

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 21, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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Appeal No. 2013AP2100-CR

Cir. Ct. No. 2011CF2753

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JULIUS ALFONSO COLEMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Brennan, P.J., Kessler and Brash, JJ.

¶1 KESSLER, J. Julius Alfonso Coleman appeals a judgment of conviction, following a jury trial, of one count of being a felon in possession of a firearm and one count of misdemeanor bail jumping. We affirm.

BACKGROUND

¶2 On June 14, 2011, Coleman was charged with one count of conspiracy to commit armed robbery, one count of being a felon in possession of a firearm, and two counts of misdemeanor bail jumping. The charges stemmed from an incident which occurred on June 9, 2011, in which Coleman, another person who was a confidential informant for the Wauwatosa Police Department, and two others, set out to rob “Poncho.” While assisting Wauwatosa police as a part of an exchange for having drug charges against him dropped, the informant began communicating with Coleman to arrange an armed robbery. Wauwatosa police and the informant worked together to stage the fictitious robbery of a fictitious drug dealer called “Poncho.” All of the informant’s conversations with Coleman were recorded by police.

¶3 On June 9, 2011, Coleman drove two accomplices to meet the informant so that they could commit the robbery. The informant then drove Coleman and the two accomplices in a van to a Wauwatosa parking lot, which Coleman believed would lead to access to “Poncho’s” house. The informant got out of the vehicle to make sure the coast was clear, at which point Wauwatosa police surrounded the van and ultimately arrested Coleman. Police recovered a firearm from the vehicle.

¶4 Following his arrest, Coleman was transported to the Wauwatosa Police Station, where he was interviewed by Detective Robin Schumacher. During the twenty-five minute interview, Coleman asked multiple questions about how to become a confidential informant and acknowledged that police “got [him]” by way of the recorded phone conversations with the informant. Schumacher responded to Coleman’s inquiries by telling him there could be “leeway” with his

charges, but Coleman would have to be honest and would have to “dazzle” her with information about other criminal activity. Coleman also insisted that the felon in possession charge would be dropped, as police had no evidence that he actually had a firearm. At no point during, or before, this interview did Schumacher read Coleman his *Miranda*¹ rights.

¶5 The interview ended with Coleman storming out of the interrogation room and stating that he no longer wished to speak with police. However, approximately one hour later, Coleman requested to speak with police again. Schumacher immediately read Coleman his *Miranda* rights and confirmed that he understood those rights. Coleman ultimately chose to make a statement to police, in which he stated he was on drugs while speaking with the informant in the recorded phone calls. Schumacher told Coleman that she wanted honesty with regard to her question about whether Coleman brought the firearm, to which Coleman remained silent. However, at other points in the interview, Coleman denied bringing the gun and denied knowing who brought the gun. He also claimed he lied when he told the informant he would bring a gun.

¶6 Prior to trial, Coleman’s defense counsel moved to suppress Coleman’s statements from both interviews. Counsel argued that the statements in the first interview had to be suppressed because Coleman was never advised of his *Miranda* rights and that the second interview was tainted by the first. Following a hearing on the motion, the trial court denied the motion to suppress.

¶7 The matter proceeded to trial where multiple witnesses testified. The informant told the jury that “Poncho” was a fictitious drug dealer that the

¹ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

informant made up as part of a deal with Wauwatosa police. He testified that he discussed robbing “Poncho” with Coleman, at which point the State played the audio recordings of the conversations between the informant and Coleman. The informant stated that when he met with Coleman and the other two co-defendants just prior to the “robbery,” he saw Coleman get a gun from under the hood of Coleman’s car. The informant testified that he then drove the four of them to the area where the supposed robbery was to take place and got out of the car.

¶18 Officer David Cefalu, the informant’s handler, testified that he facilitated the recorded conversations between the informant and Coleman. Cefalu testified that he was conducting surveillance of the robbery operation and witnessed Coleman retrieve an object from the hood of his car before getting into the van with the informant to drive to the robbery site.

¶19 Sergeant David Moldenhauer testified that a gun was found in the vehicle at the scene. He also identified a photograph of the gun at trial.

¶10 Schumacher testified that she was present during the staged robbery and witnessed Coleman retrieve something from under the hood of his car and hand it to a co-actor prior to getting into the informant’s van. Schumacher also discussed her interrogation of Coleman, telling the jury that Coleman admitted to planning the robbery with the informant but denied possessing the gun.

¶11 The jury found Coleman guilty of being a felon in possession of a firearm, but was split on the charge of conspiracy to commit armed robbery, leading to an acquittal and dismissal of that charge and the corresponding bail jumping charge. Coleman was ultimately convicted of being a felon in possession of a firearm and one count of misdemeanor bail jumping.

¶12 Coleman appealed his conviction and appointed counsel filed a no-merit report and sought to withdraw as appellate counsel. In a February 4, 2015 order, we rejected the no-merit report and converted the case to a merits appeal. The merits appeal is what is now before us.

DISCUSSION

¶13 On appeal, Coleman argues that the trial court erred in denying his motion to suppress because Schumacher violated his constitutional right to remain silent. Specifically, Coleman contends that Schumacher violated his right to receive *Miranda* warnings in his first interview and that the second interview was tainted by the earlier violation. The State concedes that statements from Coleman’s first interview should have been suppressed, but contends that Coleman was properly Mirandized in his second interview and that Coleman waived his right to remain silent. The State also contends that “despite any alleged error in admitting statements from the Mirandized second interview, Coleman is not entitled to relief because the error and alleged error were harmless beyond a reasonable doubt.” We conclude that, even if improperly obtained, any error in admitting statements from Coleman’s interviews was harmless.²

² Coleman’s argument relies predominantly on the United States Supreme Court’s decision in *Missouri v. Seibert*, 542 U.S. 600 (2004), in which the Court held that *Miranda* warnings given to the defendant in the middle of his interrogation, but after his confession, were inadmissible at trial. *Seibert*, 542 U.S. at 604. The Court, however, was divided in its holding, and the decision did not produce a majority opinion. A four-justice plurality and Justice Anthony Kennedy produced competing tests to determine when suppression is required. Coleman urges us to adopt the objective test produced by the plurality, as no Wisconsin case has adopted either test. The facts of this case do not require us to address Coleman’s constitutional questions, as the evidence in this case was sufficient to convict Coleman of being a felon in possession of a firearm regardless of the statements made during his interrogations. Accordingly, we decline to decide the extent to which *Seibert* applies to the facts of this case and decide the matter on the narrowest possible grounds. See *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997). (We should decide cases on the narrowest possible grounds and should not reach constitutional issues if we can dispose of the appeal on other grounds.)

¶14 If a statement that should have been suppressed has been erroneously admitted at trial, that admission is subject to a harmless error analysis. See *State v. Armstrong*, 223 Wis. 2d 331, 367-68, 588 N.W.2d 606 (1999). An error is harmless if “it is ‘clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.’” *State v. Harvey*, 2002 WI 93, ¶49, 254 Wis. 2d 442, 647 N.W.2d 189 (citation omitted). A reasonable possibility is one sufficient to undermine the confidence in the outcome of the proceeding. See *State v. Patricia A.M.*, 176 Wis. 2d 542, 556, 500 N.W.2d 289 (1993). The burden of proof is on the beneficiary of the error, here the State, to show that the error was harmless. See *State v. Dyess*, 124 Wis. 2d 525, 544 n.11, 370 N.W.2d 222 (1985). Assessing harmless error presents a question of law we review *de novo*. See *State v. Ziebart*, 2003 WI App 258, ¶26, 268 Wis. 2d 468, 673 N.W.2d 369.

¶15 With this standard in mind, we conclude that the result in this case would have been the same beyond a reasonable doubt even if the trial court had granted Coleman’s suppression motion; therefore, any admissions stemming from Coleman’s interrogations constituted harmless error. First, the State relied primarily on the recorded conversations between Coleman and the informant, rather than on Coleman’s statements to Schumacher. The jury was neither shown the video of Coleman’s interrogations, nor provided with transcripts of the interrogations. The only information the jury received about Coleman’s statements during the interrogation came from Schumacher’s testimony, which primarily addressed Coleman’s inquiries about becoming a confidential informant and Coleman’s admission to conspiring to commit the staged robbery—the charge which was ultimately dismissed. Regarding the gun, Schumacher testified that Coleman denied bringing a firearm. Because Coleman did not testify at trial, he

actually benefited from Schumacher's testimony that he denied possessing a firearm. In short, the inculpatory portion of what the jury heard from Schumacher related to the charge which was ultimately dismissed.

¶16 We also conclude that the contents of Coleman's interrogation had no effect on his felon in possession conviction. As noted, Coleman actually denied possessing a firearm during his interrogation—a fact Schumacher told the jury. Moreover, there was other evidence unrelated to the interrogations from which a rational jury could conclude that Coleman possessed a firearm. The informant testified that he saw Coleman raise the hood of his (Coleman's) car and pull a gun from the engine compartment. Cefalu testified that while he was conducting surveillance of the staged robbery, he witnessed Coleman retrieve something from under the hood of Coleman's car. Schumacher corroborated Cefalu's testimony, stating that she also witnessed Coleman retrieve something from under the hood of his (Coleman's) car and hand it to one of his accomplices prior to getting in the informant's van. Moldenhauer testified that a gun was found in the van. Coleman admitted in his recorded conversations that he had several guns and was willing to use them during the robbery. Consequently, it was reasonable for the jury to conclude that the item three witnesses saw Coleman retrieve from under the hood of his car was indeed a firearm. In short, proof of Coleman's possession of a firearm was *not* established by the interviews, but by the unrelated observations of multiple witnesses and the recorded conversations.

¶17 For the foregoing reasons, we affirm the trial court.

By the Court.—Judgment affirmed.

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