COURT OF APPEALS
DECISION
DATED AND FILED

October 9, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 01-0510-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK S. RAYFORD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Mark Rayford appeals the judgment of conviction entered after Rayford entered ***Alford***[1] no contest pleas to one count of first-degree reckless injury and one count of attempted homicide, contrary to WIS. STAT.

[1] ***North Carolina v. Alford***, 400 U.S. 25 (1970).

§§ 940.23(1), 940.01(1) and 939.32.[2] Rayford argues that the trial court erred in denying his motion to suppress his statement given to the police, which occurred after he was formally charged with two counts of attempted homicide, and an arrest warrant had issued. He contends that the trial court erred in finding that he never requested an attorney to represent him and, additionally, he submits, that even if he did not request an attorney, the police violated his constitutional rights by failing to tell him that formal criminal charges had been initiated against him before taking his statement. We affirm.

I. BACKGROUND.

¶2 On June 3, 1995, Rayford was charged with two counts of attempted homicide. The charges stemmed from an incident in which Rayford got into an argument with his neighbor and his neighbor's girlfriend that culminated with Rayford shooting both of them. He was interviewed by the Milwaukee police concerning these charges on February 3, 1996, while he was incarcerated in a Chicago jail. Rayford gave the police a detailed statement regarding his involvement. After Rayford's return to Wisconsin, he brought a motion seeking to suppress his statements that was denied. He then entered ***Alford*** pleas to an amended charge of first-degree reckless injury and to one count of attempted homicide.[3] The State recommended that a presentence report be prepared and that Rayford receive "a period of prison of 20 years." The trial court sentenced him to

[2] All references to the Wisconsin Statutes are to the 1995-96 version unless otherwise indicated.

[3] The record reflects there were three different plea hearings. After the first, the State discovered the complaint contained the wrong penalties; at the second, Rayford's attorney failed to advise the trial court that Rayford was entering an ***Alford*** no contest plea rather than a guilty plea. The third plea then proceeded and Rayford was found guilty.

ten years' imprisonment on count one, to be served consecutively to a sentence he was serving in Illinois, and twenty years' imprisonment on count two, consecutive to the sentence in count one and the Illinois sentence.

II. ANALYSIS.

¶3 Rayford claims two trial court errors. First, he argues that the trial court erred at the motion to suppress in finding that he did not ask for an attorney prior to giving an incriminating statement to the police. Second, he submits that the trial court erred in finding no constitutional violation of his rights when the police, before interviewing him about these charges, failed to tell him that he had already been formally charged with two felonies.

¶4 In addressing the first issue, we note that the standard for reviewing a trial court's factual finding is contained in WIS. STAT. § 805.17(2). It states in part: "In all actions tried upon the facts without a jury … the court shall find the ultimate facts and state separately its conclusions of law thereon…. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

¶5 At the hearing, Rayford and two police officers testified. The officers claimed they advised Rayford of his ***Miranda***[4] rights, that Rayford indicated he understood those rights, that he waived them, and that he agreed to talk to them about the incident. Rayford testified that he asked for an attorney, but the police told him, among other things, that he did not need an attorney. The trial

[4] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

court made extensive findings as to why it found the police witnesses more credible than Rayford:

> But what I have found more convincing than the defendant's testimony was the four pages of the statement of Exhibit 2. The two officers both testified that the defendant did not request an attorney, and that they did not promise lesser charges from a female D.A., they did not promise probation. There's their testimony, which was credible and on its face believable. On top of that, the fact that the defendant gave a four-page statement with initials on each page, a signature at the end of the first paragraph, which indicates that he stated he fully understands and states that he will now – that he will make a statement to us, understands his rights. The fact that he signed the end of the statement, The above is true, Mark Rayford, 2-3-96, all are very persuasive to me that this is not a case where he didn't want to make a statement without an attorney being present. He never writes anywhere on this statement that he wanted an attorney or that he had a promise of lesser charges or probation, and he gave such a full and complete statement both as to background and as to the substance of the shooting. He talks for a full three plus pages about the shooting itself.

¶6 Further, the trial court observed that Rayford's testimony—that one of the police officers told him that, if he would confess, he would recommend to the female district attorney who issued the charges that he get probation—is belied by the fact that both police officers testified that neither knew who had issued the criminal complaint and, as the trial court observed, the complaint charging Rayford was signed by a male assistant district attorney. We also note, after reviewing the record, that the officers had far better recall of the events occurring during the interrogation than did Rayford. Consequently, we are satisfied that the trial court's credibility determination that the police version of the events surrounding Rayford's confession was more believable than Rayford's is amply supported by the record.

¶7 Next, Rayford argues that if, indeed, this court should find that he did waive his right to an attorney, then the trial court erred in ruling that his constitutional rights were not violated when the police failed to tell him prior to questioning that he had already been formally charged with two felonies before the interview. The State responds that: (1) this issue was never raised below and, therefore, Rayford has waived the issue; (2) Rayford cites no case law to support his contention that the police are obligated to tell a suspect before taking his statement that he has already been charged with a crime; and (3) on the merits, Rayford's argument is contrary to law. We agree with the State's first argument and do not address the State's remaining arguments. Because this issue was not raised below, giving the trial court and the parties an opportunity to develop and respond to the argument, we decline to address it. *See* ***State v. Rogers***, 196 Wis. 2d 817, 827-29, 539 N.W.2d 897 (Ct. App. 1995) (failure to raise specific challenges in the trial court waives the right to raise them on appeal). Thus, we affirm the trial court's decision.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.