

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT MASON,

Defendant-Appellant.

UNPUBLISHED

July 5, 1996

No. 172463

LC No. 92-008357

Before: Neff, P.J., and Jansen and G.C. Steeh III,* JJ.

PER CURIAM.

Defendant conditionally pleaded guilty to armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was thereafter sentenced to consecutive terms of the mandatory two years' imprisonment for felony-firearm and six to ten years' imprisonment for armed robbery. Defendant appeals as of right. We affirm.

Defendant tendered a conditional guilty plea preserving the right to raise two issues on appeal. MCR 6.301(C)(2). He first argues that the trial court clearly erred in denying his motion to suppress his police statement because the statement was involuntarily made. He also claims that the trial court clearly erred in denying his motion to suppress the evidence of the gun because the gun was illegally seized where the police officers did not have a search warrant. We do not find either issue to require reversal.

I

First, defendant argues that the trial court clearly erred in denying his motion to suppress his police statement because the statement was involuntarily made. When reviewing a trial court's determination of the voluntariness of a statement, this Court examines the entire record and makes an independent determination of voluntariness. *People v Haywood*, 209 Mich App 217, 225-226; 530 NW2d 497 (1995). However, the trial court's findings will not be reversed unless they are clearly

* Circuit judge, sitting on the Court of Appeals by assignment.

erroneous. *Id.*, p 226. In evaluating the admissibility of the statement, this Court reviews the totality of the circumstances surrounding the making of the statement to determine whether it was freely and voluntarily made in light of the factors set forth in *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). *Id.*

Defendant was arrested on July 6, 1992. He was held at the lockup at police headquarters in the City of Detroit. When he was arrested, the officer in charge of the armed robbery, Sergeant Larry Day, ordered that there would be a telephone restriction and no visitors restriction because defendant's codefendant, Kwan Arnold, was still at large. When Arnold was arrested on July 7, 1992, Day informed the personnel on the ninth floor lockup that the restrictions were removed. On July 6, after defendant's arrest, Investigator Daniel Budz advised defendant of his constitutional rights and defendant signed a constitutional rights form. Budz also filled out an interrogation sheet, but he did not take a statement from defendant. All of the police officers who had contact with defendant testified that defendant never requested an attorney.

Defendant's police statement was taken on July 8, 1992, by Detroit Police Officer Jerry Swope. Swope stated that he advised defendant of his constitutional rights before taking the statement, and defendant initialed and signed the constitutional rights form. Defendant also told Swope that he understood his rights after reading them out loud. Swope took defendant's statement, and the interrogation lasted about forty-five minutes. Swope indicated that defendant never requested an attorney.

Defendant's testimony regarding his statement differed from that of the police officers. Defendant claimed that he requested an attorney, and was denied that request. Defendant also stated that he was denied any access to make a telephone call on several occasions.

In its findings, the trial court stated that the police gave defendant his *Miranda* warnings, indicating that the police were following the law as they were supposed to, that it did not believe the defendant's testimony, and that it did believe the testimony of the police officers. This case was clearly a credibility contest between the competing claims of the police officers and of defendant. At a suppression hearing, the trial court's resolution of factual issues is entitled to deference, especially where a factual issue involves the credibility of the witnesses whose testimony is in conflict. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). The trial court in this case resolved the credibility contest in favor of the police officers. We, therefore, cannot conclude that the trial court's factual findings are clearly erroneous.

The totality of the circumstances indicate that defendant's police statement was freely and voluntarily made. Defendant was given his warnings pursuant to *Miranda* on two separate occasions, and the police officers stated that defendant never requested an attorney. The denial of using the telephone does not amount to denying defendant the right to counsel because defendant must clearly and unequivocally request counsel. *People v Granderson*, 212 Mich App 673, 677-678; 538 NW2d

471 (1995). Further, the fact that defendant was not arraigned until July 9, 1992, approximately sixty-five hours after his arrest, is not dispositive of the issue of voluntariness. *Cipriano, supra*, pp 333-334. Rather, we find that, under the totality of the circumstances surrounding the making of the police statement, the statement was freely and voluntarily made.

The trial court did not clearly err in denying defendant's motion to suppress his statement.

II

Defendant also claims that the trial court clearly erred in denying his motion to suppress evidence of the gun. Defendant argues that the evidence was illegally seized because the police did not have a search warrant for the apartment when they seized the gun. The trial court ruled that defendant had no standing to raise this issue because the gun was seized from the purse of defendant's companion, Angela Branch.

A trial court's ruling on a motion to suppress evidence is not to be disturbed unless it is clearly erroneous. *People v Faucett*, 442 Mich 153, 170; 499 NW2d 764 (1993). A decision is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Shields*, 200 Mich App 554, 556; 504 NW2d 711 (1993).

The trial court correctly ruled that defendant has no standing to challenge the search. In determining whether a person has a legitimate expectation of privacy so as to confer standing to challenge a search and seizure as violative of the Fourth Amendment, a two-part inquiry is employed. First, the defendant must show that, under the totality of the circumstances, he had a legitimate expectation of privacy in the area or object searched. *People v Lombardo*, ___ Mich App ___; ___ NW2d ___ (Docket no. 176431, issued 5/10/96), slip op, p 2. Second, the defendant's expectation must be one that society accepts as reasonable. *Id.* The Fourth Amendment right to be free from unreasonable searches and seizures is personal, and the defendant bears the burden of proving standing or expectation of privacy. *Id.*; *People v Smith*, 420 Mich 1, 24; 360 NW2d 841 (1984).

In this case, the police entered defendant's apartment without a search warrant. However, the gun was found in the purse belonging to Angela Branch. It is uncontested that defendant did not own or possess the purse. Therefore, defendant had no reasonable expectation of privacy in the purse and the contents of the purse. See *People v Tejada (On Rehearing)*, 188 Mich App 292, 303; 469 NW2d 77 (1991) (the defendant had no standing to challenge the search of a package without a warrant because the defendant had no reasonable expectation of privacy in the package where the package was addressed to another); *Lombardo, supra*, slip op, p 4 (the defendant did not have standing to challenge the search and seizure because she had not established a legitimate expectation of privacy in a package addressed to her alias "Joe Panta").

Under the totality of the circumstances, we conclude that defendant did not have a reasonable expectation of privacy in a purse belonging to another. The trial court did not clearly err in denying defendant's motion to suppress the evidence of the gun.

Affirmed.

/s/ Janet T. Neff

/s/ Kathleen Jansen

/s/ George C. Steeh, III