

Mauricio Martinez was convicted after a jury trial of murder¹ and carrying a handgun without a license² as a Class A misdemeanor and was given a fifty-year aggregate sentence. He appeals, raising the following restated issue: whether the trial court abused its discretion when it admitted his confession because he contends it was not given voluntarily.

We affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of August 17, 2008, Luis Velez (“Luis”) was drinking beer in an outside stairwell of the Eagle Terrace Apartment Complex (“Eagle Terrace”) in Indianapolis with his friend, Anjel Valazques-Luis, known as “Cowboy.” Several other people were present in the area, including a woman known as “Tee,” a man named Jose, whose nickname was “Mechanico,” and a prostitute who was known as “Cherry.” *Tr.* at 281-83. Cowboy was trying to arrange to “do business,” or to have sex with Cherry. *Id.* at 285, 407. Cherry was not interested in doing business with either Cowboy or his friend from across the street because of Cowboy’s drunken state. *Id.* at 432.

A dark colored Mitsubishi Eclipse carrying four people pulled up and parked nearby. Martinez exited the passenger side of the vehicle and began to talk to Cherry. Martinez and Cherry had done business two or three times over the past eight years, with the most recent being approximately three weeks prior. Martinez and Cherry were “talking business,” and Cowboy became increasingly upset, interrupting their

¹ See Ind. Code § 35-42-1-1.

² See Ind. Code § 35-47-2-1.

conversation several times. *Id.* at 292-95, 436. Luis tried to diffuse the situation by calling Cowboy over to the stairwell to give him a beer and a cigarette to calm him. Cowboy only stayed with Luis for a few minutes, then went back to Martinez and Cherry. Luis could see the body language of Cowboy and Martinez getting more hostile, and Cherry moved away. The two men were within arm's reach of each other. Martinez then shot Cowboy twice, once from close range, with the gun touching the abdomen, and again in the shoulder as Cowboy tried to flee across the street. Cowboy collapsed on the sidewalk, and everyone fled from the area. Cowboy died as a result of the shooting.

On October 8, 2008, Martinez was arrested and taken to the Indianapolis Metropolitan Police Department headquarters to be interviewed shortly after midnight. The interview was conducted by Detective Chris Minka and Officer Jesus Soria ("Officer Soria"), who acted as the interpreter, and was done almost entirely in Spanish. Martinez signed a waiver of rights form written in Spanish. Initially, Martinez denied ever being at Eagle Terrace and denied ever seeing Cowboy. *Id.* at 349-50. He denied having any friends and stated he only left his home to go to work to provide for his family. *Id.* at 350. Eventually, Martinez claimed to have gone to Eagle Terrace to buy beer with his friend, Raleigh. *Id.* at 351. Officer Soria tried to end the interview at one point, but Martinez indicated that he wanted to continue and told the officer that he had argued with Cowboy regarding where he and Raleigh parked and that Cowboy had pulled a gun on him. *Id.* at 352-53. Martinez stated that, when he exited the apartment after purchasing the beer, Cowboy and others armed with machetes approached him. *Id.* at 354-55. Martinez was not entirely clear, but he told the officer that one of the men had a gun. *Id.*

at 356. He claimed that Raleigh threw him a handgun, and he fired two shots, hitting Cowboy from a distance of approximately eight feet. *Id.* at 356-57. Martinez also stated that, although a prostitute was present, he and Cowboy were not fighting about her. *Id.* at 357.

The State charged Martinez with murder and carrying a handgun without a license as a Class A misdemeanor. Prior to trial, Martinez filed a motion to suppress his statement to the police, claiming that he did not make a knowing or intelligent waiver of his Fifth Amendment rights. After a hearing on the motion, the trial court denied Martinez's motion. A jury trial was held, and at the conclusion, Martinez was found guilty as charged. The trial court sentenced him to an aggregate sentence of fifty years executed. Martinez now appeals.

DISCUSSION AND DECISION

A trial court has broad discretion in ruling on the admissibility of evidence. *Scott v. State*, 855 N.E.2d 1068, 1071 (Ind. Ct. App. 2006). "Because we are considering the issue after a completed trial, we review the admission of evidence for an abuse of discretion." *Taylor v. State*, 891 N.E.2d 155, 158 (Ind. Ct. App. 2008), *trans. denied, cert. denied* (2009). We will consider the conflicting evidence most favorable to the trial court's ruling and any uncontested evidence favorable to the defendant. *Id.* An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or it misinterprets the law. *Id.*

Martinez argues that the trial court abused its discretion when it admitted his statement to the police because it was obtained in violation of the Fifth Amendment to

the United States Constitution and Article I, section 14 of the Indiana Constitution. He specifically contends that he did not knowingly, voluntarily, and intelligently waive his right to counsel and his right to remain silent because he misunderstood the rights read to him by the police. He claims that he mistakenly believed that his right to remain silent was contingent upon hiring an attorney and that if he wanted to not answer the officers' questions, he had to hire an attorney, which he could not afford to do. Therefore, he asserts that his confession was not voluntarily given.

The Fifth and Fourteenth Amendments to the United States Constitution as well as Article I, section 14 of the Indiana Constitution guarantee a defendant's right against self-incrimination. *Malinski v. State*, 794 N.E.2d 1071, 1076 (Ind. 2003). They also afford the rights to remain silent and to be represented by an attorney. *Id.* In *Miranda v. Arizona*,³ the United States Supreme Court determined that a defendant may waive these rights so long as the waiver is made voluntarily, knowingly, and intelligently. *Id.* However, a defendant is entitled to the procedural safeguards of Miranda only if he or she is subject to custodial interrogation. *Lawson v. State*, 803 N.E.2d 237, 239 (Ind. Ct. App. 2004), *trans. denied*.

“If a defendant challenges the voluntariness of a confession under the United States Constitution, the state must prove the statement was voluntarily given by a preponderance of the evidence.” *Pruitt v. State*, 834 N.E.2d 90, 114 (Ind. 2005) (citing *Colorado v. Connelly*, 479 U.S. 157, 167-69, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986); *Lego v. Twomey*, 404 U. S. 477, 488-89, 92 S. Ct. 619, 30 L. Ed. 2d. 618 (1972)), *cert.*

³ 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

denied (2006). Thus, a federal constitutional claim that a confession was not voluntarily given is governed by a preponderance of the evidence standard. *Id.* However, the Indiana Constitution requires the state to prove beyond a reasonable doubt that the defendant voluntarily waived his rights, and that the defendant's confession was voluntarily given. *Id.*

A waiver of one's Miranda rights occurs when the defendant, after being advised of those rights and acknowledging that he understands them, proceeds to make a statement without taking advantage of those rights. *Ringo v. State*, 736 N.E.2d 1209, 1211-12 (Ind. 2000). "In evaluating a claim that a statement was not given voluntarily, the trial court is to consider the totality of the circumstances, including the crucial element of police coercion, the length of the interrogation, its location, its continuity, the defendant's maturity, education, physical condition, and mental health." *Wells v. State*, 904 N.E.2d 265, 271 (Ind. Ct. App. 2009), *trans. denied*. A signed waiver form is one piece of evidence that may show that the defendant was aware of and understood his rights, but it is not conclusive proof of a valid waiver. *Ringo*, 736 N.E.2d at 1212. Conflicting evidence is viewed most favorably to the trial court's ruling. *McGhee v. State*, 899 N.E.2d 35, 37-38 (Ind. Ct. App. 2008), *trans. denied* (2009). If there is substantial evidence to support the trial court's conclusion, it will not be set aside. *Pruitt*, 834 N.E.2d at 115.

Here, at the beginning of the interview, the officers determined that Martinez spoke broken English, but was able to speak Spanish. *State's Ex. 1* at 94. Officer Soria

then ascertained that Martinez was able to read in Spanish and then read the Advice of Rights form to Martinez in Spanish, which, when translated, informed Martinez:

You have a right to . . . remain silent. Anything you say can be used as evidence against you in a court of law. You have the right to speak with a lawyer for advice before any questioning and for the lawyer to be present during questioning. If you do not have the economic means to hire a lawyer and would like a lawyer to represent you, one will be appointed to you by the court before any questioning. If you choose to answer questions now without a lawyer present you will still have the right to stop questions at any moment until you speak with a lawyer.

Id. at 95-96. Officer Soria asked Martinez if he had any questions, and the following exchange occurred:

Martinez: No, not one question.

Soria: Understand?

Martinez: I understand everything, yes, yes.

Soria: Okay. Um, do you want to speak with us?

Martinez: It is that I want to know why you brought me here.

Soria: Well, before you speak . . . before you answer questions you must . . . you don't have to, you have a choice. You can sign here. This, this says you understand your rights. It says, Waiver of Rights and you want to speak with us.

Martinez: Okay, because if, because if I am going to remain silent, I need to hire these lawyers.

Soria: It is, it is your decision what you want to do.

Martinez: So then, but I don't have enough funds for . . . because I work three days a week.

Soria: No but, do you understand your rights?

Martinez: Yes . . .

Soria: How . . .

Martinez: Yes, I understand.

Soria: Okay. Uh, but do you want to speak with us?

Martinez: Okay, well go ahead, yes.

Id. at 96-97.

As shown by this exchange, Officer Soria noticed that Martinez seemed to misunderstand that he had a right to an attorney at no cost to him if he was unable to afford one. *Tr.* at 548-49, 556-57. Therefore, Officer Soria again clarified that Martinez understood his rights and was satisfied that he understood the rights correctly. *Id.* at 557. Officer Soria continued to read Martinez the Waiver of Rights, which stated, “I waive my rights and agree to answer to questions. I don’t want a lawyer at this time and am willing to make a statement and answer questions. I knowingly waive my rights and am aware of what I am doing. No threats or promises have been made to me.” *State’s Ex.* 1 at 99. After Martinez signed the form, he answered questions for approximately two hours. At the end of the interview, Martinez told Officer Soria that he had previously told his friend he was going to hire a lawyer to deal with the fact that he shot Cowboy. *State’s Ex.* 3 at 258. Upon hearing this, Officer Soria began the following exchange with Martinez:

Soria: I have to ask because you said, “I am going to hire a lawyer.”

Martinez: Oh because . . .

Soria: You said at that moment?

Martinez: So then what had taken out . . . I didn’t know if he died or didn’t die. But I did my, my, my . . .

Soria: Okay. But at this moment do you want a lawyer than [sic] to keep talking with me?

Martinez: It could be a lawyer I think.

Soria: Okay.

Martinez: But listen, now I don't, don't have enough . . .

Soria: No, okay.

Martinez: . . . to . . .

Soria: That is fine.

Martinez: . . . to . . .

Soria: Okay.

Martinez: . . . to . . .

Soria: Okay.

Martinez: . . . to continue . . .

Soria: Only because you told me. That is why I have to . . . like I said before, you have rights here. Okay?

Martinez: Yes. Because, what's it called, right now the lawyer to, to, to, to hire no, no . . . I don't have, like I said, I don't . . .

Soria: Like I explained, in your, in your right, how I explained . . .

Martinez: M-hmm.

Id. at 258-60. Officer Soria then terminated the interview.

The evidence showed that, when Martinez seemed confused about his rights, Officer Soria determined that Martinez understood them correctly before having him sign the Waiver of Rights form. After two hours of answering questions, when Martinez

expressed a desire for an attorney, Officer Soria ended the interview. The evidence also showed that Martinez was twenty-six years old, and although he spoke broken English, he was able to read in Spanish. The interview, as well as the Advice and Waiver of Rights form, was therefore interpreted in Spanish by Officer Soria. Evidence was also presented that Martinez had previously been arrested and had prior contact with the criminal justice system. We conclude that, under the totality of the circumstances, there was substantial evidence to support the trial court's conclusion that Martinez made a knowing, intelligent, and voluntary waiver of his rights. There was no abuse of discretion in admitting Martinez's statement to the police.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.