[Cite as *State v. Renfro*, 2012-Ohio-2848.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-07-142
	:	O P I N I O N
- vs -		6/25/2012
	:	
RICCARDO A. RENFRO a.k.a. RICCO RENFRO,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2010-08-1370

Michael T. Gmoser, Butler County Prosecuting Attorney, Michael A. Oster, Jr., Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

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POWELL, P.J.

{¶ 1} Defendant-appellant, Riccardo A. Renfro a.k.a. Ricco Renfro, appeals from his conviction in the Butler County Court of Common Pleas for one count of murder and one count of aggravated robbery. For the reasons outlined below, we affirm.

{¶ 2} On August 8, 2010, Renfro, Phillip Platt and Keri Kakaris agreed to rob Ransom "Randy" Maines at Kakaris' father's house. The three carried out the plan on the morning of

August 9, 2010. Kakaris called Maines and asked him to meet her at the house. Once Maines arrived, Renfro and Platt, who were hiding in a closet, jumped out and attacked Maines. Maines fought back. During the struggle, Renfro applied a choke hold around Maine's neck. The two took Maines' money and some of his property and fled the scene.

{¶ 3} Maines was found dead later that day. Dr. James Swinehart performed an autopsy on August 10, 2010. The autopsy revealed that Maines had "died of cerebral hypoxia due to neck compression" by yoking.[1] The police arrested Renfro on August 10, 2010, at a house in Franklin, Ohio. After receiving *Miranda* warnings, Renfro showed the police the location of the jewelry and other items he took during the robbery. Renfro was transported to the Middletown City Detective Division where he was re-warned and then interrogated. During this interrogation, Renfro made incriminating statements. He also provided his cellular telephone number and offered to show the detectives text messages he and Platt exchanged while planning the robbery. The police later subpoenaed Renfro's cell phone records detailing these text messages.

{¶ 4} A grand jury indicted Renfro on September 29, 2010, on one count of aggravated robbery in violation of R.C. 2911.01(A)(1) and one count of murder in violation of R.C. 2903.02(B) for the robbery and murder of Maines. The trial court denied his motion to suppress the statements he made to police on the night of his arrest. Following a three-day jury trial, Renfro was found guilty as charged and sentenced to serve a sentence of fifteen years to life.

{¶ 5} Renfro now timely appeals his conviction, raising two assignments of error for review.

{¶ 6} Assignment of Error No. 1:

1. According to Dr. Swinehart, "yoking" is when a neck is compressed by an arm and it is usually done from behind.

{¶ 7} IT WAS ERROR TO ADMIT INTO EVIDENCE ANY OF THE ALLEGED STATEMENTS OF APPELLANT, WHETHER ORAL OR WRITTEN OR TAPED, AS THE APPELLANT WAS NOT ADEQUATELY ADVISED OF HIS MIRANDA RIGHTS RELATIVE TO THE PRESENCE OF A LAWYER DURING QUESTIONING.

{¶ 8} In his first assignment of error, Renfro challenges the adequacy of the *Miranda* warnings he received on August 10, 2010, prior to his statement in Franklin, Ohio, and the interrogation at the Middletown police department. Renfro argues that he was not fully advised of his right to have a lawyer present while being questioned or that a lawyer could be appointed before questioning. Additionally, Renfro asserts that he was not advised he could stop talking at any time during questioning. Renfro contends that as a result of these alleged deficiencies in the *Miranda* warnings, he did not knowingly and intelligently waive his *Miranda* rights, and thus his statements should have been suppressed. We find no merit to this argument.

{¶ 9} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Rader*, 12th Dist. No. CA2010-11-310, 2011-Ohio-5084, ¶ 7. When considering a motion to suppress, the trial court assumes the role of the trier of fact, and therefore is in the best position to resolve factual questions and evaluate the credibility of witnesses. *In re J.B.*, 12th Dist. No. CA2004-09-226, 2005-Ohio-7029, ¶ 52, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992).

> Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.

State v. Geldrich, 12th Dist. No. CA2006-10-267, 2008-Ohio-2622, ¶ 13, quoting *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8.

{¶ 10} It is well-established that before law-enforcement officials question a suspect in custody, the suspect must be advised of his *Miranda* rights and make a knowing and intelligent waiver of those rights before any statements obtained during the interrogation will be admissible. *State v. Treesh*, 90 Ohio St.3d 460, 470, 2001-Ohio-4. *Miranda* requires that the suspect be warned: "[1] that he has the right to remain silent, [2] that anything he says can be used against him in a court of law, [3] that he has the right to the presence of an attorney, and [4] that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Florida v. Powell*, __ U.S. __, 130 S.Ct. 1195, 1203 (2010), quoting *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602 (1966). These four warnings are invariable, but the United States Supreme Court has never required *Miranda* warnings to be given in a specific form. *Powell* at 1204; *State v. Foust*, 105 Ohio St.3d 137, 2004-Ohio-7006, ¶ 68. Instead, the warnings must touch all of the bases required by *Miranda*. *See State v. Dailey*, 53 Ohio St.3d 88, 90-91 (1990); *Duckworth v. Eagan*, 492 U.S. 195, 200, 109 S.Ct. 2875 (1989). "In determining, whether police officers adequately conveyed the four warnings, * * * reviewing courts are not required to examine the words employed 'as if construing a will or defining the terms of an easement.'" *Powell* at 1204, quoting *Duckworth* at 203. Rather, the inquiry is simply whether the warnings reasonably convey to a suspect his rights as required by *Miranda. Powell* at 1204, citing *California v. Prysock*, 453 U.S. 355, 361, 101 S.Ct. 2806 (1981).

{¶ 11} The record from the motion to suppress hearing indicates that on August 10, 2010, Renfro was arrested by Middletown and Franklin police officers at a home in Franklin, Ohio. At the time of the arrest, the police did not advise him of his *Miranda* rights. Detective Steven C. Winters, City of Middletown Division of Police, the lead investigator of the homicide of Maines, testified that he arrived at about 2:00 or 2:30 a.m., approximately 10 to 15 minutes after Renfro's arrest. When Detective Winters arrived on the scene, Renfro was handcuffed

and seated on the sidewalk. Renfro told Detective Winters that he wanted to talk to him and show him the location of the jewelry and other items he received during the robbery. Winters moved Renfro in front of a cruiser camera where the following exchange took place:

> OFFICER WINTERS: I'm Detective Winters and that's Detective Mossman with the Middletown Police Department. Okay. Let me read you something real quick before – I'm a police officer, and I warn you that you have the right to remain silent, and what you say can and will be used against you in a court of law. And you have the right to consult with a lawyer before and during any questioning, and you have a right to have a lawyer present with you during any questioning. If you cannot afford an attorney, one will be provided for you free of charge. Do you understand these rights?
>
> DEFENDANT: Yes.
>
> OFFICER WINTERS: You speak English fine. At this time, what I'm asking you is when we were over there, you made a statement that you knew --- (indiscernible). Would you mind taking us up there and showing us in the house? Okay. Are you sure? All right. We'll go back upstairs.

{¶ 12} After receiving these warnings, Renfro then told Winters and the other officers the location of the items taken from the victim during the robbery. No other interview occurred at this location. Renfro was then transported to the Middletown City Detective Division and placed in an interview room. Prior to beginning the interrogation at about 4:20 a.m., Detective Winters once again advised Renfro of his constitutional rights:

> OFFICER WINTERS: Well, like I said, this is Detective Mossman, and I'm Detective Winters. * * *.
>
> So what I'm going to do is I'm going to read you your Miranda, the same thing I read to you out there in front of the cruiser. And this is pretty much verbatim the same thing I told you, that I'm a police officer and I warn you that you have the right to remain silent, and anything that you say can and will be used against you in a court of law. And you have a right to counsel with a lawyer before, and during any questioning. Do you understand these rights that I have read to you? Also, one aspect is that if you cannot afford an attorney, one will be provided to you free of charge if you cannot afford one.

> You speak English. You graduated through Middletown High School. [C]orrect? Okay. Do you understand these? What I'm asking you to do is flip it over and sign the card.

{¶ 13} After hearing these warnings, Renfro signed a *Miranda* warnings card, which stated: "I Riccardo Renfro have been advised of all my rights as contained on this card and I understand all of them and I wish to talk to you without having a lawyer present." It was dated August 10, 2010 at 4:20 a.m. and witnessed by Detective Winters. Winters testified at the suppression hearing that Renfro read the constitutional rights card as he repeated the warnings. Renfro then proceeded to answer Detectives Winters and Mossman's questions and provided incriminating statements related to the murder and robbery of Maines.

{¶ 14} Once the interview was complete, Renfro began writing a voluntary statement and completed it at 5:15 a.m. The statement was admitted into evidence at the suppression hearing and consists of three pages. The page before Renfro's written statement contains constitutional warnings and a waiver of rights. It was also signed and dated by Renfro.

{¶ 15} At the suppression hearing, the state introduced videotaped recordings of the warnings given to Renfro at the home in Franklin (Franklin warnings) and at the police station in Middletown (Middletown warnings), Renfro's written statement, and his signed *Miranda* warnings card. Detective Winters also testified that during the interview Renfro was oriented to place and time, given drinking water, and his articulation and mannerisms were appropriate. Furthermore, Winters testified that Renfro never requested an attorney after he read him his *Miranda* rights or prior to giving his written statement.

{¶ 16} Renfro sought to suppress all statements made to the officers on August 10, 2010. After considering the testimony and evidence presented at the hearing, along with the written memoranda, the trial court found "[b]ased on the totality of the circumstances, * * * adequate Miranda warnings were given and overrule[d] defendant's motion to suppress statements given to the Middletown detectives and police in Franklin, Ohio and at the

Middletown Police Department."

{¶ 17} As to the statements made in Franklin, it is clear from the record, that the warnings given to Renfro touched all bases of *Miranda*. Detective Winters informed Renfro that he had the "right to remain silent, and what you say can and will be used against you in a court of law." This statement is a virtual recitation of the first two warnings required under *Miranda.* Renfro challenges the adequacy of *Miranda's* third and fourth warnings, as to the right to counsel. He asserts that he was not informed of the right to have an attorney present while being questioned or that the attorney could be appointed before questioning. The Supreme Court of the United States has stated an individual "must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." *Powell* at 1203, quoting *Miranda* at 471.

{¶ 18} In Franklin, Detective Winters informed Renfro he had "the right to consult with a lawyer before and during any questioning, and you have a right to have a lawyer present with you during any questioning." This statement falls within the confines of *Miranda* as it clearly informed Renfro of his right to consult with a lawyer and to have the lawyer present during questioning. Renfro was also informed that the attorney could be appointed prior to the questioning. The first warning, that he had the right to consult with an attorney and have them present during questioning, communicated to Renfro that he was entitled to the presence of an attorney before questioning. The second statement, that if Renfro could not "afford an attorney, one will be provided for you free of charge," confirmed that if he could not secure his own attorney, one would be provided for him. In combination, these two statements reasonably conveyed to Renfro that if he could not afford an attorney, then one would be appointed to him and such appointment would occur prior to any questioning. Accordingly, these two statements meet the requirements for the final two warnings under *Miranda.* The trial court did not err in denying Renfro's motion to suppress his statements

made in Franklin as he received sufficient *Miranda* warnings.

{¶ 19} Renfro also argues that the warnings provided to him prior to the interview in Middletown were also incomplete, and therefore any statements made during the videotaped interview or in his written statement should have been suppressed. The initial question, however, is whether there was even a need for Detective Winters to re-warn Renfro. Once police adequately advise a suspect of his *Miranda* rights before a custodial interrogation, the suspect need not be warned again before each subsequent interrogation. *State v. Rader*, 12th Dist. No. CA2010-11-310, 2011-Ohio-5084, ¶ 8. "Police are not required to readminister the *Miranda* warnings when a relatively short period of time has elapsed since the initial warnings." *State v. Treesh*, 90 Ohio St.3d 460, 470, 2001-Ohio-4, citing *State v. Mack*, 73 Ohio St.3d 502, 513-514 (1995). To determine whether initial *Miranda* warnings remain effective during subsequent interrogations, a court looks to the totality of the circumstances, including:

> the length of time between the giving of the first warnings and the subsequent interrogation; (2) whether the warnings and the 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; and (5) the apparent intellectual and emotional state of the suspect.

Rader at ¶ 9, citing *State v. Roberts*, 32 Ohio St.3d 225, 232 (1987).

{¶ 20} After a thorough review of the record and upon considering the factors set forth in *Roberts*, we find the original *Miranda* warnings issued in Franklin remained effective despite the change in location and lapse of two hours. After being advised of his *Miranda* rights, the police transported Renfro to the police department where he was then interviewed for nearly an hour. Only about two hours had passed between the initial warning and the second interrogation in Middletown. In addition, both Detectives Winters and Mossman were

present and conducted both interviews that morning. During the interview in Middletown, Renfro's articulation and mannerisms were appropriate, and he provided the detectives with a similar story which did not differ from the statement he provided in Franklin. Based on these facts, the *Miranda* warnings originally provided by Detective Winters had not become so stale as to dilute their effectiveness. *See State v. Rader*, 2011-Ohio-5084 at ¶ 14; *State v. Montgomery*, 5th Dist. No. 2007 CA 95, 2008-Ohio-6077, ¶ 52. Therefore, because the initial *Miranda* warnings remained in effect during the first interview in Franklin and the subsequent interview in Middletown, it was unnecessary for the police to provide new *Miranda* warnings to Renfro.

{¶ 21} However, the detectives were overly cautious and provided Renfro with a second set of *Miranda* warnings prior to beginning the interview in Middletown. The warnings once again touched the four bases of *Miranda*. Moreover, after hearing these warnings, Renfro signed a constitutional rights card recognizing that he had been told his rights, he understood these rights, yet he still wished to speak to the detectives without an attorney. Finally, Renfro never asked for a further explanation of his rights or requested an attorney. Accordingly, both the initial and re-warnings provided to Renfro were adequate under *Miranda.*

{¶ 22} Renfro also takes issue with the detectives' failure to inform him that he could stop talking at any time during the questioning. He argues that this rendered both sets of warnings inadequate.

{¶ 23} Police do not have to provide additional warnings to a suspect beyond what *Miranda* requires. *State v. Foust*, 105 Ohio St.3d 137, 2004-Ohio-7006, ¶ 69. Once a suspect has been "advised of the essential rights, the officers are not obliged to warn of any or all of the circumstances or manners in which the right may be invoked." *Id.* at ¶ 71, quoting *United States v. Alba*, 732 F.Supp. 306, 310 (D.Conn.1990). Specifically, courts

have found that police are not required to advise a suspect that he could stop questioning at any time after the interrogation was underway. *Id.*; *State v. Cedeno*, 192 Ohio App.3d 738, 2011-Ohio-674, ¶ 14 (10th Dist.); *United States v. Ricks*, 6th Cir. No. 92-5503, 1993 WL 78781 * 3 (Mar. 19, 1993). Accordingly, Detective Winters was not required to inform Renfro of his right to stop the interrogation at any time. Rather, Winters' warning that Renfro had the right to remain silent and anything he said would be used against him in court was sufficient to satisfy *Miranda*.

{¶ 24} The warnings given to Renfro both in Franklin and again in Middletown complied with the requirements of *Miranda* such that Renfro made a knowing and intelligent waiver of his rights when he provided incriminating statements to Detectives Winters and Mossman. The trial court did not err in denying Renfro's motion to suppress. Accordingly, Renfro's first assignment of error is overruled.

{¶ 25} Assignment of Error No. 2:

{¶ 26} IT WAS ERROR TO ADMIT INTO EVIDENCE TEXT MESSAGES ALLEGEDLY FROM APPELLAN'TS PHONE AS THEY WERE NOT PROPERLY AUTHENTICATED.

{¶ 27} In his second assignment of error, Renfro argues that the trial court erred when it admitted his cellular telephone records as the records were not properly authenticated pursuant to Evid.R. 901. Renfro also asserts for the first time in his reply brief that the text messages constituted inadmissible hearsay and were unduly prejudicial in violation of Evid.R. 403(A).

{¶ 28} An appellant may not use a reply brief to raise new issues or assignments of error. *Baker v. Meijer Stores Ltd. Partnership*, 12th Dist. No. CA2008-11-136, 2009-Ohio-4681, ¶ 17. A reply brief simply provides the appellant with an opportunity to respond to the arguments raised in the appellee's brief. App.R. 16(C). Accordingly, Renfro's challenge to the admission of the cellular telephone records on the basis of hearsay and Evid.R. 403(A)

are not properly before the court, and we will not consider it. We now consider whether the cellular phone records were properly authenticated.

{¶ 29} In general, the "trial court's decision to admit or exclude evidence will not be reversed by a reviewing court absent an abuse of discretion." *State v. Jackson*, 12th Dist. No. CA2011-01-001, 2011-Ohio-5593, ¶ 16. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 130.

{¶ 30} The requirement of authentication or identification as a condition precedent to admissibility is satisfied by introducing "evidence sufficient to support a finding that the matter in question is what its proponent claims." Evid.R. 901(A); *State v. Moshos*, 12th Dist. No. CA2009-06-008, 2010-Ohio-735, ¶ 11. This threshold requirement for authentication of evidence is low and does not require conclusive proof of authenticity. *State v. Easter*, 75 Ohio App.3d 22, 25 (4th Dist.1991). Instead, the state only needs to demonstrate a "reasonable likelihood" that the evidence is authentic. *State v. Thomas*, 12th Dist. No. CA2010-10-099, 2012-Ohio-2430, ¶ 15; *State v. Bell*, 12th Dist. No. CA2008-05-044, 2009-Ohio-2335, ¶ 30. To properly authenticate business records, a witness must "testify as to the regularity and reliability of the business activity involved in the creation of the record." *Thomas* at ¶ 19, quoting *State v. Hirtzinger*, 124 Ohio App.3d 40, 49 (2nd Dist.1997). While firsthand knowledge of the business transaction is not required by the witness providing the foundation, the witness must be "sufficiently familiar with the operation of the business and with the circumstances of the record's preparation, maintenance and retrieval, that he can reasonably testify on the basis of this knowledge that the record is what it purports to be, and that it was made in the ordinary course of business consistent with the elements of Evid.R. 803(6)." *State v. Glenn*, 12th Dist. No. CA2009-01-008, 2009-Ohio-6549, quoting *State v. Vrona*, 47 Ohio App.3d 145, 148 (9th Dist.1988).

{¶ 31} In support of admission of the cellular telephone records, the state presented testimony of Paula Papke, a manager and custodian of records with Cincinnati Bell Telephone Company (CBT). Papke testified that, pursuant to a subpoena, CBT provided the Middletown Division of Police with the subscriber information and text messaging information for the wireless number Renfro provided to police. She identified Exhibit 34 as the text messaging content records from August 8, 2010 through August 10, 2010. Papke testified she has access to these records, and that these records are kept in the ordinary course of business. She explained that CBT retains text messages that are transmitted by or to Cincinnati Bell wireless equipment for about seven days and that the messages in Exhibit 34 were stored contemporaneously on its server on the day the messages were transmitted. Papke stated that the name on this account was Antonio Baarez. She further testified that because this was a pre-paid account CBT does not take any steps to verify the information provided by the customer.

{¶ 32} A review of this testimony demonstrates that Papke adequately authenticated the cellular telephone records as a business record. As an employee of CBT and one with access to these types of records, she was able to testify that the records for Renfro's number were recorded during regularly conducted activity, the messages were recorded at the same time as transmission, and that these records are kept in the ordinary course of business. Based on this testimony, there was sufficient evidence to support a finding that the matter in question is what the proponent claims, the cellular telephone records, including text messages, belonging to the number Renfro provided to police. Accordingly, the trial court did not abuse its discretion in admitting Exhibit 34 into evidence as the exhibit was properly authenticated.

{¶ 33} Renfro, however, argues that the cellular telephone records were not properly authenticated because there was no testimony connecting him to the customer on the

account, Antonio Baarez. He also asserts that there was no testimony that he was the one who purchased the prepaid phone or even used it. However, these arguments go to the weight of the evidence rather than its authentication. *See State v. Bell*, 12th Dist. No. CA2008-05-044, 2009-Ohio-2335, ¶ 31 (finding the argument that e-mails were fabricated merely went to the weight the jury could give to the evidence). Furthermore, prior to Papke's testimony, the state played the video of Renfro's statement to police at the Middletown police department on the night of his arrest. During this statement, Renfro identified his cellular telephone number and stated that his provider was Cincinnati Bell. Renfro himself provided the evidence connecting him to these text messages. The jury was then free to determine whether Renfro was the individual who sent the text messages detailed in Exhibit 34. Accordingly, Renfro's second assignment of error is overruled.

{¶ 34} Judgment affirmed.

RINGLAND and HUTZEL, JJ., concur.