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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 13-CF-603
)	
ROBERTO RAMOS JR.,)	Honorable
)	John A. Barsanti,
Defendant-Appellee.)	Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 13-CF-604
)	
ROBERTO RAMOS JR.,)	Honorable
)	John A. Barsanti,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant's motion to suppress his statements: by its terms, a prior agreement to provide the police with information about unrelated

offenses did not compel defendant's statements about the offenses at issue here, and the police did nothing to suggest to defendant otherwise.

¶ 2 The State appeals from the judgment of the circuit court of Kane County ruling that defendant Roberto Ramos Jr.'s statements to police were rendered involuntary by a written agreement requiring him to provide information in exchange for leniency on unrelated charges. Because the statements were not rendered involuntary by the agreement, we reverse and remand.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted in case No. 13-CF-636 on one count of armed robbery (720 ILCS 5/18-2(a)(2) (West 2012)), one count of armed violence (720 ILCS 5/33A-2(a) (West 2012)), one count of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)), one count of unlawful possession of a firearm by a street-gang member (720 ILCS 5/24-1.8(a)(1) (West 2012)), and one count of reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2012)), and in case No. 13-CF-637 on one count of armed robbery (720 ILCS 5/18-2(a)(2) (West 2012)), one count of armed violence (720 ILCS 5/33A-2(a) (West 2012)), and one count of unlawful possession of a firearm by a street-gang member (720 ILCS 5/24-1.8(a)(1) (West 2012)). He filed in each case a motion to suppress statements.¹

¶ 5 The following facts are taken from the hearing on the motion to suppress. In case No. 12-CF-1524, defendant was charged with, among other things, several firearms-related offenses. On January 25, 2013, he entered into a written agreement to provide information to the Aurora police department and to the Kane County sheriff's office. In exchange for the information, defendant would be allowed to plead guilty to only one charge in case No. 12-CF-1524 and would receive a sentence of 30 months' probation.

¹ The cases have been consolidated on appeal.

¶ 6 The agreement provided, in pertinent part, that defendant would supply information to the Aurora police department regarding two murders and to the Kane County sheriff's office regarding a murder and an attempted murder. The agreement did not require defendant to provide information about any other crimes. The agreement further provided that the "failure to perform any of the *** conditions shall be considered a violation of the agreement." Defendant was required to "at all times remain cooperative and available to the Kane County State's Attorney's Office, the Aurora Police Department and the Kane County Sheriff." The "[i]nability to find or contact the Defendant after reasonable efforts by the Kane County State's Attorney's Office or the police [would] be considered a violation of [the] agreement." Defendant was to contact every other day, in person or by phone, both the Aurora police department and the Kane County sheriff's office. He was further required to "refrain from all criminal activity." Any criminal activity would be "deemed a violation" of the agreement. Defendant and his attorney signed the agreement. Immediately below their signatures, the agreement provided that their signatures "indicate[d] that [they had] read, understood, and agreed to all of the conditions contained in the agreement."

¶ 7 Detective Darrell Moore of the Aurora police department was present when defendant signed the agreement. Detective Moore was the contact person for the Aurora police department. Defendant never contacted Detective Moore as required by the agreement.

¶ 8 Defendant, who was suspected of being involved in two armed robberies that occurred on March 19 and 20, 2013, respectively, had been placed on an "investigative hold" at the Aurora police department from April 3 to April 5, 2013. On April 3, 2013, Detective Moore met with defendant to discuss the armed robberies. Detective Moore reminded defendant that they had met when defendant entered into the agreement.

¶ 9 Detective Moore advised defendant of his *Miranda* rights, and defendant waived those rights and agreed to talk. According to Detective Moore, defendant mentioned the agreement only once during the April 3 interview. Defendant asked if it would help him get a deal if he identified the robber. Detective Moore told defendant that the armed robberies were new crimes and that the agreement had no bearing on any new charges. Detective Moore advised defendant that he was not promising defendant anything in exchange for information about the armed robberies, that he would report defendant's cooperation to the State's Attorney's office, and that any benefit would be up to the State's Attorney's office.

¶ 10 During the April 3 interview, defendant admitted committing the armed robberies. Along with providing information regarding those crimes, defendant told Detective Moore about several firearms that were located in a home occupied by fellow gang members. The firearms were not connected to the murder-related offenses specified in the agreement.

¶ 11 On April 4, 2013, Detective Moore met again with defendant at the Aurora police department. The only subject of that meeting was the firearms-related information that defendant had discussed on April 3. During the April 4 meeting, Detective Moore did not discuss the armed robberies with defendant, and the subject of the agreement never came up. Detective Moore did not promise defendant anything or tell him that he would ask the State's Attorney's office for leniency on defendant's behalf. He repeated that he would convey any information to the State's Attorney's office but that he was not promising anything.

¶ 12 On April 5, 2013, Detective Moore met once again with defendant at the Aurora police department. Defendant agreed to act as a "John Doe" informant regarding a search warrant for the previously discussed firearms.

¶ 13 On April 5, after execution of the search warrant, Detective Moore again spoke with defendant. According to Detective Moore, he reiterated to defendant that the armed robberies were new offenses, unrelated to the agreement. After reminding defendant of his *Miranda* rights, Detective Moore obtained defendant's consent to record his statement regarding the armed robberies.

¶ 14 Defendant testified that, pursuant to the agreement, he met about five times with Detective Salvador Rodriguez of the Kane County sheriff's office. He considered Detective Rodriguez to be his "main contact." The FBI had also provided defendant with a cell phone, and he had contacted the FBI in person or by phone. Before April 3, 2013, the only time that defendant had met with Detective Moore was on the day he signed the agreement.

¶ 15 When defendant met with Detective Moore on April 3, 2013, defendant recognized him from the meeting in which he signed the agreement. Defendant brought up the agreement, and Detective Moore acknowledged that defendant was still working with the police. Defendant signed the *Miranda* waiver to show that he was still cooperating under the agreement. He believed that, as part of the agreement, he needed to sign the waiver and to cooperate regarding the armed robberies.

¶ 16 According to defendant, Detective Moore never told him that what he said regarding the armed robberies was unrelated to the agreement. However, he admitted that Detective Moore told him that he would pass on any information to the State's Attorney's office and that they would have to work out a new deal.

¶ 17 At the April 5 meeting, Detective Moore gave defendant his cell phone number and told defendant to have his attorney call him and that they would work out a new deal with the State's Attorney. According to defendant, Detective Moore told him that the information would be

related to the State's Attorney's office to show that he was still working with the police. Defendant provided the information related to the armed robberies to show that he was complying with the agreement.

¶ 18 Defendant admitted that the agreement called for him to contact the Aurora police department every other day and that he never did. He also admitted that the agreement did not apply to any future crimes.

¶ 19 Detective Rodriguez testified that he had no contact with defendant until he spoke with him by phone on March 13, 2013. On March 14, 2013, he and an FBI agent met with defendant at the sheriff's office. Detective Rodriguez never told defendant that defendant could commit other crimes as part of the agreement. Detective Rodriguez met with defendant one other time near the end of March 2013. One of the reasons for meeting with defendant that latter time was to discuss "violating" defendant under the agreement because defendant never provided photographs of suspects related to the murder and attempted murder and never met with the FBI as planned.

¶ 20 According to Sergeant David Wolf of the Kane County sheriff's office, defendant was supposed to check in by telephone every other day but failed to do so. After defendant failed to contact them, Sergeant Wolf and Detective Rodriguez set up the March 14, 2013, meeting with defendant to discuss whether to "violate" defendant for not fulfilling his obligations under the agreement. When Sergeant Wolf told defendant that he was not fulfilling his end of the bargain, defendant stated that he still wanted to work with them. Nonetheless, defendant never contacted them after that meeting.

¶ 21 Officer Jason Russell of the Aurora police department was assigned to an FBI task force from December 2012 through April 2013. During that time, he met with defendant to discuss

defendant becoming a paid informant. Although defendant agreed to do so, he never provided any information. At their next meeting, Officer Russell gave defendant a cell phone and told him to call Officer Russell daily. Defendant never called and failed to show up at a scheduled meeting. Officer Russell never met with defendant again.

¶ 22 In ruling on the motion to suppress, the trial court found, among other things, that defendant's recorded April 5, 2013, statement contained "[n]othing concerning any agreement old or new." On the other hand, the court noted that Detective Moore testified that he informed defendant that the agreement was not implicated by the armed-robbery investigation. The court found that there was no evidence that anyone told defendant that the agreement was over. The court found that, although Detective Moore repeatedly assured defendant that his cooperation regarding the armed robberies would be conveyed to the State's Attorney's office, he testified that he told defendant that there would be no deal or agreement regarding the armed-robbery charges.

¶ 23 The trial court found that defendant violated the agreement but that the violation was irrelevant, because the agreement was never terminated by the State's Attorney's office. The court added that a violation differed from a breach and that the agreement did not provide that a violation voided it. The court ruled that defendant's violations of the agreement did not affect its viability and that the agreement was effective when defendant made his statements regarding the armed robberies.

¶ 24 After noting the difference between Detective Moore's testimony, that he informed defendant that the armed robberies were not covered by the agreement, and defendant's testimony, that he believed he was still working under the agreement, the court stated that it was "not sure which version [was] more accurate or even accurate at all." Thus, the court stated that

it needed to look at other evidence to decide what the understanding was between defendant and Detective Moore during the April 3, 2013, meeting. After finding that defendant continued to cooperate during the meetings on April 3, 4, and 5, 2013, the court found that “the only reason” that he did so was that “defendant felt he needed to continue to cooperate [because of the agreement].” After noting that it did not disagree that defendant was told that the agreement did not apply to the armed robberies, the court found that defendant was never told that the agreement was void and that he could no longer help himself related to the agreement. Therefore, the court found “it reasonable that the defendant believed he needed to cooperate with the Aurora Police Department when he was interviewed about [the armed robberies] to keep his [agreement] intact.” Thus, the court ruled that the State failed to prove that defendant’s statements concerning the armed robberies were voluntary, and it granted the motion to suppress. The State filed a certificate under Illinois Supreme Court Rule 604(a)(1) (eff. Dec. 14, 2014) and a timely notice of appeal.

¶ 25

II. ANALYSIS

¶ 26 We apply a two-part standard to review a trial court’s ruling on a motion to suppress. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). A court’s findings of fact are reviewed for clear error and will be reversed only if they are against the manifest weight of the evidence. *Luedemann*, 222 Ill. 2d at 542. The court’s ultimate legal ruling as to whether suppression is warranted is reviewed *de novo*. *Luedemann*, 222 Ill. 2d at 542.

¶ 27 Before custodial police questioning, a person must be warned that he has the right to remain silent, that any statement he makes may be used against him, and that he has the right to have an attorney present. *People v. Tuson*, 2016 IL App (3d) 130861, ¶ 22 (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). Unless those warnings are given and the accused

voluntarily, knowingly, and intelligently waives those rights, his statements will be suppressed. *Tuson*, 2016 IL App (3d) 130861, ¶ 22 (citing *Pennsylvania v. Muniz*, 496 U.S. 582, 589 (1990)). A waiver must be given with sufficient assurances of the resulting circumstances and consequences. *People v. Braggs*, 209 Ill. 2d 492, 514-15 (2003). The question of whether a waiver is voluntary, knowing, and intelligent is a factual one and is determined by the totality of the circumstances, including the suspect's background, experience, and conduct. *Braggs*, 209 Ill. 2d at 515. A statement is not voluntary where it is obtained by a false promise of governmental immunity. See *Tuson*, 2016 IL App (3d) 130861, ¶ 22; *People v. Arkebauer*, 198 Ill. App. 3d 470, 483-84 (1990). Where a defendant seeks suppression of his confession, the State has the burden to prove by a preponderance of the evidence that the confession was voluntary. *Braggs*, 209 Ill. 2d at 505.

¶ 28 In this case, defendant was 29 years old and had numerous experiences with the criminal justice system. The record does not indicate that defendant suffered from any cognitive or intellectual difficulties.

¶ 29 On appeal, defendant solely contends that his waiver and statements were involuntary because he understood that the agreement required him to cooperate regarding the armed robberies. Thus, in deciding whether defendant's statements were involuntary, we first consider the language of the agreement.

¶ 30 In paragraph four of the agreement, defendant was required to provide information to the Aurora police department regarding two specific murders and to the Kane County sheriff's office regarding a specific murder and attempted murder. The agreement did not mention any other crime for which defendant was to provide information. By its terms, the agreement clearly did not apply to the armed robberies.

¶ 31 Not only did the agreement clearly specify that it applied only to the crimes stated therein, defendant signed the agreement, thereby indicating that he read and understood its terms. Indeed, defendant testified that he knew that the agreement did not apply to any future crimes. In light of the agreement's terms and defendant's understanding thereof, defendant could not have believed that the agreement required him to provide information regarding crimes not specified in the agreement, particularly the two armed robberies.

¶ 32 Notwithstanding defendant's understanding that the agreement applied to only the murder-related offenses set forth therein and not the armed robberies, defendant argues that his *Miranda* waiver and his statement about the armed robberies were involuntary because Detective Moore led him to believe that the agreement required him to cooperate. We disagree. Rather than lead defendant to believe that the agreement applied, Detective Moore's statements clearly indicated that the agreement did not apply. In that regard, Detective Moore advised defendant that, although he would convey any information about the armed robberies to the State's Attorney's office, he was not promising anything in exchange for the information. He added that whether defendant would benefit from providing such information would be up to the State's Attorney's office. Detective Moore also told defendant that the State's Attorney's office would have to work out a new deal related to the information about the armed robberies. The need to work out a new deal implied that the existing agreement did not govern defendant's statements about the armed robberies. Moreover, Detective Moore advised defendant that the agreement did not apply. Indeed, the trial court noted that it did not disagree that Detective Moore told defendant that the agreement did not apply to the armed robberies. In light of Detective Moore's statements, a person in defendant's position would not have reasonably believed that,

notwithstanding its terms to the contrary, the agreement required him to speak about the armed robberies.

¶ 33 We recognize that Detective Moore acknowledged to defendant that the agreement existed and that defendant was still working with the police. That, of course, was true. Indeed, the agreement was still in effect when Detective Moore spoke with defendant about the armed robberies. Nonetheless, as discussed, defendant knew, based on its terms and Detective Moore's statements, that the agreement did not apply to any crimes other than those specified in paragraph four. Therefore, Detective Moore's acknowledgement to defendant that defendant was still obligated to cooperate under the agreement would not have led defendant, who was fully aware that the agreement applied only to the specified murder-related crimes, to believe that he must cooperate regarding the unrelated armed robberies.

¶ 34 According to defendant, Detective Moore never told him that what he said regarding the armed robberies was unrelated to the agreement. However, it was unnecessary for Detective Moore to have done so before talking to defendant about the armed robberies. Indeed, defendant was fully aware of the terms of the agreement and knew that it did not apply to any crimes not specified therein. In that regard, the trial court's finding that it was reasonable for defendant to believe that he needed to co-operate with the police concerning the gas station robberies was against the manifest weight of the evidence.

¶ 35 We observe that the trial court put stock in the fact that the agreement was still viable when defendant made his statements. Although we agree that it was, its mere viability did not render defendant's statements involuntary. That is because, even if it was still effective, defendant could not have believed that it applied to his statements related to the armed robberies.

¶ 36 Although defendant relies on *Arkebauer*, that case is distinguishable. There, the appellate court held that the defendant's statements were rendered involuntary because an assistant State's Attorney and the police promised defendant that he would not be prosecuted for conspiracy to commit murder if he provided information regarding the same murder. *Arkebauer*, 198 Ill. App. 3d at 484. Key to the court's holding was that it was reasonable for the defendant to have believed that the promise not to prosecute applied to his incriminating statements, because the subject matter of the interview related to the same ongoing investigation as the one covered by the promise. *Arkebauer*, 198 Ill. App. 3d at 484. Here, the subject matter of the interview, the two armed robberies, had nothing to do with the subject matter of the agreement, murder and attempted murder. Thus, *Arkebauer* does not support defendant.

¶ 37 Under the totality of the circumstances, defendant's statements were not rendered involuntary by the agreement. Absent a showing that Detective Moore hoodwinked defendant by convincing him that he would benefit under the agreement if he talked about the armed robberies, defendant could not have believed that the agreement required him to cooperate about the armed robberies. Therefore, the trial court erred in ruling that the *Miranda* waiver and statements were involuntary.

¶38

III. CONCLUSION

¶ 39 For the reasons stated, we reverse the judgment of the circuit court of Kane County and remand for further proceedings.

¶ 40 Reversed and remanded.