



NUMBER 13-17-00050-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ROBERT SANDERS JR.,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 427th District Court
of Travis County, Texas.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Benavides and Hinojosa
Memorandum Opinion by Chief Justice Valdez**

Appellant, Robert Sanders Jr., appeals from his conviction of murder. See TEX. PENAL CODE ANN. § 19.02(c) (West, Westlaw through 2017 1st C.S.). By two issues, appellant contends that the trial court erred when it: (1) allowed Sergeant Brett Bailey to identify appellant in a video during trial and to offer his opinion regarding the weight of a

shopping cart; and (2) admitted a video of an interview of Sergeant Bailey and appellant. We affirm.

I. BACKGROUND¹

Kelly Dubose and his mother discovered the body of Tasha Morrison in a field on January 19, 2015. Morrison's body had been placed in the bedframe of a sleeper sofa that had been partially covered by a tarp. Detectives determined that Morrison had been strangled, had died at a different location, and her body had been moved to the field where it was found. On January 21, 2015, the Austin, Texas Police Department received a tip that provided Morrison's identification and that, prior to her death, she had been seen at the Budget Inn in Austin.

Evidence established that appellant checked into room 106 at the Budget Inn on January 17, 2015. Sergeant Bailey gathered video surveillance from the Budget Inn, showing appellant's activities during his stay at the Budget Inn. The camera had a view of the door of room 106. Sergeant Bailey stated at trial that he observed Morrison entering room 106 on January 18, 2015. In addition, Margarita Delgado, an employee of Budget Inn, testified that Morrison joined appellant in his room on January 18, 2015. Sergeant Bailey testified that in the videotapes that he reviewed Morrison never left room 106. In one of the videos, appellant left the room and returned with an empty shopping cart. According to Sergeant Bailey, appellant then left the room with a weighted shopping cart. Sergeant Bailey testified that the video from a business located between the Budget Inn and the field where Morrison's body was found shows appellant pushing the shopping

¹ This case is before the Court on transfer from the Third Court of Appeals in Austin pursuant to an order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2017 1st C.S.).

cart toward the field and later pushing the cart away from the field. During an interview with Sergeant Bailey, appellant admitted that he rented room 106, Morrison had been his guest, the couple had sex, and he had transported the shopping cart to the room. However, appellant denied any knowledge of Morrison's death. The jury found appellant guilty. He was sentenced to seventy years' incarceration, and this appeal followed.

II. OBJECTION TO TESTIMONY

By his first issue, appellant contends that the trial court improperly admitted Sergeant Bailey's testimony identifying appellant as the man in the videos. Specifically, appellant argues that Sergeant Bailey's testimony is bolstering because the members of the jury could have watched the video and decided for themselves whether the person in the video was in fact appellant.

Appellant cites *Woods v. State*, 13 S.W.3d 100 (Tex. App.—Texarkana 2000, pet. ref'd). In *Woods*, there were no eyewitnesses to a burglary in a store; however, there was a videotape provided by the store owners showing the burglary. *Id.* at 102. At trial, the State presented the testimony of three police officers identifying the person in the video as Woods and each officer pointed to Woods when asked who was in the video committing the crime. *Id.* Neither of the police officers testified that he had seen Woods prior to the trial. *Id.* at 101. Two other witnesses, who had seen Woods prior to the burglary, also identified Woods as the person in the video. *Id.* at 102. A parole officer, who knew Woods, stated that she recognized him in the video. *Id.*

On appeal, Woods argued that it was improper bolstering of the State's evidence to allow six witnesses to testify that he was the person in the video. *Id.* The Texarkana Court of Appeals concluded that evidence from a lay witness offering an opinion based

on the same evidence the jury is viewing, without further qualifications, is not admissible under Texas Rule of Evidence 701, which deals with opinion testimony by a lay witness. *Id.* at 102–03. The court reasoned that three of the witnesses specifically, the officers, had not seen Woods prior to the trial and that their testimony, which was based solely on viewing the video, did not add to the information already before the jury. *Id.* at 103. The court stated, “there was nothing in [these] witnesses’ testimony that was not readily observable by the twelve jurors.” *Id.*

Appellant analogizes the officers in *Woods* with Sergeant Bailey. However, the officers in *Woods* had never seen Woods prior to the trial and had no familiarity with Woods. Notably, the *Woods* court also concluded that the trial court properly allowed three other witnesses to identify Woods in the video because each had seen Woods prior to the trial. *Id.* The *Woods* court determined that these three witnesses had a familiarity with Woods that would aid the jury. *Id.* The court found that two of the witnesses had this familiarity because each had seen Woods earlier in the day prior to the robbery. *Id.* at 104. Therefore, their identifications of Woods were admissible. *Id.* The court found that Woods’s parole officer’s testimony was also admissible because she “was able to independently identify [the appellant]” based on her familiarity with him. *Id.* at 103.

“We review the trial court’s decision to admit or exclude evidence . . . under an abuse of discretion standard. The trial court does not abuse its discretion unless its determination lies outside the zone of reasonable disagreement.” *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010) (internal citations omitted).

Here, Sergeant Bailey testified that he interviewed appellant prior to the trial, and a video of the interview that lasted approximately one hour was admitted during Sergeant

Bailey's testimony. Unlike the officers in *Woods*, who had never seen Woods prior to the trial, Sergeant Bailey had seen and interacted with appellant. Thus, we agree with the State, that under *Woods*, Sergeant Bailey's testimony identifying appellant as the person in the video was admissible because Sergeant Bailey had the type of familiarity with appellant that could have been helpful to the jury. See *Woods*, 13 S.W.3d at 103. Accordingly, we cannot conclude that the trial court abused its discretion by admitting Sergeant Bailey's testimony identifying appellant as the person in the videos. See *Martinez*, 327 S.W.3d at 736. We overrule appellant's first issue.²

III. APPELLANT'S RECORDED STATEMENTS TO SERGEANT BAILEY

By his second issue, appellant contends that the trial court erred by admitting a video of his interview with Sergeant Bailey. Specifically, appellant argues that the video does not clearly demonstrate that he had intelligently and knowingly waived his rights pursuant to Texas Code of Criminal Procedure article 38.22 section 3(a)(2). Appellant claims that Sergeant Bailey intermixed questions concerning appellant's waiver of his *Miranda* rights with other questions and when appellant stated, "go ahead," a fact finder cannot conclude that appellant meant that he was waiving his rights.

"The question is not whether Appellant 'explicitly' waived his *Miranda* rights, but whether he did so knowingly, intelligently, and voluntarily." *Joseph v. State*, 309 S.W.3d 20, 25 (Tex. Crim. App. 2010). To evaluate whether a waiver of *Miranda* rights was done knowingly, intelligently, and voluntarily, we have two separate concerns. *Id.*

² In his issue, appellant states that the trial court improperly admitted Sergeant Bailey's testimony concerning the weight of the shopping cart that he allegedly used to transport Morrison's body. However, appellant does not cite authority which would render such testimony inadmissible. See Tex. R. App. P. 38.1(i). Moreover, upon our review of the record when Sergeant Bailey gave his opinion regarding the weight of the shopping cart, appellant failed to object. Accordingly, this issue is not preserved for our review. See TEX. R. APP. P. 33.1; 38.1(i).

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

Id. (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)). We may conclude that the defendant waived his *Miranda* rights only if the totality of the circumstances reveals both an uncoerced choice and the requisite level of comprehension. *Id.*

The video shows that Sergeant Bailey read appellant his *Miranda* warnings from a card. The video shows that after reading each right, Sergeant Baily asked if appellant understood, and appellant stated he did. Sergeant Bailey then asked if appellant understood his rights, and appellant replied that he did. Sergeant Bailey explained why he was reading appellant his rights, and appellant replied, "I understand that you're saying I have a right to remain silent, and I have nothing to hold back, but if it ain't relating to going to work and staying on the street, hey, then you know hey." After reading the warnings to appellant, Sergeant Bailey told appellant he wanted to talk about a dead girl that appellant may have known. Appellant then said "Okay, go ahead. I know girls on the street, go ahead." Immediately after Sergeant Bailey warned appellant of his right to remain silent and that he did not have to make a statement, appellant engaged in an interview with Sergeant Bailey that lasted at least one hour. See *id.* at 25 n.7 (explaining that "a defendant's conduct—namely, willingly talking with investigators—can demonstrate a knowing, intelligent, and voluntary waiver of his *Miranda* rights"). At a certain point in the interview, after about one hour, appellant said that he wished to end the interview, and Sergeant Bailey left the room. The fact that appellant felt free to end the interview and to decline answering any more questions suggests that the information

that he did choose to provide was given voluntarily. *See id.* at 26. The video shows that there was no intimidation by Sergeant Bailey, and appellant has neither claimed on appeal that there was any intimidation or coercion nor cited the record wherein he made such a complaint. *See id.* Thus, we conclude that the totality of the circumstances surrounding the interview shows that appellant's waiver was with full awareness of the nature of the rights being abandoned and the consequences of the decision to abandon them, and it was given knowingly, intelligently, and voluntarily. *See id.* We overrule appellant's second issue.

IV. CONCLUSION

We affirm the trial court's judgment.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
15th day of February, 2018.