COURT OF APPEALS
DECISION
DATED AND FILED

February 20, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP3069-CR **Cir. Ct. No. 1993CF934260**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROY LEE ROGERS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed*.

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

¶1 CURLEY, P.J. Roy Lee Rogers appeals from the February 7, 1994 judgment of conviction for first-degree intentional homicide, party to a crime,

contrary to WIS. STAT. §§ 940.01(1) and 939.05 (1991-92),[1] and the November 14, 2006 order denying his postconviction motion. Rogers argues that his motion to suppress his statement should have been granted because the State failed to prove that he waived his rights to counsel and his right to remain silent. Further, he argues that his statement given to the police was involuntary because it was "the product of undue police coercion." Because we are satisfied that the State met its burden in proving that Rogers waived his constitutional rights, and under the totality of the circumstances his statement was voluntary, we affirm.

I. BACKGROUND.

¶2 According to the criminal complaint, later used as a factual basis for Rogers's guilty plea, on September 20, 1993, Rogers, then sixteen years old, and two accomplices abducted Clance Venson, Jr., intending to rob him of his money and car. All three gave incriminating, but conflicting, statements. The complaint recounts that the three tied the victim's hands, taped his mouth, and forced him into the trunk of his car. After driving around for more than an hour, they stopped the car and opened the trunk, and either Rogers or one of his accomplices (the complaint included differing accounts) aimed a gun at Venson and fired. They reentered the car and, after driving around for a short time, they pulled into an alley where Rogers opened the trunk, aimed the gun at Venson's head and fired. Rogers and his accomplices then drove to a house where Rogers sold the gun. They then continued driving a short time more until they parked the car, used bleach in an attempt to rid the car of evidence, and then set the car on fire. Police

[1] All references to the Wisconsin Statutes are to the 1991-92 version unless otherwise noted.

recovered Venson's partially burned body from the trunk. An autopsy established that he bled to death as a result of a gunshot wound to the head.

¶3 Rogers was waived from the juvenile court to the adult court system, where he was charged with first-degree intentional homicide and armed robbery, both as party to a crime. He filed a motion to suppress his statement given to the police. At the initial suppression motion, only one detective testified. The detective stated that he asked Rogers some background questions before reading Rogers his ***Miranda*** rights.[2] He also stated that while he believed Rogers understood his rights, the detective never wrote in his report that Rogers waived his ***Miranda*** rights. The trial court denied the suppression motion. Thereafter, Rogers pled guilty to first-degree intentional homicide, party to a crime, and the armed robbery charge was dismissed. He was sentenced to life imprisonment with parole eligibility in 2020.

¶4 After his appellate counsel withdrew, the public defender's office declined to appoint successor counsel for Rogers because Rogers had indicated he wished to proceed *pro se*. More than three years after his conviction, following successive extensions from this court, Rogers filed a pro se motion for postconviction relief.[3] In this motion, he claimed the police did not have probable cause to arrest him; that his trial attorney provided ineffective assistance for various reasons; and that the juvenile court did not consider all the waiver information during his waiver hearing. Additionally, he claimed his statements to

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

[3] Rogers's various requests for extensions of the deadline to file a notice of appeal or postconviction motion are not in the record; however, both Rogers and the trial court, in its decision and order denying postconviction relief, reference the extensions.

the police should have been suppressed because they were taken in violation of his due process rights; and he sought to withdraw his guilty plea because he did not understand the rights he was giving up. The trial court denied his motion without a hearing. Rogers filed a notice of appeal and, after various extensions, Rogers filed a pro se brief with this court. A decision from this court, ***State v. Rogers***, No. 97-3181-CR, unpublished slip op. (Wis. Ct. App. June 8, 1999), affirmed his conviction.

¶5 Sometime later, Rogers filed a writ of habeas corpus in the federal court. On November 6, 2003, the federal court granted Rogers's motion for habeas corpus relief because Rogers had never been informed of the danger of proceeding without the assistance of counsel. The judgment granting the writ of habeas corpus stated that "Rogers shall be released from custody unless within 120 days … the State of Wisconsin affords Rogers a new appeal with the assistance of appointed counsel." The State moved to reinstate Rogers's appellate rights, a motion which we granted, and an attorney was appointed to represent him. Following this, a postconviction motion was filed in the trial court. The trial court denied the motion, concluding that the law of the case resolved the matter. An appeal was taken from this decision to which the State agreed with Rogers that the trial court's summary denial of Rogers's postconviction motion was improper, and in 2005 this court reversed the order denying the motion and remanded the matter to the trial court.

¶6 The trial court then set a briefing schedule on the postconviction motion and eventually held a ***Machner*** hearing.[4] Because Rogers's trial attorney

[4] ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

could not recall advising Rogers that he could testify at the ***Miranda-Goodchild*** hearing,[5] the trial court ordered that the ***Miranda-Goodchild*** hearing be continued and permitted Rogers to testify. At the hearing, Rogers testified, as did the retired arresting officer and the two Milwaukee Police Department detectives, one of whom was retired at the time, who took Rogers's statement (one of the detectives testified at the motion hearing in 1994). After the testimony was completed, the trial court denied the motion, finding that Rogers was advised of his rights, understood them, and waived his rights. Further, the trial court found that Rogers freely and voluntarily gave a statement to police. Consequently, the trial court signed an order denying the postconviction motion. This appeal follows.

II. ANALYSIS.

¶7 Rogers first argues that his motion to suppress his inculpatory statement should have been granted because the State failed to establish that he waived either his right to remain silent or his right to an attorney. He also asserts that his statement was involuntary because of undue police coercion. We disagree with both contentions.

¶8 At a suppression hearing, the State is required to show that the defendant received and understood his ***Miranda*** warnings, ***State v. Armstrong***, 223 Wis. 2d 331, 345, 588 N.W.2d 606 (1999); ***State v. Mitchell***, 167 Wis. 2d 672, 697, 482 N.W.2d 364 (1992), and that he knowingly and intelligently waived the rights protected by the ***Miranda*** warnings, ***Armstrong***, 223 Wis. 2d at 346; ***State v. Santiago***, 206 Wis. 2d 3, 12, 556 N.W.2d 687 (1996). "The State also

[5] ***Miranda***, 384 U.S. 436; ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

bears the burden on the issue of whether the warnings were sufficient in substance." ***Armstrong***, 223 Wis. 2d at 346 (citing ***Santiago***, 206 Wis. 2d at 12). Finally, the State has the burden of showing that the defendant's statements were voluntary. ***Id.*** at 347; ***Mitchell***, 167 Wis. 2d at 696; ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 264-65, 133 N.W.2d 753 (1965). The State's burden throughout the proceedings is a preponderance of the evidence. ***State v. Agnello***, 226 Wis. 2d 164, 181-82, 593 N.W.2d 427 (1999).

¶9 In reviewing a motion to suppress an inculpatory statement, our standard of review is mixed. *See* ***State v. Turner***, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987). We will uphold a trial court's findings of historical or evidentiary facts as long as they are not clearly erroneous; however, we independently determine whether those facts resulted in a constitutional violation. ***Id.***

¶10 Rogers testified that he asked for an attorney and the detective replied that they would "get to that," or words to that effect, and the detective continued reading. With respect to Rogers's contention that he did not waive his right to remain silent or his right to an attorney, the two detectives' testimony contradicted Rogers's testimony. One of the two detectives who took Rogers's statement testified that he read Rogers his rights from a card containing the ***Miranda*** rights, as he did routinely, and that he stopped after every right and made sure that Rogers understood it. The detective also testified that he believed that Rogers understood all his rights and was willing to waive them. The detective denied that Rogers ever asked for an attorney. The detective also recalled that Rogers did not ask to call his parents before giving a statement.

¶11 The trial court concluded that Rogers intelligently waived his constitutional rights and implicitly found that the detectives' version of the events was more credible than Rogers's version. Our review of the record supports the trial court's findings and conclusion. A detective testified that Rogers understood his rights and that he waived his rights. Indeed, Rogers initialed all the pages that contained both the fact that he had been advised of his rights and the pages containing his entire statement. We are satisfied that the State met its burden of proof and that Rogers waived his right to remain silent and his right to an attorney.

¶12 Rogers also asserts that his statement was involuntary due to undue police coercion. We disagree.

¶13 In determining whether a statement was voluntary, this court must consider the totality of the circumstances, which includes balancing the personal characteristics of the defendant against the pressures applied by the police. ***State v. Hoppe***, 2003 WI 43, ¶38, 261 Wis. 2d 294, 661 N.W.2d 407. The court should consider things such as "the defendant's age, education and intelligence, physical and emotional condition, and prior experience with law enforcement." ***Id.***, ¶39. These are balanced against police tactics such as:

> the length of the questioning, any delay in arraignment, the general conditions under which the statements took place, any excessive physical or psychological pressure brought to bear on the defendant, any inducements, threats, methods or strategies used by the police to compel a response, and whether the defendant was informed of the right to counsel and right against self-incrimination.

Id. This balancing recognizes "that the amount of police pressure that is constitutional is not the same for each defendant." ***Id.***, ¶40.

¶14 "'[S]pecial caution'" is needed when assessing the voluntariness of a juvenile's statements, particularly when the statement is obtained "'in the absence of a parent, lawyer, or other friendly adult.'" ***State v. Jerrell C.J.***, 2005 WI 105, ¶21, 283 Wis. 2d 145, 699 N.W.2d 110 (citations omitted). However, there is no Wisconsin rule mandating parental notification before a juvenile's statement is admissible. ***Theriault v. State***, 66 Wis. 2d 33, 46, 50, 223 N.W.2d 850 (1974). Nor is there a per se rule excluding in-custody statements from juveniles who were not first given the opportunity to consult with a parent. ***Jerrell C.J.***, 283 Wis. 2d 145, ¶¶37, 43.

¶15 A defendant's statement is voluntary if it "was the product of a 'free and unconstrained will, reflecting deliberateness of choice,'" as opposed to the result of a "'conspicuously unequal confrontation in which the pressures brought to bear on [the defendant] by representatives of the [S]tate exceed[ed] the defendant's ability to resist.'" ***State v. Clappes***, 136 Wis. 2d 222, 236, 401 N.W.2d 759 (1987) (citations omitted). Here, the trial court found that the statement "certainly wasn't coerced or [the] product of any type of coercion by the police." Again, we agree.

¶16 While Rogers was only sixteen years old at the time of the interrogation, he owned a weapon and was apparently very independent, as he had traveled to California without his parents. He was of average intelligence, was in good physical health, was attending high school, and had had prior contact with the police. At the time the detectives advised Rogers of his constitutional rights, he was not handcuffed and had been given cigarettes and something to drink. The interrogation was relatively short, being only two and one-half hours in length, and he had been in custody for only approximately four hours before the interrogation began. As noted, Rogers initialed all the pages containing his statement and

initialed the paragraph that read: "At 5:47 pm Roy Rogers was read his Miranda Rights from the card issued from [sic] the State of Wisconsin Department of Justice by Det. John H. Wesley, in the presence of Det. Michael Wesolowski, at which time, he stated he understood." Perhaps the most important piece of evidence that points to a lack of police coercion in this case is the fact that in his statement Rogers minimizes his involvement and points the finger at his two accomplices. Had his statement been coerced as he claims, one would have expected the statement to place the blame entirely on Rogers. Thus, we are satisfied that Rogers's statement was "the product of a 'free and unconstrained will, reflecting deliberateness of choice.'" ***Clappes***, 136 Wis. 2d at 236 (citation omitted).

¶17 For the reasons stated, the judgment of conviction and the order denying the postconviction motion are affirmed.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.