STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MAURICE TREMAYNE NORTON,

Defendant-Appellee.

UNPUBLISHED
December 16, 2021

No. 356835
Wayne Circuit Court
LC No. 20-002884-01-FC

Before: CAVANAGH, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

In this interlocutory appeal, the prosecution appeals by delayed leave granted[1] the trial court's order granting defendant's motion to suppress his statement to police at his trial for second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On appeal, the prosecution argues that the trial court erred because defendant reinitiated the interview after he had requested a lawyer, and his later references to an attorney were equivocal and ambiguous thus he did not clearly assert his right to counsel, and the police were not required to end the interrogation. We agree and reverse the trial court's order granting defendant's motion to suppress.

This appeal arises out of a fatal shooting in Detroit. On the evening of April 6, 2018, Detroit Police Department officers responded to Linwood Street after receiving a call about a loud commotion near a house on that street. The residents of the house, Antoinette Williams ("Williams"), Shams-Deen Aigoro, and Brandon Young ("the victim") were visiting with their neighbor and friend, Shamona Williams ("Shamona"), when an argument prompted one of them to call the police. Police officers were called to Aigoro's house to escort Shamona out, but she returned shortly thereafter, and the argument resumed in the kitchen. The victim was also in the

[1] *People v Norton*, unpublished order of the Court of Appeals, entered May 12, 2021 (Docket No. 356835).

kitchen, but he was not involved in the argument. The rear doorbell rang, and the victim answered the door. He was immediately shot once in the face and neck. The victim ultimately died.

On September 6, 2018, Detroit Police Department Sergeant Matthew Gnatek and Detroit Police Department Detective Gentry Shelby interviewed defendant. Detective Shelby audio recorded the interview and defendant was advised of his constitutional rights and signed a constitutional rights form. The interview started at 10:46 a.m. and ended at 10:50 a.m. when defendant requested an attorney. Either Sergeant Gnatek or Detective Shelby hit the "call" button and then both waited for deputies to escort them out of the room. Sergeant Gnatek testified that the recording stopped at that point because the interview ended after defendant had asked for an attorney. He also testified that a minute afterwards, defendant stated that he would talk without the presence of an attorney.

An audio recording of the interview was attached to the prosecution's brief on appeal. Contrary to Sergeant Gnatek's testimony, the recording device was still recording after defendant had asked for an attorney. The audio recording indicates that defendant and Detective Shelby briefly continued talking about the incident after defendant had asked for an attorney, but Sergeant Gnatek told defendant, "You're not allowed to talk [to us] once you ask for an attorney," to which defendant responded, "I want to say something . . . I want to say something." Defendant followed with a description of what had happened on the night of the incident. Sergeant Gnatek and Detective Shelby told defendant that others had identified him as the shooter and that they thought his story was "b***s**t." Sergeant Gnatek also told defendant that he believed defendant shot the victim, but that the shooting was accidental. Nearly halfway through the interview, defendant said, "I feel like I need a lawyer," to which Sergeant Gnatek responded, "Well, I can't talk to you if you want an attorney, we can't talk to you . . . and you can't ask us for legal advice." Defendant can then be heard asking, "They trynna set this on me? Then I need somebody with higher legal knowledge than I do," to which Sergeant Gnatek responded, "If you ask for an attorney, we have to leave . . . we are done, we are done . . . we are not coming back to talk to you." Detective Shelby asked defendant questions about a codefendant; defendant seemed hesitant to answer these questions, but he answered them. Detective Shelby began to write questions down and ask defendant for answers. Ultimately, defendant told Sergeant Gnatek and Detective Shelby his version of events and reviewed the statement Detective Shelby had written. Defendant made some corrections to the statement and then signed and dated each page.

Defendant was subsequently charged and bound over for second-degree murder[2] and felony-firearm. On December 10, 2020, defendant filed a motion for a *Walker*[3] hearing and a motion to suppress, requesting that the trial court suppress the statements he made during the interview. Defendant argued that once he told Sergeant Gnatek and Detective Shelby that he wanted a lawyer, the officers responded "this ain't no f***ing movie," and repeated that statement multiple times. Defendant also argued, albeit erroneously but in accordance with Sergeant Gnatek's testimony, that the audio recording did not include defendant's statement regarding his

[2] Defendant was originally charged with open murder, MCL 750.316, but he was bound over for second-degree murder.

[3] *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).

willingness to speak to Sergeant Gnatek and Detective Shelby without the presence of an attorney. Moreover, defendant argued that, after having asked for an attorney, Sergeant Gnatek and Detective Shelby should have ceased all questioning, and by continuing to question him, they violated his constitutional rights.

A hearing on defendant's motion for a *Walker* hearing was held on December 14, 2020. The prosecution argued that after defendant had asked for an attorney, all questioning stopped, but defendant continued talking, which can clearly be heard on the audio recording when defendant said he wanted to say something, after which the interview resumed. The prosecution indicated that Sergeant Gnatek was mistaken when he testified that defendant's statement was not captured on the audio recording because the recording device was turned off. Moreover, the prosecution argued that defendant's later references to a lawyer were equivocal.

The trial court granted defendant's motion to suppress. The trial court first noted that the parties had stipulated to allow the trial court to decide the motion by relying on the audio recording and testimony from the preliminary examination in lieu of a *Walker* hearing. The trial court stated:

> What is clear, that on at least four separate occasions, he asked for an attorney. The first time he asked for an attorney, the interview stops. And even if it's as the prosecutor says, that the defendant is the one who re-engaged, he re-engaged and repeatedly said that he felt like he needed a lawyer. He felt like he needed someone with higher legal knowledge than he does [sic].
>
> And it's not even so much what the defendant says, it's what the officers say in response to the defendant's repeated inquiries about the necessity of having counsel. And it's as if the officers are trying to convince him that he doesn't really need a lawyer, that it would be in his best interest to go ahead and talk to them without a lawyer.
>
> They say things to him like, you know, we know what the deal is. We know what these other people are saying. We're just trying to get your side of the story. And at one point, he's explicitly told by the officer, asking for an attorney doesn't make it go away.
>
> So I have to look at the totality of the circumstances here. When you have a young man with relatively -- the record doesn't reflect that he has any, you know, extensive history of interacting with the police, but we do know that he told the officers that he had a tenth grade education.
>
> And we do know that in addition to first asking for an attorney, before they even get into the substance of the heart of the statement where he makes these incriminating statements, he repeatedly says that he felt like he needed an attorney.
>
> So although, you know, one might say that that's not an unequivocal request for an attorney, yeah well, on its own if he's just saying I feel like I need an attorney or I think I need someone with higher legal knowledge than I do to help me here, you know, if you look at it together with everything including his initial request for an attorney and the officer's statements trying to convince him . . . .

Accordingly, the trial court entered an order granting defendant's motion to suppress statements.

On appeal, the prosecution argues that the trial court erred when it granted defendant's motion to suppress his statement to police officers because defendant reinitiated the interview after he had requested a lawyer, and his later references to an attorney were equivocal and ambiguous thus he did not clearly assert his right to counsel, and the police were not required to end the interrogation. We agree.

This Court reviews a trial court's ultimate decision on a motion to suppress de novo. *People v Mullen*, 282 Mich App 14, 21; 762 NW2d 170 (2008). Moreover, this Court reviews for clear error a trial court's factual findings in a ruling on a motion to suppress evidence. *People v Tanner*, 496 Mich 199, 206; 853 NW2d 653 (2014) (citation omitted). A trial court's factual findings are clearly erroneous when this Court is left with a definite and firm conviction that the trial court made a mistake. *People v Johnson*, 502 Mich 541, 565; 918 NW2d 676 (2018).

The trial court erred when it granted defendant's motion to suppress evidence of statements he made to police officers during his interrogation because, under the totality of the circumstances, defendant voluntarily, knowingly, and intelligently waived his right to an attorney, and defendant's constitutional rights were not violated when police officers continued to interview him.

In *Miranda v Arizona*, 384 US 436, 467; 86 S Ct 1602; 16 L Ed 2d 694 (1966), the United States Supreme Court established procedures designed to safeguard the right to remain silent protected by the Fifth Amendment, US Const, Am V. The Supreme Court held that when an officer interrogates a person who is in custody, that person must be "informed in clear and unequivocal terms" that he has the right to remain silent and that anything that he says can be used against him in court. *Id*. at 467-469. The Court also determined that the right to have counsel present during the interrogation is indispensable to the protection of the Fifth Amendment right. *Id*. at 469. Accordingly, a person in custody must also be advised that he has the right to consult a lawyer and to have the lawyer present during interrogation, and that, if he cannot afford a lawyer, one will be appointed for him. *Id*. at 471-473.

The Supreme Court also established several rules to prevent abuses of these constitutional rights. "If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Id*. at 473-474. Any statements that occur after that point are deemed to be the product of compulsion. *Id*. at 474. Unless the person in custody has been given the required warnings and still waives his rights, "no evidence obtained as a result of interrogation can be used against him." *Id*. at 479. A person in custody may waive his rights if the waiver is made voluntarily, knowingly, and intelligently. *Id*. at 444.

In a case decided after *Miranda*, the Supreme Court had occasion to address what happens when a person in custody asserts his right to counsel. The Supreme Court explained in *Edwards v Arizona*, 451 US 477, 484-485; 101 S Ct 1880; 68 L Ed 2d 378 (1981), that an accused, "having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him . . . ." The assertion of the right to counsel during a custodial interrogation is a per se invocation of the right to remain silent. *Id*. at 485. However, the defendant's request for an attorney must be unambiguous and unequivocal. *Berghuis v Thompkins*, 560 US 370, 381-382; 130 S Ct 2250; 176 L Ed 2d 1098

(2010). "[I]f a suspect makes a reference to an attorney that is ambiguous or equivocal," and "a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel," the officer is not required to cease questioning. *Davis v United States*, 512 US 452, 459; 114 S Ct 2350; 129 L Ed 2d 362 (1994) (emphasis in original). The *Edwards* Supreme Court emphasized that it was "inconsistent with *Miranda*" to allow police officers, "at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel." *Edwards*, 451 US at 485. There is, however, an exception to this rule—an officer may again interrogate a suspect who has asserted the right to remain silent, without first providing the suspect with the requested lawyer, if the suspect "initiates further communication, exchanges, or conversations with the police." *Id*. at 484-485.

The Supreme Court discussed the proper application of the *Edwards* rule in *Oregon v Bradshaw*, 462 US 1039; 103 S Ct 2830; 77 L Ed 2d 405 (1983). In that case, the issue before the Supreme Court was whether the initiation by the defendant of a conversation with a police officer constitutes, by itself, a waiver of the defendant's Fifth Amendment rights. *Id*. at 1041-1044. The Supreme Court concluded that—even after a defendant reinitiates a conversation with police—the burden remains on the prosecution to show that the defendant waived his Fifth Amendment rights. *Id*. at 1044-1045. The Supreme Court then determined that there was no violation of the *Edwards* rule because the defendant initiated the conversation with the police officer, who reasonably understood that the defendant's question related to the investigation. *Id*. at 1045-1046. After making that determination, the Supreme Court explained that the relevant question was whether the defendant validly waived his right to counsel and the right to remain silent under the totality of the circumstances, which included the necessary fact that the accused, not the police officer, reopened the dialogue. *Id*. at 1046. The Supreme Court agreed that the trial court properly concluded that the defendant's statements were voluntary and the result of a knowing waiver of his rights. *Id*. at 1046-1047.

Therefore, the *Edwards* rule embodies two independent inquiries. First, courts must determine whether the accused actually invoked his right to counsel. Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) made a knowing and intelligent waiver of the right he had invoked. See *id*. at 1044-1046. "[T]he test is whether, under the totality of the circumstances, the person voluntarily, knowingly, and intelligently waived his right to counsel and to remain silent." *People v Clark*, 330 Mich App 392, 398; 948 NW2d 604 (2019). In addition, this Court has held that "police are not required to read *Miranda* rights every time a defendant is questioned." *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992) (citation omitted). Notably, the *Littlejohn* Court stated it was sufficient that the police officer reminded the defendant that he had earlier been advised of his rights and asked whether he still understood them after the defendant "independently initiated contact" with the officer. *Id*.

Here, defendant asked for an attorney within the first few minutes of the interview so Sergeant Gnatek and Detective Shelby stopped the interview; they pressed the "call" button for a deputy to come and escort them out. Sergeant Gnatek and Detective Shelby also told defendant that the interview would end, and they would leave if he wanted an attorney. Defendant can clearly be heard on the recording state that he wanted to "say something." So, defendant unequivocally reinitiated the interview, and then provided the officers with a description of the shooting incident.

Because defendant reinitiated the discussion, Sergeant Gnatek and Detective Shelby were not required to cease questioning or stop the interview.

Thereafter, Sergeant Gnatek and Detective Shelby employed typical interrogation tactics to obtain a statement from defendant. They told defendant that others had identified him as the shooter and that they thought his story was "bullsh*t." Sergeant Gnatek told defendant that he believed defendant shot the victim, but that the shooting was accidental. This kind of persistence is characteristic of most police interviews with a suspect. At one point, defendant stated, "I feel like I need a lawyer," and Sergeant Gnatek immediately advised him that they could not talk to him if he wanted a lawyer. Defendant followed by expressing concern that others had identified him as the shooter, and then said that he needed to talk to someone with "higher legal knowledge." However, these statements were not unequivocal requests for an attorney. In *Davis*, 512 US at 462, the Supreme Court held that the defendants' statement, " '[m]aybe I should talk to a lawyer,' " was not an unequivocal and unambiguous request for counsel. Furthermore, this Court, in *People v Tierney*, 266 Mich App 687, 711; 703 NW2d 204 (2005), held that the defendant's statements, " '[m]aybe I should talk to an attorney,' " or " 'I might want to talk to an attorney,' " were "almost identical" to the statement at issue in *Davis*, and thus, "were not unequivocal demands" for counsel. Defendant's statements here were very similar to the statements in *Davis* and *Tierney*. In addition, defendant knew that he could ask for an attorney and stop the interview because he had done so within the first few minutes of the interview. Sergeant Gnatek and Detective Shelby had stopped the interview within the first few minutes and called for a deputy to escort them out. Hence, defendant was fully aware that he could stop the interview if he did not want to be interviewed without the presence of an attorney.

Defendant again made a reference to counsel when Sergeant Gnatek misunderstood what defendant had said about a specific fact that was being included in the written statement that Detective Shelby was drafting. Defendant said, "no, no," and something to the effect of that was why he needed a lawyer. But defendant immediately continued to answer questions without hesitation, and did not appear to want to end the interview. Again, defendant's reference to a lawyer here was not an unequivocal request for counsel. Notably, defendant even made some corrections to the written statement and then signed and dated each page. Accordingly, under the totality of the circumstances, defendant voluntarily, knowingly, and intelligently waived his right to an attorney, and defendant's constitutional rights were not violated when Sergeant Gnatek and Detective Shelby continued to interview him following equivocal and ambiguous statements regarding the need for counsel.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Michael J. Kelly