IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SAMMY ANTHONY TERRAZAS JR.,
Appellant.

No. 2 CA-CR 2014-0416
Filed December 21, 2015

Appeal from the Superior Court in Pima County
No. CR20131170001
The Honorable Richard S. Fields, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Steven R. Sonenberg, Pima County Public Defender
By Michael J. Miller, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial, Sammy Terrazas Jr. was convicted of first-degree murder. The trial court sentenced him to a term of life in prison without the possibility of parole for twenty-five years. On appeal, Terrazas argues the court erred by ruling that his post-arrest statements were voluntary and therefore admissible as impeachment evidence. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding Terrazas's conviction. *See State v. Almaguer*, 232 Ariz. 190, ¶ 2, 303 P.3d 84, 86 (App. 2013). In January 2013, seventeen-year-old Terrazas learned that his girlfriend, E.Q., had "cheated" on him with J.D. Terrazas later threatened J.D. in a series of text messages, claiming to be a "sicario"—a Mexican drug cartel's hitman—and warning J.D., "I'm going to make sure you stop breathing."

¶3 In March 2013, in a separate string of text messages, Terrazas impersonated E.Q. using a different telephone number and set up a meeting with J.D. at J.D.'s apartment complex. When J.D. arrived at the meeting, Terrazas approached him, identified himself, and questioned J.D. about his relationship with E.Q. J.D. refused to answer, and a physical altercation ensued. After Terrazas pulled out a semi-automatic handgun, J.D. repeatedly said "just wait" and began to walk away. Terrazas shot J.D. multiple times as he walked away and after J.D. fell to the ground. J.D. died as a result of his injuries.

¶4 Two days later, after running from police officers, Terrazas was arrested at his high school. He was taken to a police

station and, after being placed in an interview room, requested counsel on three separate occasions. Approximately four hours later, two detectives entered the room and advised Terrazas of his rights pursuant to *Miranda*.[1] Terrazas told the detectives he would answer their questions "[a]s long as [he had] an attorney present." One of the detectives asked if Terrazas had his own attorney, and Terrazas stated that he did not. The detectives informed him that one would be appointed "[b]y the courts" and he would "have to wait" for that to occur. When the detectives stated, "[W]e're not go[ing to] talk to you" and started to leave the room, Terrazas told them, "[I]f I can't have an attorney now, sit down and . . . I'll answer [your questions]." He then admitted having shot J.D. A grand jury indicted Terrazas for first-degree murder.

¶5 Before trial, Terrazas filed a motion to suppress his post-arrest statements. He claimed they were involuntary and obtained in violation of *Miranda* because he had invoked his right to counsel. After a hearing, the trial court determined that "it is absolutely clear that [Terrazas] had expressed a desire to deal with the police only through counsel and he's not subject to further interrogation until counsel has been made available." In granting the motion to suppress, the court found that "the State did not scrupulously honor his right" to counsel.

¶6 At trial, the court clarified its ruling on the motion, explaining that, although Terrazas's statements had been made in violation of *Miranda*, they nonetheless were voluntary and could be used for impeachment. Terrazas testified that, at the time of the confrontation, he "had no knowledge" he was the only one armed and had shot J.D. because he thought J.D. was pulling out a firearm while walking away. During cross-examination, the prosecutor attempted to impeach Terrazas's testimony with his statement during the post-arrest interview that, "[a]s of [his] knowledge," he was the only person armed that night. The jury found Terrazas guilty, and the court sentenced him as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

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

Discussion

¶7 A statement obtained in violation of *Miranda* may be used to impeach a witness if it is voluntary. *Mincey v. Arizona*, 437 U.S. 385, 397-98 (1978); *State v. Huerstel*, 206 Ariz. 93, ¶ 61, 75 P.3d 698, 712 (2003). Terrazas argues the trial court erred in ruling that his statement to the detectives was voluntary and therefore admissible for impeachment purposes. We review the court's determination on the voluntariness of a defendant's statements for an abuse of discretion. *State v. Newell*, 212 Ariz. 389, n.6, 132 P.3d 833, 840 n.6 (2006). "In reviewing the voluntariness of a statement, we consider only the evidence presented at the voluntariness hearing and nothing presented at trial." *Huerstel*, 206 Ariz. 93, ¶ 62, 75 P.3d at 712.

¶8 In Arizona, confessions are prima facie involuntary. *State v. Emery*, 131 Ariz. 493, 498, 642 P.2d 838, 843 (1982); *State v. Arnett*, 119 Ariz. 38, 42, 579 P.2d 542, 546 (1978). The state therefore bears the burden of showing by a preponderance of the evidence that a confession was freely and voluntarily made. *Arnett*, 119 Ariz. at 42, 579 P.2d at 546. "The trial court must look to the totality of the circumstances in evaluating the voluntariness of a confession to decide whether a defendant's will has been overborne." *State v. Tapia*, 159 Ariz. 284, 287-88, 767 P.2d 5, 8-9 (1988); *see also* A.R.S. § 13-3988. "A confession will be found involuntary where the court, considering all the circumstances, determines that one of the following factors exists: (1) impermissible conduct by police, (2) coercive pressures not dispelled, or (3) confession derived directly from prior involuntary statement." *State v. Gretzler*, 126 Ariz. 60, 82, 612 P.2d 1023, 1045 (1980). "When a juvenile confession occurs as a result of police questioning, the 'greatest care must be taken to assure that the admission was voluntary . . . .'" *State v. Jimenez*, 165 Ariz. 444, 449, 799 P.2d 785, 790 (1990), *quoting In re Gault*, 387 U.S. 1, 55 (1967).

¶9 Terrazas maintains that "the failure of the deputies to honor [his] repeated requests for counsel as well as holding him in isolation and in pain for four hours" constituted police misconduct that rendered his statements involuntary. He reasons that, because he was a juvenile, "[h]e understood that he had the right to counsel

while talking to the police but he could not understand why he was told of this right when counsel was not going to be provided to him at the time the police wanted to question him."[2] He contends that "[t]alking to the detectives was the best option to avoid being left alone and hopefully avoid the pain of the handcuffs."

¶10 Terrazas places undue emphasis on the *Miranda* violation to support his argument that his statements were involuntary.[3] "'[V]oluntariness and *Miranda* are two separate inquiries.'" *State v. Pettit*, 194 Ariz. 192, ¶ 19, 979 P.2d 5, 9 (App. 1998), *quoting State v. Montes*, 136 Ariz. 491, 494, 667 P.2d 191, 194 (1983). A *Miranda* violation is relevant to the issue of voluntariness. *Id.* But it is not dispositive. *See id.*; *State v. Strayhand*, 184 Ariz. 571, 591, 911 P.2d 577, 597 (App. 1995). Rather, as mentioned above, courts must consider the totality of the circumstances. *Tapia*, 159 Ariz. at 287-88, 767 P.2d at 8-9; *see also State v. Scholtz*, 164 Ariz. 187, 189, 791 P.2d 1070, 1072 (App. 1990) (listing various voluntariness factors to consider when juvenile involved).

¶11 Despite his multiple requests for counsel, Terrazas unambiguously told the detectives that he wanted to speak with them rather than waiting for an attorney to be appointed to represent him. When Terrazas confirmed that he did not have his own attorney, one of the detectives informed him that an attorney would be appointed to him "[b]y the courts." Terrazas then asked, "So I have to wait?" The detective responded, "Yeah." When the detective then told Terrazas that they were not going to talk to him and they started to leave the room, Terrazas said, "Well I mean that's not what I meant. And if I can't have an attorney now, sit down and . . . I'll answer [your questions]." The detective asked,

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[2]As the state points out, Terrazas was three days away from majority at the time of the interview.

[3]Terrazas points out that he had requested counsel before being read the *Miranda* warnings and maintains that "the right to counsel must . . . be honored" even in that situation. For purposes of this appeal, we assume that Terrazas's right to counsel was violated, as the trial court had found.

"What's that?" Terrazas responded, "If you can please sit down. And I'll answer your questions."

¶12 Additionally, at the end of the interview, the detectives attempted to clarify why Terrazas had decided to answer their questions. He stated, "I can't have an attorney now. I jus' wanna get this off my chest. That's what I was thinking. Jus' sit down. There's no point for an attorney. Jus' go ahead and sit down. And jus' ask me the questions." He said he did so of his "own free will," explaining he had "invited [the detectives] back in" and they never forced him to say anything. "The fact that the conversation occurred at the request of [Terrazas] weighs heavily toward a finding of voluntariness." *State v. Ashelman*, 137 Ariz. 471, 475, 671 P.2d 912, 916 (App.), *disapproved in part on other grounds*, 137 Ariz. 460, 671 P.2d 901 (1983). This evidence supports the trial court's conclusion that Terrazas's age did not render his statements involuntary. There simply was no evidence presented that the detectives in any way coerced, pressured, or promised him anything in order to obtain a statement. *See Gretzler*, 126 Ariz. at 82, 612 P.2d at 1045.

¶13 Next we turn to Terrazas's claim that his statement was involuntary because he was held in isolation for several hours and he experienced pain caused by the handcuffs. A video and transcript of his time in the interview room was admitted into evidence at the suppression hearing. The trial court indicated it had watched the video. A trial court "has the duty to resolve any conflicts in the evidence, and this court will uphold the findings of the trial court on the voluntary nature of a confession if the findings are supported by adequate evidence in the record." *State v. Rhymes*, 129 Ariz. 56, 57, 628 P.2d 939, 940 (1981).

¶14 Although Terrazas was placed in the interview room for approximately four hours in handcuffs before being interviewed by the detectives, this does not, standing alone, establish that he was held in "any prolonged or deliberate" isolation or pain. *State v. Stanley*, 167 Ariz. 519, 524, 809 P.2d 944, 949 (1991). One of the detectives testified they held off interviewing Terrazas until after they had completed their interview of his girlfriend. Nothing in the record suggests the detectives' delay amounted to impermissible conduct. *See State v. Linden*, 136 Ariz. 129, 134, 664 P.2d 673, 678

(App. 1983) (waiting four hours in police custody prior to making statement not "so oppressive" as to render confession involuntary). The video shows that deputies checked on Terrazas several times, provided him with water, and took him to the restroom. Although Terrazas was handcuffed the entire time, his hands initially were restrained in the front of his body. His claim that the handcuffs caused him pain is belied by the fact that the handcuffs were placed behind his back shortly before the detectives entered only because Terrazas had removed one of his hands from the restraints. Terrazas also moved freely around the room, even removing a label from underneath a chair and using it to cover a video-camera lens. He can be seen laughing to himself and appears to have fallen asleep more than once.

¶15 In sum, based upon the totality of the circumstances of Terrazas's post-arrest interview, *see Tapia*, 159 Ariz. at 287-88, 767 P.2d at 8-9, we cannot say the trial court abused its discretion in finding that Terrazas's statements were voluntary and therefore admissible for the purpose of impeachment, *see Newell*, 212 Ariz. 389, n.6, 132 P.3d at 840 n.6; *Huerstel*, 206 Ariz. 93, ¶ 61, 75 P.3d at 712. As we noted above, nothing in the record suggests that Terrazas's statement to the detectives was obtained under "threat, coercion or promises of immunity or a lesser penalty." *State v. Jerousek*, 121 Ariz. 420, 424, 590 P.2d 1366, 1370 (1979).

¶16 In a related argument, Terrazas suggests the trial court erred by "not permit[ting him] to tell the jury of his repeated requests for counsel." He contends that such evidence was necessary for the jury "to properly determine whether his statements were voluntary." Terrazas is correct that a "two-tiered determination of voluntariness exists in Arizona," and it was his "prerogative to present the issue to the jury" after the court determined that his statements were voluntary and admissible. *Linden*, 136 Ariz. at 137-38, 664 P.2d at 681-82; *see also* § 13-3988(A).

¶17 The state argues Terrazas has waived this argument because he did not raise it below and does not argue on appeal that the error amounted to fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (failure to raise claim in trial court constitutes forfeiture of claim absent fundamental and

prejudicial error); *State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (failure to argue fundamental error waives issue on appeal). During trial, when defense counsel questioned Terrazas about his requests for counsel, the prosecutor objected and the court sustained the objection. During a bench conference, defense counsel then explained that he wanted to present Terrazas's requests for counsel to the jurors because "they won't know what happened to him and whether or not his will was overb[orne]." However, after the prosecutor observed that he was foreclosed from addressing Terrazas's treatment by detectives and suggested that he should be permitted to ask those questions if Terrazas could testify about his repeated request for an attorney, defense counsel stated, "I'll move on." Defense counsel thus arguably abandoned the argument. Terrazas nevertheless contends on appeal that defense counsel's response was appropriate because he had "clearly lost the argument." But the court had not made a ruling on the issue. The court's only response was: "I don't know. I just get really nervous when you start talking about people invoking." Moreover, if Terrazas believed he had been thwarted from presenting a full defense on the voluntariness issue by an erroneous evidentiary ruling, he had the opportunity to argue the futility of giving a jury instruction on that issue, which the court had already agreed to do during the same bench conference.[4]

¶18 But even assuming Terrazas sufficiently raised this issue below and there was error, we are confident it was harmless. *See Henderson*, 210 Ariz. 561, ¶ 18, 115 P.3d at 607 ("Harmless error review places the burden on the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence."). The issue underlying Terrazas's entire appeal centers around one statement made during his post-arrest interview that was admitted as impeachment evidence at trial:

[4]The trial court instructed the jury that it should not consider Terrazas's post-arrest statements unless it found that the statements were voluntarily made. However, Terrazas did not argue in closing that the statements were involuntary.

> [Detective]: That night the only gun, the only person armed was you?
>
> [Terrazas]: As of my knowledge.

But apart from that one statement, the state presented substantial evidence of Terrazas's guilt. *See State v. Fulminante*, 161 Ariz. 237, 245, 778 P.2d 602, 610 (1988). Pretending to be E.Q., Terrazas set up a meeting with J.D. to confront him about his relationship with E.Q. Terrazas went to that meeting with a handgun, and, after a physical altercation, he shot J.D. multiple times as J.D. walked away. After J.D. fell to the ground, Terrazas approached him and shot him several times more.

¶19 Although Terrazas maintains that he shot J.D. because he thought J.D. was reaching for a weapon, Terrazas previously had threatened J.D. in a text message, even claiming to be a hitman. Specifically, Terrazas told J.D., "You disrespected me and you made your way, enjoy what you can while you can because when I find you, and I will, I'm going to make sure you stop breathing." Moreover, two residents in the apartment complex testified that they heard a man "begging" before and after the initial series of gunshots. One resident said that she heard a male cry, "Por favor, se[ñ]or, no," meaning "Please, sir, no." Witness credibility is a determination for the jury, *State v. Manzanedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005), and the jury here apparently rejected Terrazas's testimony. We are satisfied that any error from the admission of Terrazas's post-arrest statement did not contribute to or affect the verdict. *See Henderson*, 210 Ariz. 561, ¶ 18, 115 P.3d at 607.

Disposition

¶20 For the reasons stated above, we affirm Terrazas's conviction and sentence.