

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMMY ORLANDO COLLIER,

Defendant-Appellant.

UNPUBLISHED
February 16, 2001

No. 214253
Oakland Circuit Court
LC No. 98-158327-FC

Before: Hood, P.J., and Doctoroff and K. F. Kelly, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of first-degree, premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a). He was sentenced to life imprisonment and appeals as of right. We affirm.

On November 14, 1997, the body of Nancy Billiter was found in Flint, Michigan. Billiter resided at an address in West Bloomfield where Carol Giles also lived. Giles gave a nine-page statement to police that identified defendant as Billiter's killer. Defendant arrived at the West Bloomfield residence while police officers were on the scene. Defendant was taken into police custody. Lieutenant Tim Sheridan spoke to defendant at 3:30 a.m. on November 15, 1997. Lieut. Sheridan advised defendant of his *Miranda*¹ rights and determined that he understood and waived his rights. Lieut. Sheridan based his conclusion on defendant's appearance, demeanor, prior record, express waiver, and the officer's own experience. Defendant did not appear to be under the influence of drugs, did not appear to be sleep deprived, and was articulate. Lieut. Sheridan went through the statement of Giles with defendant. Defendant denied having any knowledge of the accusations or involvement in the murder. Defendant questioned whether Giles would make the same statement at trial. When asked why Giles would accuse defendant of committing the crime, defendant instructed Lieut. Sheridan to ask Giles that question. When asked if Giles had participated in the murder, defendant stated that "that was for me [Lieut. Sheridan] to find out." Defendant then stated that he did not want to answer any more questions until he spoke to an attorney. The interview immediately ceased upon defendant's request.

¹ *Miranda v Arizona*, 384 US 436; 474; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Sergeant Dawn Ferguson was on duty on November 15, 1997, and was aware of the fact that Giles was on her way to the police station. Sergeant Ferguson prepared to move defendant away from the booking area where Giles would be. As she was walking by the cells, defendant asked Sergeant Ferguson if he could ask her a question. Defendant then asked if Giles was incarcerated. Sergeant Ferguson responded no. Defendant asked, "She's not locked up in here?" Sergeant Ferguson advised defendant that Giles was not locked up in that jail or any jail because, after questioning, she had been released. Defendant was angered by the information. Sergeant Ferguson asked defendant if Giles should be in jail. Defendant then stated that he had been set up and was not responsible for the crime. Sergeant Ferguson reminded defendant that Lieut. Sheridan had read the entire nine-page statement by Giles to him and that was the only information the police had regarding Billiter's murder. Defendant stated that Lieut. Sheridan had not asked him the "right questions" to obtain information regarding Giles' involvement and that was why defendant did not say anything. Defendant then indicated that he would speak to Lieut. Sheridan and tell him what happened. Sergeant Ferguson reminded defendant that questioning had ceased because he had requested an attorney, and they could not speak with him if he wanted to talk to an attorney. Defendant said that he would speak to Lieut. Sheridan if a "third party" such as the "NAACP" was present. Sergeant Ferguson advised defendant that they did not have any type of third party available. Defendant responded that he would speak to Lieut. Sheridan without an attorney present. Sergeant Ferguson asked defendant if he was sure of his decision because Lieut. Sheridan was not on duty and would have to be called in to speak with defendant. Defendant reiterated that he wished to speak to Lieut. Sheridan without an attorney present. Sergeant Ferguson notified Lieut. Sheridan of defendant's request.

Lieut. Sheridan returned to the station, advised defendant of his *Miranda* rights, and spoke to defendant, who waived his rights. Defendant advised Lieut. Sheridan that the death of Giles' husband, Jessie, that occurred in September 1997, was a homicide. Jessie was a diabetic, weighed in excess of four hundred pounds, and suffered from heart problems. An autopsy was not performed at the time of his death because there were no signs of suspicious activity and due to his past health problems that included a prior heart attack. Before Jessie's death, Giles had inquired about undetectable methods of killing an individual. Defendant advised Giles that heroin injected into a diabetic would cause the person to go into a coma and die. Defendant denied knowing that Giles intended to carry out the murder and that the intended victim was Jessie. In this case, a jury convicted defendant for his role in the murder of Giles' husband, Jessie.²

Defendant testified that he took a bus from Sacramento, California to return home to West Bloomfield. He left California on November 13, 1997. During the three day trip home, defendant only slept three hours per day. He also consumed a half ounce of cocaine during the

² In lower court case no. 98-158327-FC, the case involved in this appeal, defendant was charged for his role in the murder of Jessie. In lower court case no. 98-157225-FC, currently pending on appeal as docket no. 215573, defendant was charged with the murder of Billiter. A hearing was held pursuant to *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965) before the Hon. Rudy Nichols in case no. 98-157225-FC, the Billiter murder case, who denied the motion to suppress defendant's statement. A separate evidentiary hearing was not held in case no. 98-158327-FC, and the propriety of holding only one evidentiary hearing is not an issue raised on appeal.

trip. On the night of Billiter's murder, defendant purchased heroin and three ounces of cocaine. He purchased the heroin for sale, but ingested one and a half ounces of cocaine. Defendant was taken into custody and spoke to Lieut. Sheridan, but requested an attorney. Defendant was returned to his cell and tried to sleep, but was unable to do so. The light was bright, and he was not allowed to cover his head with his blanket due to surveillance in the jail. Defendant did not reveal his lack of sleep or drug intake to police. While he responded to police questions, he did not understand the questions, although he understood the words that were spoken. Although defendant had been convicted of other offenses, he denied ever being given his *Miranda* rights because he had been "caught," not "arrested." On cross-examination, defendant acknowledged that he was a frequent drug user and was able to perform basic functions, such as driving, while on drugs.

The trial court concluded that there was nothing "untoward" about the statements given by defendant under the totality of the circumstances. The trial court noted that defendant alleged that his mental condition was impaired due to sleep deprivation and the ingestion of drugs. However, the trial court found that defendant's allegations were not credible. The trial court also held that defendant was advised of his constitutional right to an attorney by police in the present case and had prior knowledge of his rights based on his numerous prior felony arrests and convictions. Lastly, the trial court acknowledged the conversation between Sergeant Ferguson and defendant when defendant was asked whether Giles should be in jail. The trial court noted that the conversation was limited in duration to three to five minutes and there were no inculpatory statements made during that time. Rather, any statement was exculpatory because it shifted all blame to Giles for Jessie's murder. The trial court determined that the statement was voluntary and denied the motion to suppress.

Defendant first argues that his constitutional rights were violated when police interrogated him after he asserted his right to counsel. We disagree. While our review of a *Walker* hearing is de novo, we do not disturb a trial court's factual findings regarding a knowing and intelligent waiver of *Miranda* rights unless the ruling is clearly erroneous. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). Defendant was advised of his Fifth Amendment privilege against compulsory self-incrimination and invoked his right to counsel. Lieut. Sheridan properly ceased questioning upon defendant's request. *Miranda v Arizona*, 384 US 436; 474; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Slocum (On Remand)*, 219 Mich App 695, 698; 558 NW2d 4 (1996). However, the *Miranda* decision does not preclude all further interrogation once a suspect declines to make a statement. *People v Kowalski*, 230 Mich App 464, 473-474; 584 NW2d 613 (1998). Rather, *Miranda* requires that interrogation cease until new and adequate warnings are given and there is a reasonable basis for the conclusion that the defendant voluntarily changed his mind. *Id.* That is, there is no prohibition of all communication between police and the defendant. *Id.* at 478-479. Rather, police initiated custodial interrogation is precluded. *Id.* Interrogation includes any words or actions on the part of police that are likely to elicit an incriminating response from the suspect. *Id.* at 479.

Defendant alleges that the conversation with Sergeant Ferguson was designed to elicit an incriminating response. We cannot conclude that the trial court's findings regarding this issue were clearly erroneous following a de novo review of the record. Defendant initiated the contact with Sergeant Ferguson by inquiring about the whereabouts of Giles. Sergeant Ferguson advised defendant that Giles was not in custody at that time, an accurate statement. When defendant was angered by her response, Sergeant Ferguson advised defendant that he was aware of the

information provided by Giles because he had been read her nine-page statement. Based on Giles' statement, defendant was the perpetrator of the Billiter murder, and there was no information implicating Giles. While it could be argued that Sergeant Ferguson's question regarding whether Giles should be in jail constituted an inquiry designed to elicit an incriminating response, defendant did not provide information at that time. Instead, defendant indicated his willingness to speak to Lieut. Sheridan a second time. Sergeant Ferguson did not attempt to elicit information from defendant. Instead, she reminded defendant that questioning had ceased based on his request for an attorney. Furthermore, Lieut. Sheridan was not on duty and would have to be called in to speak to defendant. Defendant indicated that Sergeant Ferguson should be called. When Sergeant Ferguson returned to the police station, defendant was given his *Miranda* rights again, waived them, and gave a statement incriminating Giles, not himself, in Jessie's death. Accordingly, we cannot conclude that the trial court's factual findings were clearly erroneous. *Daoud, supra*.

Defendant also argues that his statement was not knowingly and voluntarily given because of his mental impairment and unfamiliarity with his rights. We disagree. In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), our Supreme Court discussed the factors to consider in assessing the voluntariness of a statement:

In determining whether a statement is voluntary, the trial court should consider, among other things, the following factors: the 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.

In the present case, defendant alleged that he slept a mere three hours per day for the three day period prior to his arrest and was unable to sleep during his confinement due to the bright light in the jail. Defendant also alleged that he had ingested ounces of cocaine during his bus trip from California to Michigan and upon his return to Michigan. However, defendant admitted, during cross-examination, that he was a frequent drug user who was able to function while on drugs. The trial court rejected defendant's allegation that any statement should be suppressed as involuntary due to lack of sleep and drug use. The trial court concluded that defendant's testimony regarding lack of sleep was not credible. Furthermore, his testimony regarding impairment due to drug use was impeached on cross-examination. Finally, Lieut. Sheridan testified that his training included observation of a suspect, and there was no indication from defendant's appearance that he suffered from sleep deprivation or had ingested drugs. We cannot conclude that the trial court's finding was clearly erroneous. *Daoud, supra*.

Defendant next argues that the trial court erred in denying his motion to suppress when police did not have probable cause to support his arrest. We disagree. We are obligated to

review issues that were properly preserved by being raised before and addressed by the trial court. *People v Cain*, 238 Mich App 95, 127; 605 NW2d 28 (1999). Our review of the record reveals that there was no challenge to the probable cause to support the arrest in this case. In any event, we note that defendant's claim is without merit. Probable cause to arrest exists when the facts and circumstances surrounding a criminal act lead a reasonably prudent person to believe that a felony was committed and that the defendant was the perpetrator. *People v Dumas*, 102 Mich App 196, 201; 301 NW2d 849 (1980). In the present case, the evidence indicated that Billiter was killed and Giles identified defendant as the perpetrator. Accordingly, there was probable cause to support defendant's arrest. *Dumas, supra*.

Affirmed.

/s/ Harold Hood

/s/ Martin M. Doctoroff

/s/ Kirsten Frank Kelly