

Not Reported in N.W.2d, 2009 WL 2032034 (Mich.App.)

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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UNPUBLISHED

Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff-Appellee,

v.

Benjamin Russell PLATT, Defendant-Appellant.

Docket No. 283749.

July 14, 2009.

Kalamazoo Circuit Court; LC No.2007-000607-FC.

Before: DAVIS, P.J., and MURPHY and FORT HOOD, JJ.

PER CURIAM.

*1 Following a jury trial, defendant Benjamin Russell Platt was convicted of two counts of felony murder, MCL 750.316(1)(b); perjury, MCL 767a.9(1)(b); and first-

degree home invasion, MCL 750.110a(2). Defendant was acquitted of one additional count of felony murder, MCL 750.316(1)(b). Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to life imprisonment for the two counts of felony murder, 240 months to 30 years' imprisonment for the perjury conviction and 175 months to 30 years' imprisonment for the home invasion conviction. Defendant appeals as of right. We affirm.

Defendant argues that the trial court improperly denied his motion to suppress his statement. Both the Fifth Amendment to the United States Constitution and the Michigan Constitution prohibit the government from compelling a defendant to testify against himself. US Const, Am V; Const 1963, art 1, § 17. To admit a statement into evidence obtained from defendant during a custodial interrogation, the defendant must have voluntarily, knowingly and intelligently waived his Fifth Amendment rights. *People v. Akins*, 259 Mich.App 545, 564; 675 NW2d 863 (2003). A defendant's waiver of his constitutional rights must be made "without intimidation, coercion, or deception ... and must be the product of an essentially free and unconstrained choice by its maker." *Id.* at 564 (citations omitted).

Defendant first argues that he invoked his right to remain silent and that the police officers failed to stop questioning him after this invocation of his rights. "[A] suspect is free at any time to exercise his right to remain silent, and all interrogation must cease if such right is asserted." *People v. Catey*, 135 Mich.App 714, 722; 356 NW2d 241 (1984), citing *Miranda v. Arizona*, 384 U.S. 436; 86 S Ct 1602; 16 L.Ed.2d 694 (1966). The police are required to cease questioning only if a suspect unequivocally invokes his right to remain silent. *Catey*, *supra*. When a defendant does not unequivocally invoke his right to remain silent, police officers are permitted to continue the interview. *People v. Adams*, 245 Mich.App 226, 234-235; 627 NW2d 623 (2001). The continuation of the interview is proper when the police honor a defendant's request to limit the interview to certain topics. *Id.*

During the police interview, defendant stated "this conversation is over." Defendant contends that this was an invocation of his right to remain silent. We disagree. A review of the context of the comment indicates that defendant did not indicate to the detectives that he no longer wished to speak with them. Rather, defendant's comment was an equivocal statement that he was not going to change his story, and there was no point in any further questioning on that subject matter. Because the statement did not unequivocally indicate that defendant wanted to remain silent, the police were not required to cease the interview. *Catey*, *supra* at 722. Additionally, defendant continued to speak to the detectives after he made the statement, which is especially notable in light of defendant's testimony that he has had multiple contacts with police, was read his Miranda rights on several previous

occasions and was aware of how to invoke those rights. Because the statement was equivocal and not intended to terminate the interview, the trial court properly denied defendant's motion to suppress the statement on that ground.

*2 Additionally, defendant contends his statement to the detectives was involuntary because of the length of the interrogation, the implied threats to imprison defendant's mother and the threats of incarceration and promises of leniency. To determine if a statement was 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. [*People v. Cipriano*, 431 Mich. 315, 334; 429 NW2d 781 (1988).]

“The 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 prosecution bears the burden of establishing by a preponderance of the evidence that a valid waiver was made. *People v. Daoud*, 462 Mich. 621, 634; 614 NW2d 152 (2000).

In the present case, a review of the *Cipriano* factors reveals that defendant: 1) was 27 years old, 2) had obtained a general education diploma, 3) was literate, 4) had multiple contacts with police in the past, 5) was interviewed for approximately seven hours before he made the first admission, 6) was informed of his constitutional rights and understood them, 7) was not injured, ill or intoxicated at the time of the interview, 8) was provided with food, beverages and bathroom breaks during the interview, and 9) was not physically abused or threatened with physical abuse. All of these factors weigh in favor of a finding that the statement was voluntary. Contrary to defendant's claims, the fourteen-hour interrogation did not in and of itself render his statement involuntary because defendant confessed after seven hours of questioning and was provided with food, beverages and breaks when

needed. Considering the totality of the circumstances, this one factor does not outweigh the others. Cipriano, *supra* at 334.

Further, contrary to defendant's assertion, there is no evidence in the record to support defendant's contention that he was coerced into admitting his participation in this crime by the detective's threats to imprison his mother. A review of the entire record and the interrogation recording does not indicate such a threat was ever made. Thus, defendant failed to establish a factual predicate to support his claim that such a threat was made and that defendant was coerced by it. See *People v. Geno*, 261 Mich.App 624, 629; 683 NW2d 687 (2004) ("Giving proper deference to the trial court's credibility determination, there were no promises or threats made, and thus the factual predicate for defendant's argument is unsupported. Therefore, defendant's argument here fails."); *People v. Givans*, 227 Mich.App 113, 123; 575 NW2d 84 (1997) (This Court held that there was nothing in the record to support the defendant's claim that threats or promises were directed towards the defendant's girlfriend and, thus, the defendant's testimony alone was "insufficient to establish that defendant's confession was coerced by threats or promises regarding his girlfriend").

*3 Defendant's arguments that he was coerced by police threats and promises are also meritless. While a review of the record indicates the detectives and defendant discussed the possibility of reduced charges, there is no evidence in the record to support that such a promise of leniency was made or that defendant was threatened with incarceration. To the contrary, defendant was told that it was the prosecutor who could make a deal, not the police. Because of defendant's age, education, extensive contact with police, knowledge of his rights, the length of the interview, defendant's good health, the detectives' professionalism during the interview as noted by the trial court, the lack of threats or promises and defendant's lack of intoxication all indicate defendant voluntarily provided the statement to the detectives. *Akins*, *supra* at 656. The trial court did not clearly err in denying the motion to suppress. *People v. Sobczak-Obetts*, 463 Mich. 687, 694; 625 NW2d 764 (2001).

Affirmed.

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People v. Platt

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