the circumstances, the trial court erred by concluding that defendant's statement was voluntary.[3]

Finally, defendant argues that his convictions for both felony murder, with attempted larceny being the underlying offense, and assault with intent to rob while armed violated federal and state constitutional prohibitions against double jeopardy. The prosecution also requests that we set aside defendant's conviction for assault with intent to rob while armed. Accordingly, we vacate defendant's assault with intent to rob while armed conviction, and remand for a correction of defendant's judgment of sentence.

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[3] Defendant does not contend that his statement was inadmissible" because of the "knowing and intelligent" prong of the test.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Donald S. Owens