STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NAJIB EZZEDDINE SHOUCAIR,

Defendant-Appellant.

UNPUBLISHED
December 29, 1998

No. 200892
Recorder's Court
LC No. 95-004983

Before: Jansen, P.J., and Holbrook, Jr., and MacKenzie, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for placing an explosive with intent to destroy and causing damage to property, MCL 750.206; MSA 28.403. Defendant was sentenced to three to twenty-five years' imprisonment. We affirm.

On April 10, 1995, the home of Yahia Hassan was damaged when a pipe bomb exploded near his front porch. On the day of the bombing, Hassan and defendant had been involved in a heated argument concerning the death of defendant's sister. Shortly after defendant was arrested on April 12, 1995, Detroit Police Sergeant James A. May took down a written statement from defendant in which defendant denied having been involved in the bombing. The statement was presented in a question and answer format. Then, on April 13, 1995, defendant struck up a conversation with Detroit Police Investigator Darleen McKinney while defendant was being palm-printed by the officer. McKinney testified at trial that defendant told her that the police should be investigating his sister's murder "instead of messing with him." When defendant made an obscure comment about "a man," McKinney asked defendant to whom he was referring to. According to McKinney, defendant responded, "the man I bombed."

Defendant argues that the two statements were involuntary and thus inadmissible at trial. We disagree. In order to determine whether defendant's statements were freely and voluntarily made, we must consider the totality of circumstances surrounding the making of the statements. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988).

> 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 . . . ; 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. [*Id.* at 334. Accord *People v Sexton*, 458 Mich 43, 66; 580 NW2d 404 (1998).]

After reviewing the record, we conclude that both of defendant's statements were freely and voluntarily made. Regarding the oral statement, the record shows that it was not the result of a custodial interrogation. *People v Anderson*, 209 Mich App 527, 532; 531 NW2d 780 (1995). Rather, defendant volunteered the statement to the police during a casual conversation. Defendant may have been in custody for purposes of obtaining palm prints, but the officer's behavior is not what elicited the statement from defendant. There was no evidence presented at the *Walker*[1] hearing that would show that defendant was mistreated, coerced, or threatened by the officer before making the incriminating remark.

As for defendant's written statement, the record shows that defendant was not held overly long and was not subjected to unpleasant surroundings before the statement was made. In addition, the attitude of the officer who took the statement was not hostile toward the defendant, and there is no indication that defendant was threatened in any way. There is no indication that defendant's age, or physical or mental state, prevented him from freely and voluntarily making the statement. There is also no indication that defendant was under the influence of drugs or alcohol. Finally, we note that defendant was fully advised of his *Miranda*[2] rights before the statement was written down.

Defendant also argues that the trial court erred in denying his motion to suppress the two statements because they were the fruit of an illegal arrest. Prior to trial, the court ruled that the search warrants used to search defendant's vehicle and home were defective in that they lacked probable cause. Defendant asserts that any arrest arising from the defective warrants was illegal and, therefore, any statements made following the arrest were inadmissible. We disagree. Without deciding the question of the legality of the arrest, we reject defendant's argument because we find that the two statements were both voluntary and the product of a free will. *Brown v Illinois*, 422 US 590, 602-603; 95 S Ct 2254; 45 L Ed 2d 416 (1975).

As we have just concluded, defendant's oral statement was made voluntarily. Further, the record clearly shows that it was not the result of a police interrogation. Because the volunteered statement was not the product of either police prompting or interrogation, the trial court correctly concluded that it need not be excluded as the fruit of an illegal arrest. *People v Mallory*, 421 Mich 229, 241; 365 NW2d 673 (1984); *People v White*, 392 Mich 404, 424-425; 221 NW2d 357 (1974), cert den sub nom *Michigan v White*, 420 US 912; 95 S Ct 835; 42 L Ed 2d 843 (1975).

As for defendant's written statement, we conclude that the trial court did not err in rejecting defendant's motion to suppress. In *Brown*, the United States Supreme Court observed that "[i]n order for the causal chain, between the illegal arrest and the statements made subsequent thereto to be broken," the statement must not only be voluntary, but must also "be 'sufficiently an act of free will to purge the primary taint'" of an illegal arrest. *Brown, supra* at 602-603, quoting *Wong Sung v United States*, 371 US 471, 486; 83 S Ct 407; 9 L Ed 2d 441 (1963). When determining whether a causal connection exists between an unlawful detention and a given statement, "we look at: (1) the time lapse between the arrest and the statement, (2) the flagrancy of the official misconduct, (3) any intervening circumstances, and (4) any antecedent circumstances." *Mallory, supra* at 243 n 8. Accord *Dunaway v New York*, 442 US 200, 218; 99 S Ct 2248; 60 L Ed 2d 824 (1979); *Brown, supra* at 603-604.

After reviewing the record, we are convinced that any alleged taint associated with defendant's arrest was sufficiently purged, thus breaking the causal chain between the arrest and the statement. While the time lapse between the arrest and the making of the statement was relatively short, we do not believe that this fact is dispositive. See LaFave & Scott, Criminal Procedure, § 9.4, p 478 (Abridgment, 1992) (observing "that temporal proximity is the least important factor involved"). Of more significance is the lack of evidence establishing that the arrest was the result of flagrant misconduct by the police. For example, there is no indication in the record to show that defendant was arrested either "in the hope that something might turn up," *Brown, supra* at 605, or with the purpose of obtaining a confession. *Mallory, supra* at 243. Further, we again note that the record establishes that defendant was advised of and understood his *Miranda* rights before making the statement. Finally, we can find no relevant intervening circumstances. *People v Spinks*, 206 Mich App 488, 497; 522 NW2d 875 (1994). Given these circumstances, we conclude that the statement was properly admitted into evidence.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie

[1] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

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