

[Cite as *State v. Grissom*, 2011-Ohio-1796.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100542
	:	TRIAL NO. B-1001573-E
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
FREDRICK GRISSOM,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: April 15, 2011

Joseph T. Deters, Prosecuting Attorney, and *Scott M. Heenan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Jerome J. Grogan, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

SUNDERMANN, Presiding Judge.

{¶1} Fredrick Grissom appeals his conviction for receiving stolen property. We conclude that his assignments of error do not have merit, so we affirm the judgment of the trial court.

{¶2} Grissom was indicted for one count of receiving stolen property in violation of R.C. 2913.51(A). He waived his right to a jury trial, and his case was heard by the court. The trial court also considered Grissom's motion to suppress statements that he had made to police investigators.

{¶3} At trial, Charles Ward testified that he had awoken on the morning of April 4, 2010, and had discovered that his television had been taken from his house. Ward testified that he had paid \$2,100 for the television approximately three to four years earlier, and that his insurance company had paid him \$1,134.47 for his loss claim for the television. The court overruled Grissom's motion to suppress and, at the conclusion of the trial, found him guilty as charged.

{¶4} Forest Park Detective Jackie Dreyer testified that she had been dispatched to Ward's house as part of an investigation of a series of burglaries that had occurred in the area. During her investigation, she received information that led her to execute a search warrant at Grissom's residence. A search of Grissom's bedroom led to the discovery of a television that matched the description that Ward had given of his television.

{¶5} Dreyer also testified about a series of text messages between Grissom and Dishon Long that had occurred in early March. According to Dreyer, Long had been subsequently arrested and charged with several burglaries that were the subject of the investigation. The text messages indicated that Grissom was aware that Long

had stolen property, and that Grissom had offered to pick up some of the items. But the text messages had occurred a month prior to the Ward burglary.

{¶6} Forest Park Police Sergeant Rick Jones testified that he had been present at Grissom's house when the search warrant was executed. Jones testified that he had helped with the search and with the removal of Grissom from the house. According to Jones, Grissom had been arrested at the house. Jones stated that after Grissom had been placed in handcuffs, Grissom began to talk and ask questions, so Jones advised him of his *Miranda*¹ rights. Jones testified that Grissom had stated that he understood his rights. Jones transported Grissom to the Forest Park Police Department.

{¶7} Springfield Township Detective Eric Catron testified that he had also been involved in the multijurisdictional burglary investigation. According to Catron, he had been summoned to the Forest Park Police Department to interview suspects approximately three to four hours after a search warrant had been executed. The state admitted into evidence a video recording and transcript of Catron's interview with Grissom. Toward the end of the interview, Grissom said, "Listen, I just don't understand. I didn't do anything. I understand that I received stolen property. I paid for it cash money, everything."

{¶8} Grissom's mother, Shirley Anne Dorsey, testified on his behalf. According to Dorsey, Long had sold her the television that had been found in Grissom's bedroom. Dorsey stated that Long had told her that the television belonged to his brother who needed to sell it. Dorsey testified that, before she bought the television, she spoke to a person who, Long had claimed, was his brother, and that the person had confirmed that he wanted to sell the television.

¹ *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602.

{¶9} At the conclusion of the testimony, the trial court found Grissom guilty as charged and sentenced him to three years of community control.

{¶10} In his first assignment of error, Grissom asserts that the trial court erred when it overruled the motion to suppress his statements made to Catron. Our review of the trial court's denial of the motion to suppress presents a mixed question of fact and law.² We must accept the trial court's findings of fact if they are supported by competent and credible evidence.³ Then we must conduct a de novo review to determine if the trial court properly applied the law to those facts.⁴

{¶11} Grissom argues that he was not properly advised of his *Miranda* rights before he made the statements to Catron. He does not deny that he had been advised of his *Miranda* rights at his house. But he contends that the warnings had gone stale by the time that he was questioned by Catron.

{¶12} In *State v. Roberts*, the Ohio Supreme Court considered whether a *Miranda* warning given two hours before a defendant made a statement was sufficient to protect the defendant's constitutional rights.⁵ The court cited the Supreme Court of Connecticut's decision in *State v. Burge* as the standard by which it would consider the defendant's argument.⁶ In that case, the Connecticut court stated that "[t]he test is whether the warnings given are, in light of the particular facts and totality of circumstances, sufficiently proximate in time and place to custodial status to serve as protection 'from the coercive pressures that can be brought to bear upon a suspect in the context of custodial interrogation.'"⁷ The Connecticut court, referring to precustodial warnings in that case, recognized that

² *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8.

³ Id.

⁴ Id.

⁵ (1987), 32 Ohio St.3d 225, 513 N.E.2d 720.

⁶ Id. at 232, citing *State v. Burge* (1985), 195 Conn. 232, 487 A.2d 532.

⁷ *Burge*, supra, at 248, citing *Berkemer v. McCarty* (1984), 468 U.S. 420, 429, 104 S.Ct. 3138.

“warnings may fail to provide the necessary protection if the overall situation becomes significantly more coercive as a result of a change to custodial status or if, because of a significant lapse in the process of interrogation, the warnings have become so stale as to dilute their effectiveness.”⁸

{¶13} With this guidance in mind, the Ohio Supreme Court adopted the totality-of-the-circumstances test delineated by the Supreme Court of North Carolina in *State v. McZorn*.⁹ The test is to be used to “determine whether the initial warnings have become so stale and remote that there is a substantial possibility the individual was unaware of his constitutional rights at the time of the subsequent interrogation.”¹⁰ The factors to be considered are as follows: “(1) the length of time between the giving of the first warnings and subsequent interrogation, * * * (2) whether the warning and subsequent interrogation were given in the same or different places, * * * (3) whether the warnings were given and the subsequent interrogation conducted by the same or different officers, * * * (4) the extent to which the subsequent statement differed from any previous statements, * * * (5) the apparent intellectual and emotional state of the suspect.”¹¹

{¶14} Application of the factors to this case leads us to conclude that, under the totality of the circumstances, the warnings that were initially given to Grissom had not become so stale and remote that there was a substantial possibility that he was unaware of his constitutional rights. No witness could state with certainty the amount of time that had elapsed between the initial *Miranda* warnings and the subsequent interrogation by Catron. But according to Catron’s testimony, he had

⁸ *Burge*, supra, at 248-249.

⁹ *Roberts*, supra, at 232, citing *State v. McZorn* (1975), 288 N.C. 417, 219 S.E.2d 201.

¹⁰ *McZorn*, supra, at 434.

¹¹ *Id.*

been summoned to the Forest Park Police Department three or four hours after the search warrant had been executed. And although the warnings and the interrogation occurred in separate places, there was no change in Grissom's custodial status. Grissom had been placed in handcuffs at his house and transported to the Forest Park Police Department.

{¶15} More troubling for purposes of the totality-of-the-circumstances test adopted by the Ohio Supreme Court is that Grissom was given the *Miranda* warnings by one police officer and then interrogated by another police officer from a different jurisdiction. This factor figured strongly in *Roberts*. But there the defendant had been given his *Miranda* warnings by a police officer and then had made statements to a probation officer with whom the defendant had a prior relationship.¹² Such a prior relationship clearly could have diluted the effectiveness of the earlier given warnings. Here, even though Grissom was warned and interrogated by two different officers, there were no factors, such as a previous relationship, that would have diluted the effectiveness of the initial warnings. When he was read the *Miranda* warnings, Grissom told Jones that he understood his rights. No evidence suggested that Grissom's intellectual and emotional state was such that his understanding of his rights was later compromised. The first assignment of error is overruled.

{¶16} In his second assignment of error, Grissom asserts that the trial court erred when it found him guilty of receiving stolen property. Grissom contends that the state presented insufficient evidence of the value of the property to sustain a felony conviction.

{¶17} Under R.C. 2913.51, if the value of the property involved in the receiving-stolen-property offense is more than \$500 but less than \$5,000, the

¹² *Roberts*, supra, at 230.

offense is a fifth-degree felony. We conclude that Ward's testimony about what he had paid for the television three or four years before the theft, as well as his testimony about the amount paid by his insurance company for his loss claim, was sufficient evidence of the value of the television. The second assignment of error is overruled.

{¶18} We therefore affirm the judgment of the trial court.

Judgment affirmed.

HENDON and CUNNINGHAM, JJ., concur.

Please Note:

The court has recorded its own entry this date.