REL: December 16, 2020

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0355

Nigel Pierce Steele

v.

State of Alabama

Appeal from Mobile Circuit Court
(CC-17-5972)

McCOOL, Judge.

Nigel Pierce Steele appeals his conviction for manslaughter, see § 13A-6-3, Ala. Code 1975, and his resulting sentence of 20 years' imprisonment.

Facts and Procedural History

On December 15, 2017, Steele was indicted by the Mobile County grand jury for the murder of Kendale Ely. Because Steele does not challenge the sufficiency of the evidence, a brief recitation of the facts will suffice.

Evidence indicated that Steele was Kendale Ely's boyfriend and that the two had been arguing earlier in the day. On the night of January 27, 2017, Steele and Ely arrived at Ely's mother's house. Steele and Ely were arguing outside. Ely's mother, Earlyse Yvette Davis Ely ("Earlyse"), told Steele and Ely to come inside. Steele went to the kitchen to cook dinner, and Ely went to a bedroom in the back of the house. Earlyse was watching television in the living room when she heard a loud "boom." (R. 162.) Earlyse heard Steele say, "I'm going to kill him." (R. 164.) Earlyse told Steele that he was not going to do anything to Ely and told Steele to leave and go back to his grandmother's house, which was next door to Earlyse's

house. Earlyse then went outside to the carport to her washing machine. When she returned inside a few minutes later, she heard bumping against the wall and saw Ely and Steele fighting in the hallway. Ely had his hands up in a defensive position and Steele was hitting him. Earlyse left the house and got in her vehicle and left to get someone else to assist her and stop the fighting. When officers responded to the scene of the incident, Steele walked out of the residence and stated: "[H]e's dead, he's dead, he stabbed himself." (R. 190.) When officers asked what happened, Steele told officers that he and Ely, his boyfriend, got into a struggle with the knife. Evidence showed that Ely died as a result of the stab wounds he sustained during the fight with Steele.

The jury found Steele guilty of the lesser-included offense of manslaughter, and he was sentenced to 20 years' imprisonment.

Discussion

On appeal, Steele's sole contention is that the circuit court erred when it denied his motion to suppress his custodial statement that he gave to law enforcement. Before trial, Steele filed a motion to suppress a statement that he made to law enforcement during an interrogation.

Steele argued that his statement should be suppressed because "he invoked his right to an attorney and the interrogation did not cease." (C. 29.) A suppression hearing was held on the matter.

The following evidence was presented at the suppression hearing:

Investigator Nick Crepeau with the Mobile Police Department testified that on January 27, 2017, he interviewed Steele at police headquarters. Inv. Crepeau testified that he read Steele his Miranda[1] rights and then told Steele that he needed to talk to him about what happened that night, and Steele indicated to Inv. Crepeau that he was "cool" with talking to him about the incident. (R. 17.) Inv. Crepeau testified that as he and Steele talked during the interview, Steele began to talk about what led to the stabbing and then stated: "All right. Can I wait on a lawyer or something? I just want to get this shit over with." (R. 18.) Inv. Crepeau responded, "What's that?" (R. 18.) Inv. Crepeau testified that he asked "What's that" because he was unclear what Steele meant by his statement about a lawyer. According to Inv. Crepeau, Steele then said

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

"Umm, like, he stabbed himself," and then voluntarily continued talking about the incident. (R. 18.) A copy of the audio recording was played for the court. On cross-examination, Steele testified that, he was in custody during the interview and was not free to leave.

Both parties presented their arguments to the court, and the court took the matter under advisement. The court ultimately denied Steele's motion to suppress.

"This Court reviews de novo a circuit court's decision on a motion to suppress evidence when the facts are not in dispute." State v. Skaggs, 903 So. 2d 180, 181 (Ala. Crim. App. 2004). In the instant case, the facts are uncontested; the only issue is the circuit court's application of the law to those facts. Therefore, this Court affords no presumption in favor of the circuit court's ruling.

We note that Steele concedes that he was read his Miranda rights, that he indicated to the officer that he understood and waived his Miranda rights, and that he then initially participated in the interrogation. He merely contends that "after a time, [he] decided to invoke his right to have a lawyer present with him during the questioning." (Steele's brief, at 4.)

Thus, this Court must determine whether Steele made an unequivocal invocation of his right to counsel.

This Court has stated:

> "During a custodial interrogation, if the suspect unequivocally requests counsel at any time before or after the suspect waives his Miranda rights, 'the interrogation must cease until an attorney is present.' Miranda, 384 U.S. at 474. If the suspect makes an equivocal reference to an attorney after waiving his Miranda rights, the interrogating officer has no obligation to stop questioning the suspect and the officer is not required to ask questions to clarify whether the suspect actually wants an attorney. Davis v. United States, 512 U.S. 452, 459–62, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994). However, if a suspect makes an equivocal reference to an attorney before waiving his Miranda rights, the interrogating officer is required to ask questions to clarify the reference until the suspect either clearly invokes his right to counsel or waives it. See State v. Collins, 937 So.2d 86, 93 (Ala. Crim. App. 2005) (holding that '[b]ecause [the defendant] did not waive her Miranda rights before she asked the questions about obtaining a lawyer, the ambiguity of her questions required the interrogating officer to ask follow-up questions to clarify the ambiguity').
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> "....
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> "In determining whether a suspect's statement was an unequivocal invocation of his right to counsel, we are guided by the following principles:
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> > "'"The applicability of the '"rigid" prophylactic rule' of Edwards[v. Arizona, 451 U.S. 477, 101 S.Ct. 1880 (1981)] requires courts to

> 'determine whether the accused actually invoked his right to counsel.' Smith v. Illinois, [469 U.S. 91, 95, 105 S.Ct. 490, 492, 83 L.Ed.2d 488 (1984)](emphasis added), quoting Fare v. Michael C., 442 U.S. 707, 719 [99 S.Ct. 2560, 2569, 61 L.Ed.2d 197] (1979). To avoid difficulties of proof and to provide guidance to officers conducting interrogations, this is an objective inquiry. See Connecticut v. Barrett, supra, 479 U.S. [523], at 529 [107 S.Ct. [828] at 832 (1987)]. Invocation of the Miranda right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.' McNeil v. Wisconsin, 501 U.S. [171] at 178 [111 S.Ct. [2204] at 2209 (1991).]....
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> " ' "... As we have observed, 'a statement either is such an assertion of the right to counsel or it is not.' Smith v. Illinois, 469 U.S., at 97–98 [105 S.Ct., at 494] (brackets and internal quotation marks omitted). Although a suspect need not 'speak with the discrimination of an Oxford don,' post, at 476, 114 S.Ct., at 2364 (Souter, J., concurring in judgment), he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." '

"Ex parte Cothren, 705 So.2d 861, 864 (Ala. 1997)(quoting Davis, 512 U.S. at 458–59).

"Furthermore, a suspect's reference to an attorney is equivocal if ' "a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking

> the right to counsel." ' Cothren, 705 So. 2d at 864 (quoting Davis, 512 U.S. at 459). '[T]he proper standard to be used in resolving this issue is an objective one—whether a police officer in the field reasonably could have concluded from the circumstances that a suspect was not absolutely refusing to talk without the assistance of an attorney.' Cothren, 705 So. 2d at 866–67.
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> > "Equivocal has been defined as:
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> > " ' " 'Having different significations equally appropriate or plausible; capable of double interpretation; ambiguous,' 5 Oxford English Dictionary 359 (2d ed., J.A. Simpson & E.S.C. Weiner, eds., 1989); and as: 'Having two or more significations; capable of more than one interpretation; of doubtful meaning; ambiguous,' Webster's Third International Unabridged Dictionary 769 (1986)." '
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> "Cothren, 705 So. 2d at 866 (quoting Coleman v. Singletary, 30 F.3d 1420, 1425 (11th Cir. 1994))."

Thompson v. State, 97 So. 3d 800, 806-08 (Ala. Crim. App. 2011).

In the present case, Steele said, "Can I wait on a lawyer or something? I just want to get this shit over with." Steele's statement relating to a lawyer was a question that did not declare anything. A reasonable officer in Inv. Crepeau's position would have understood only that Steele was questioning whether he could wait on a lawyer, and could

reasonably conclude that Steele was not refusing to talk without the assistance of an attorney, especially considering that his question about waiting on an attorney was followed by his statement that he wanted to "get this shit over with." Steele's question was ambiguous at best and did not constitute a clear and unequivocal request for a lawyer. See Cothren, 705 So. 2d at 866 (holding that the phrase "I think I want to talk to an attorney" was not an unequivocal request for an attorney because the "use of the word 'think' could have led [the interrogating officer] to conclude that [the suspect] was not certain as to what he should do'); Gray v. State, 507 So. 2d 1026, 1029 (Ala. Crim. App. 1987)(holding that the query, "Where's the counselor?" was held not to be a clear request for an attorney). Therefore, because Steele did not make an unequivocal request for an attorney, the circuit court did not err when it denied Steele's motion to suppress his statement to police.

Based on the foregoing, the judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.