

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Jose A. Gordillo-Cansigno

Appellant-Defendant

v.

State of Indiana

Appellee-Plaintiff

February 23, 2024

Court of Appeals Case No.
23A-CR-1352

Appeal from the Delaware Circuit Court

The Honorable Judi Calhoun, Judge

Trial Court Cause No.
18C01-2104-F5-48

Memorandum Decision by Judge Riley
Judges Brown and Foley concur

Riley, Judge.

[1] Appellant-Defendant, Jose Gordillo-Cansigno (Gordillo-Cansigno), appeals his convictions for operating a vehicle while intoxicated causing serious bodily injury, a Level 5 felony, Ind. Code § 9-30-5-4(a)(3); and leaving the scene of an accident with moderate or serious bodily injury, a Level 6 felony, I.C. §§ 9-26-1-1.1(a)(1), -(b)(2)(A).

[2] We affirm.

ISSUES

[3] Gordillo-Cansigno presents this court with two issues, which we restate as:

- (1) Whether the trial court erred when it admitted his statements made to EMTs while being transported to the hospital for treatment; and
- (2) Whether the trial court erred when it admitted his statements as impeachment evidence.

FACTS AND PROCEDURAL HISTORY

[4] Around 11:45 p.m. on March 27, 2021, Robert McCoy was driving his truck eastbound on 8th Street in Muncie, Indiana. Robert's wife, Brenda, was in the front passenger seat, and their grandson was in the back passenger seat. As Robert drove through the green light at the intersection of 8th and Walnut Streets, a car driven by Gordillo-Cansigno collided with the front of Robert's truck. Gordillo-Cansigno did not stop after the collision, and Robert followed

Gordillo-Cansigno's car. Gordillo-Cansigno's car died several times, and once Gordillo-Cansigno got out of his car, prompting Robert to call 9-1-1. Gordillo-Cansigno's car died for a final time in the parking lot of a restaurant located at 300 Memorial Drive, several blocks away from the scene of the collision. Law enforcement arrived shortly thereafter. Officer Gary Vannatta (Officer Vannatta) of the Muncie Police Department observed Gordillo-Cansigno exit his vehicle from the driver's seat. Gordillo-Cansigno smelled heavily of alcoholic beverages, slurred his speech, and had red, watery eyes. Officer Vannatta took Gordillo-Cansigno into custody. Brenda was transported to IU Ball Memorial Hospital, where she was diagnosed with two broken bones, one in her forearm and one in her wrist.

[5] Gordillo-Cansigno refused to submit to a chemical or alcohol test. Gordillo-Cansigno was transported to IU Ball Memorial Hospital for treatment of wounds on the right side of his head. Officer Lauren Skinner (Officer Skinner) rode in the ambulance to the hospital with Gordillo-Cansigno. On the way to the hospital, EMTs asked Gordillo-Cansigno questions for purposes of medical treatment, including whether he had consumed alcoholic beverages or food. Gordillo-Cansigno told the EMTs that he had consumed three shots of tequila and two beers that evening and that he had not eaten any food. In response to the EMTs' question about how he had sustained his injuries, Gordillo-Cansigno replied that he had been going twenty-five miles per hour and that "he hit me." (Tr. Vol. II, p. 155). Gordillo-Cansigno's blood was drawn pursuant to a search

warrant. Toxicology analysis revealed that Gordillo-Cansigno's BAC was .161 and that he had THC in his system.

[6] On April 1, 2021, the State filed an Information, charging Gordillo-Cansigno with Level 5 felony operating a vehicle while intoxicated causing serious bodily injury and Level 6 felony leaving the scene of an accident with moderate or serious bodily injury.¹ On April 13, 2023, Gordillo-Cansigno filed a motion to suppress his statements based on the fact that he had never been provided with his *Miranda* advisements. On April 26, 2023, the trial court held a hearing on Gordillo-Cansigno's motion at which the State conceded that Gordillo-Cansigno had not been provided with his *Miranda* advisements and that it would be appropriate to suppress any statements he made to police officers. At the conclusion of the hearing, based on the State's concession, the trial court excluded any statements made by Gordillo-Cansigno to police officers, but it ruled that his statements made in the ambulance to the EMTs treating him were admissible.

[7] On May 1, 2023, the trial court convened Gordillo-Cansigno's two-day jury trial. Robert testified that just prior to the collision, he saw into Gordillo-Cansigno's vehicle and was able to discern that only Gordillo-Cansigno was in the vehicle. Robert identified Gordillo-Cansigno in open court, as did Brenda.

[1] ¹ The State also charged Gordillo-Cansigno with Class B misdemeanor possession of marijuana but dropped the charge prior to trial.

Neither Robert nor Brenda saw a second person in or around Gordillo-Cansigno's vehicle. Over Gordillo-Cansigno's objection, Officer Skinner testified regarding the statements Gordillo-Cansigno made in the ambulance to the EMTs. Gordillo-Cansigno testified on his own behalf that a friend of his had been driving the car at the time of the collision and that the friend had fled after the car came to rest in the restaurant parking lot.

[8] After Gordillo-Cansigno's testimony, the deputy prosecutor sought permission to impeach Gordillo-Cansigno with statements he made to police officers. Gordillo-Cansigno objected to the impeachment on the basis that Gordillo-Cansigno had not been provided with his *Miranda* advisements prior to making the statements. Over Gordillo-Cansigno's objection, the trial court allowed the proposed impeachment. Gordillo-Cansigno did not request that the jury be provided with a limiting instruction regarding the impeachment evidence. The deputy prosecutor then impeached Gordillo-Cansigno with evidence that he had told police officers that he had driven the car involved in the collision the day before, he had instructed officers to retrieve money that he had in the car's middle console, he had been at work prior to the collision, and that he knew what he had done was wrong. On rebuttal, the deputy prosecutor called Officer Skinner, who testified that during the hours she spent with Gordillo-Cansigno, he never mentioned that his friend had been the driver of the car. Officer Skinner confirmed that Gordillo-Cansigno had told her about his whereabouts that night, money he had in the car, his cell phone, and that he knew he was wrong for what he had done.

[9] At the conclusion of the evidence, the jury found Gordillo-Cansigno guilty as charged. On May 31, 2023, the trial court held Gordillo-Cansigno's sentencing hearing. The trial court sentenced Gordillo-Cansigno to three years for his Level 5 felony operating while intoxicated causing serious bodily injury conviction, with two years executed in the Department of Correction and one year suspended to probation. For his Level 6 felony conviction for leaving the scene of an accident with moderate or serious bodily injury conviction, the trial court sentenced Gordillo-Cansigno to one year executed. The trial court ordered Gordillo-Cansigno to serve his sentences concurrently, for an aggregate sentence of three years.

[10] Gordillo-Cansigno now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[11] Gordillo-Cansigno challenges the admission of his statements at his jury trial. Decisions to admit or to exclude evidence are within the sound discretion of the trial court. *Wright v. State*, 108 N.E.3d 307, 313 (Ind. 2018). Accordingly, we afford those decisions deference and will reverse only upon an abuse of the trial court's discretion and when that error affects the defendant's substantial rights. *Id.* However, to the extent a defendant's evidentiary claims implicate constitutional issues, those are matters that we review de novo. *Ramirez v. State*, 174 N.E.3d 181, 189 (Ind. 2021).

II. *Gordillo-Cansigno's Statements*

[12] Gordillo-Cansigno argues that the trial court improperly admitted his statements made to EMTs in the ambulance on the way to the hospital. Gordillo-Cansigno also claims error in the admission of his statements made to law enforcement officers that were admitted as impeachment evidence. We examine each of these claims in turn.

A. *Statements to EMTs*

[13] Gordillo-Cansigno argues that his statements to EMTs should not have been admitted into evidence because he was never provided with his *Miranda* advisements. Pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966), a person taken into police custody who is questioned must first be warned that he has a right to remain silent, that any statement he makes may be used as evidence against him, and that he has the right to an attorney. The trigger for the requirement that a person be provided with these advisements is custodial interrogation. *Albrecht v. State*, 737 N.E.2d 719, 727 (Ind. 2000). “Police custody alone does not trigger *Miranda*; there must be police interrogation as well.” *B.A. v. State*, 100 N.E.3d 225, 233 (Ind. 2018).

[14] Here, the State does not contest that Gordillo-Cansigno was in police custody when he was in the ambulance and spoke with the EMTs. However, the State contends that *Miranda* did not bar the admission of the challenged statements because those statements were made in response to questioning by EMTs, not the police. Although we have not located any cases wherein a defendant

challenged the admissibility of non-*Mirandized* statements made to medical personnel for purposes of treatment while an officer was present, we have previously observed that the mere presence of a police officer when a private party asks the defendant questions does not convert the questioning into custodial interrogation for purposes of *Miranda*. See *P.M. v. State*, 861 N.E.2d 710, 713-14 (Ind. Ct. App. 2007) (holding that there was no custodial interrogation even though P.M. was in custody and an officer was present when a private citizen asked P.M. the question that elicited incriminating statements). Gordillo-Cansigno does not argue that the EMTs were acting as agents of the police, and there is no evidence before us of an agency relationship between the EMTs who questioned Gordillo-Cansigno and the police. Because Gordillo-Cansigno was questioned by the EMTs, who are private citizens, we conclude that *Miranda* did not bar the admission of the challenged statements. See *id.* We also reject Gordillo-Cansigno's argument that his waiver of his right to remain silent in the face of the EMTs' questioning was not knowing, intelligent, and voluntary due to his injury and his intoxication, as this argument is predicated on the incorrect premise that *Miranda* advisements were required before the EMTs could question him. We find no error in the admission of Gordillo-Cansigno's statements to the EMTs.

B. *Statements to the Police*

[15] Gordillo-Cansigno also challenges the statements he made to police that were introduced as impeachment evidence after Gordillo-Cansigno testified at trial. Although the State is prohibited from introducing a defendant's statements

made in violation of *Miranda* during its case-in-chief, such statements may nonetheless be admissible for purposes of impeachment where the defendant testifies at trial and provides testimony that contradicts his prior statements. *See Harris v. New York*, 401 U.S. 222, 224-25, 91 S.Ct. 643, 645, 28 L.Ed.2d 1 (1971) (holding that a defendant’s right to testify “cannot be construed to include the right to commit perjury” and that *Miranda* does not bar the admission of non-*Mirandized* statements for purposes of impeachment “provided of course that the trustworthiness of the evidence satisfies legal standards”). The “trustworthiness” inquiry centers on the voluntariness of the defendant’s statements. *See Mincey v. Arizona*, 437 U.S. 385, 397-98, 98 S.Ct. 2408, 2416, 57 L.Ed.2d 290 (1978) (observing that “*any* criminal trial use against a defendant of his *involuntary* statement is a denial of due process of law”) (emphasis in original); *see also Page v. State*, 689 N.E.2d 707, 710 (Ind. 1997) (“Use of the defendant’s statements as impeachment is restricted only when such statements are obtained under coercion or duress.”).

[16] Relying on *Purcell v. State*, 418 N.E.2d 533 (Ind. Ct. App. 1981), Gordillo-Cansigno argues that the trial court did not follow the proper procedure for ruling on the admissibility of the proposed impeachment evidence because it made no finding regarding the trustworthiness of his statements to police. However, *Purcell* is factually distinguishable because *Purcell* actually challenged the voluntariness of his statements in his suppression arguments. *Id.* at 536. At trial, Gordillo-Cansigno never objected that his statements to the police were involuntary due to anything other than the fact that he had not received his

Miranda advisements. He offers this same limited argument on appeal. These arguments are unpersuasive, as “[a] violation of *Miranda* is not synonymous with a violation of the voluntariness standards.” *Id.* at 535. Contrary to Gordillo-Cansigno’s implication, *Purcell* does not stand for the proposition that a trial court has an affirmative duty to rule on the voluntariness of a defendant’s statement prior to deeming it admissible for purposes of impeachment if the defendant does not challenge the voluntariness of his statements. *See id.* at 535-36.

[17] Gordillo-Cansigno also argues that the trial court did not follow the proper procedure in admitting his statements as impeachment evidence because it did not issue a limiting instruction to the jury that the impeachment evidence should not be considered as substantive evidence of his guilt. However, as correctly pointed out by the State, Gordillo-Cansigno did not request such an instruction, and, therefore, he has waived any claim based on the trial court’s failure to provide an admonishment. *See* Ind. Evidence Rule 105 (providing that a trial court must issue a limiting instruction “on timely request”); *Small v. State*, 736 N.E.2d 742, 746 (Ind. 2000) (holding that a trial court “has no affirmative duty to admonish a jury sua sponte” as to the limited purposes of impeachment evidence and rejecting Small’s claim as waived where he failed to request such an admonishment). Gordillo-Cansigno’s reliance on *Purcell* is unavailing, as *Purcell* is silent as to whether the defendant requested a limiting instruction. *Id.* at 537 (opinion on rehearing); *Purcell v. State*, 406 N.E.2d 1258-59 (Ind. Ct. App. 1980) (opinion affirming Purcell’s conviction). We note,

however, that Gordillo-Cansigno does not provide us with any cases reversing a criminal conviction based on *Purcell* and a trial court's failure to sua sponte issue a limiting instruction as to impeachment evidence garnered in violation of *Miranda*, and our own research uncovered none. Accordingly, we find no error.

CONCLUSION

[18] Based on the foregoing, we hold that the trial court committed no error when it admitted Gordillo-Cansigno's statements to EMTs and to the police into evidence.

[19] Affirmed.

Brown, J. and Foley, J. concur

ATTORNEY FOR APPELLANT

Ronald K. Smith
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caroline G. Templeton
Deputy Attorney General
Indianapolis, Indiana