2017 IL App (1st) 150072
Filed: March 10, 2017

SIXTH DIVISION

No. 1-15-0072

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 2881
	)	
PERRY LOGAN,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's convictions finding that the trial court did not err in denying a motion to suppress oral and written statements made to an Assistant State's Attorney.

¶ 2 Following a bench trial, the trial court convicted defendant-appellant, Perry Logan, of four counts of heinous battery, four counts of aggravated battery of a child, two counts of aggravated domestic battery, and two counts of aggravated battery. After merging the heinous battery counts into one count, and the aggravated battery counts into one count, the trial court sentenced defendant to two concurrent terms of six years' imprisonment. On appeal, defendant contends his convictions should be reversed because the trial court erred by denying a motion to

suppress his inculpatory oral and written statements made to an assistant State's Attorney (ASA). We affirm.

¶ 3 The charges against defendant stem from a December 14, 2009, incident where 14-month-old Z.R. sustained second and third-degree burns on her hands as a result of immersion in hot liquid. Z.R. is the daughter of C.R., who was defendant's girlfriend. Defendant, Z.R., C.R., and another child resided in an apartment located at 3201 South Morgan Street in Chicago (the apartment). At the time of the incident, defendant and Z.R. were alone in the apartment.

¶ 4 In April 2011, defendant filed a motion to suppress, contending that on January 15, 2010, he went voluntarily to the police station after being told by the police that he was not a suspect in this matter. However, defendant was taken into custody by Chicago police detectives Laura Skrip and William Spratt, and interrogated for several hours. After initially making non-incriminating statements, defendant subsequently made two inculpatory statements to the police without being advised of his rights under *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966). The ASA subsequently arrived at the police station, after which defendant received his *Miranda* warnings, and he made further inculpatory statements.

¶ 5 At the hearing on defendant's motion to suppress, Detective Skrip testified that, on December 14, 2009, she was called to Comer Children's Hospital regarding a child with severe burns to her hands. On December 17, 2009, Detective Skrip spoke to defendant at the apartment for about 20 minutes and again on two or three subsequent occasions prior to his arrest.

¶ 6 On January 3, 2010, Detective Skrip spoke to defendant's mother, Vanessa Logan, in an attempt to locate him. Ms. Logan never told the detective that she wanted to get an attorney for her son; the detective never told her that an attorney would not be necessary.

¶ 7 On January 15, 2010, when defendant voluntarily arrived at the police station, he initially was not placed under arrest, nor advised of his *Miranda* rights. Detective Skrip had a conversation with defendant in a conference room and he made no inculpatory statements. Defendant did not request to speak to an attorney or his mother or to leave the station. After discussing the case with her partner, Detective Spratt, and reviewing Z.R.'s medical records, Detective Skrip concluded that defendant's explanation of events did not correspond with Z.R.'s injuries. Detective Skrip placed defendant under arrest and moved him to a holding area.

¶ 8 After contacting the felony review unit of the office of the Cook County State's Attorney, Detective Skrip went to the holding area, gave defendant a bottle of water, and informed him that the ASA would be arriving soon and that they would speak to him then. Detective Skrip did not ask defendant any questions at that time. However, defendant told her that "he was thinking that he rinsed the child's hands off." Detective Skrip told defendant again that they would have a conversation once the ASA arrived.

¶ 9 Shortly thereafter, and before ASA Gleason arrived, Detective Skrip was informed that defendant was knocking on the door of the holding area, and so she went to see if he needed something. Defendant then made an inculpatory statement, the content of which is not described in the record. Detective Skrip did not ask defendant any questions, but again told defendant that the ASA would be there shortly and they would talk at that time. Detective Skrip did not give defendant his *Miranda* rights during the two interactions with defendant in the holding area.

¶ 10 When ASA Gleason arrived at the police station, defendant was moved from the holding area to a conference room. In the presence of Detective Skrip, ASA Gleason explained to defendant that he was a prosecutor, not defendant's lawyer, and informed defendant of his *Miranda* rights, which defendant indicated that he understood. Defendant made an inculpatory

statement (the content of which is not contained in the record), which he agreed to reduce to writing.

¶ 11 Defendant and ASA Gleason began to memorialize defendant's statement at about 9:45 p.m. after defendant was read his *Miranda* rights for a second time. Defendant was allowed to review the written statement. Defendant, ASA Gleason, and Detective Skrip signed each page of the written statement, and defendant initialed photographs which were discussed in and attached to the written statement. Detective Skrip denied promising defendant any leniency in exchange for his statement. Defendant was not handcuffed prior to giving his statement. After the statement was completed, defendant asked to call his mother. At about 11 p.m., Detective Skrip called Ms. Logan.

¶ 12 ASA Richard Gleason testified that, on January 15, 2010, he arrived at the police station at about 9:30 p.m. After speaking with Detective Skrip and reviewing Z.R.'s medical records, he met with defendant. ASA Gleason informed defendant that he was a prosecutor and advised defendant of his *Miranda* rights. When asked if he understood his rights, defendant replied: "Yes."

¶ 13 Defendant made several inculpatory statements to ASA Gleason which were memorialized in a written statement. Prior to writing defendant's statement, ASA Gleason spoke to defendant alone. In response to questions, defendant told ASA Gleason that he had been offered food and water, was allowed to use the bathroom, and that he had not been threatened or forced into giving his statement. ASA Gleason again read defendant his *Miranda* rights as set forth on the first page of the preprinted form used for the written statement, and then defendant signed the first page under the printed *Miranda* warnings. As ASA Gleason wrote out defendant's statement, he sat with and spoke to defendant.

¶ 14 ASA Gleason had defendant read aloud the first page of his written statement and followed along with defendant to ascertain that defendant was literate. ASA Gleason, Detective Skrip and defendant then signed the first page. Defendant was allowed to make corrections to the written statement, and he initialed the corrections and signed each page, as did ASA Gleason and Detective Skrip. At no time did defendant request an attorney or ask to call his mother. ASA Gleason did not tell defendant that his version of events did not add up, that he needed to modify his earlier statements, or that defendant would be shown leniency if he modified them. Defendant was not handcuffed when ASA Gleason spoke to him.

¶ 15 Over the defense's objection, the trial court allowed the State to publish two paragraphs of defendant's written statement which reflected that defendant had been treated fairly by the police and ASA Gleason, and that his statement was given voluntarily.

¶ 16 On cross-examination, ASA Gleason testified that, initially, defendant did not admit to intentionally holding Z.R.'s hands under hot water but, instead, stated that Z.R. had burned her hands when she tipped over a tray of hot chicken nuggets. This initial statement by defendant was not consistent with the medical records that "showed emergent burns, not splattered burns." ASA Gleason did not memorialize in defendant's written statement defendant's initial explanation of Z.R.'s burns and, instead, ASA Gleason continued to question defendant. On redirect examination, ASA Gleason testified that defendant eventually admitted that his initial explanation was not true.

¶ 17 Detective William Spratt testified that, during the investigation, he and Detective Skrip spoke with Ms. Logan and requested that she tell defendant he should phone the detectives. Ms. Logan did not inform him that she was going to hire an attorney for her son. Detective Spratt denied that he, nor Detective Skrip, told Ms. Logan that defendant was no longer a suspect.

¶ 18 On the evening of January 15, 2010, Detective Spratt arrived at the police station and was present when Detective Skrip and ASA Gleason interviewed defendant. Defendant was not handcuffed. ASA Gleason identified himself and gave defendant his *Miranda* warnings. Defendant responded that he understood his rights, agreed to speak to ASA Gleason and the detectives, and made inculpatory statements. Defendant agreed to give a statement.

¶ 19 Vanessa Logan testified she spoke to Detectives Skrip and Spratt three or four times over the course of a few weeks. Initially, the detectives went to her house looking for defendant. The detectives assured her that they were not going to charge him and that he would not need an attorney. She told defendant to call her if he needed an attorney. On the evening of January 15, 2010, defendant, while crying and in distress, called and told Ms. Logan that he was being charged. On cross-examination, Ms. Logan acknowledged that defendant, at that time, was 20 years old and was not living with her.

¶ 20 Defendant testified that Detective Skrip came to his apartment a day or two after the incident and he told her his version of the events, *i.e.*, that Z.R. had accidentally burned herself. Thereafter, defendant spoke to Detective Skrip on the phone four or five times prior to his voluntary visit to the police station on January 15.

¶ 21 Defendant arrived at the police station around 6 p.m. and met with Detective Skrip in "the interrogation room." Defendant answered the detective's questions in a manner consistent with his previous version of events and then he got up to leave. The detective said that the interview would take a few more minutes. Defendant went to the bathroom and was "alarmed" when an officer followed him. When he exited the bathroom, an officer accompanied him to the interrogation room. Defendant asked Detective Skrip if he could leave and was told that he

could not. Defendant was handcuffed and Detective Skrip questioned him for 30 to 45 minutes. The detective told him that defendant's version of events did not coincide with the facts.

¶ 22 Defendant was placed in a holding area and was not issued *Miranda* warnings. Another officer entered the area three or four times and asked defendant whether he was hungry or thirsty. The officer also asked defendant whether he wished to alter his statement because his story did not sound right and told defendant that he should give them something they could work with.

¶ 23 Defendant denied volunteering any information to Detective Skrip. He asked to call his mother and told Detective Skrip that he wanted an attorney. Detective Skrip and the other detective told defendant that he was not under arrest and that they were waiting for the ASA to arrive.

¶ 24 Prior to ASA Gleason's arrival, defendant asked Detective Skrip if he was going to be charged with a felony. The detective told defendant that, if he worded things in a certain way, he would most likely be charged with a lesser offense or misdemeanor, and then he could go home. Detective Skrip suggested to defendant that maybe he ran hot water over Z.R.'s hands for a couple of minutes just to "teach her a lesson." Defendant believed that, if he agreed to the statement suggested, he would likely be charged with a misdemeanor and would be able to go home.

¶ 25 ASA Gleason arrived after defendant had been at the police station for two or three hours and identified himself to defendant as a prosecutor. Defendant met with Detective Skrip and ASA Gleason and repeated his earlier version of the incident. ASA Gleason said he did not believe defendant. Detective Skrip reminded defendant that he had run the hot water over Z.R.'s

hands just to teach her a lesson. ASA Gleason then "started writing stuff down real fast." He told defendant to sign the written statement and then he could go home.

¶ 26 Defendant signed the written statement and he initialed the corrections where he was directed to do so, but he did not read each page. ASA Gleason informed defendant of his *Miranda* rights only *after* he signed the written statement.

¶ 27 On cross-examination, defendant testified he had graduated from high school and, at the time of the incident, was taking college courses. He spoke to detectives twice shortly after Z.R. had been injured. On one occasion, defendant told them he was in the process of cooking chicken when Z.R. was hurt. On another occasion, they wanted to know specifically how he cooked the chicken.

¶ 28 In ruling on the motion to suppress, the trial court found that, based on Detective Skrip's interviews and contacts with defendant and his mother, defendant was a suspect when he went to the police station on January 15 and should have been given *Miranda* warnings prior to any questioning. The court granted defendant's motion to suppress the two statements made to Detective Skrip following his arrest and prior to questioning by ASA Gleason.

¶ 29 However, the court denied the motion to suppress defendant's oral and written statements to Detective Skrip and ASA Gleason, finding those statements had been given "voluntarily and freely." Noting that *Miranda* warnings were given prior to ASA Gleason's interview of defendant, the court stated:

> "I do not find that the defendant's free will was undermined in any way, shape, or form. Here in this case, I'd point out the detective was clearly not trying to get a statement on her own. She apparently wanted the State's Attorney there to be present and to witness []

any statement. She didn't want to hear anything inculpatory that the defendant had to say once he was in the interview room. She was waiting for the State's Attorney."

¶ 30 Distinguishing case law cited by the defense, the court further stated:

"In our case, the *Miranda* [warnings were] not administered midstream during the course of inculpatory statements, the *Miranda* [warnings were] given before that statement. There was nothing prior to that that was inculpatory other than these two knocks on the door when he need[ed] to talk to the detective, at that point, and I'm not letting those come into evidence."

¶ 31 Additionally, the court noted that defendant was an adult, was offered food and water, and was allowed to use the bathroom. The court found the testimonies of Detective Skrip and ASA Gleason to be credible; however, the court did not find credible the testimony of Ms. Logan, or defendant's claim that he was promised a lesser charge in exchange for a confession.

¶ 32 At the bench trial, C.R. testified that she and defendant were in a dating relationship and that, as of December 14, 2009, defendant had been living with her for over one year. On that date, her 14-month-old daughter, Z.R., was alone with defendant while C.R. took a GED exam. As she left the exam at around 4 p.m., C.R. saw that defendant had texted her that Z.R. had burned her hands on a pan. As she was returning the text, defendant drove up with Z.R. in the back seat. Z.R. was screaming and her right hand was covered in a blue towel. C.R. and defendant took Z.R. to Mercy Hospital, where Z.R. was admitted. Later, Z.R. was transferred to another hospital with a burn unit. Z.R.'s hands were blistered like "bubbles on the top of a pizza."

¶ 33 Z.R. was in a burn unit for one month and underwent extensive rehabilitative surgery, including skin grafts and the placement of pins into her hands. Eventually, Z.R. was transferred

to a rehabilitation center where she stayed for another month. At the time of trial, Z.R. still had visible extensive scarring from the burns and continued to receive medical care and surgery to correct the deformities caused by her injuries.

¶ 34 Kelley Staley, a physician at Comer Children's Hospital pediatric burn unit, testified that she had examined Z.R. on December 15, 2009. Z.R. had second-degree burns on her palms, as well as third-degree burns on the backs of her hands, consistent with immersion in water, resulting in significant pain and disfigurement. Because Z.R.'s patient history was not compatible with accidental injury, the entire medical team suspected that her burns had been intentionally inflicted. Dr. Staley did not speak with defendant, but knew of his account that the burns took place while cooking chicken nuggets. She found this account to be "completely incompatible with [Z.R.'s] injuries." She testified that the only way an injury of this type could be sustained, is by full immersion in hot liquid, immersion in running water with pooling at the bottom, or exposure to running water for an extended period of time.

¶ 35 Defendant's written statement was read into the record at trial. In his written statement, defendant admitted that he was home alone with Z.R. on December 14, 2009. Defendant was preparing chicken nuggets in a conventional oven when he went to the bathroom. Defendant saw Z.R. knock the tray of chicken nuggets from the table; she cried because the tray was hot. Defendant was angry with Z.R. because she was always doing things to hurt herself and her hands looked slightly burned. Defendant wanted to teach Z.R. a lesson that hot things were not good to touch. He picked her up, took her to the bathroom sink, and turned on the hot water. Defendant admitted he placed Z.R.'s hands under the running faucet—first under the hot water for two to three minutes, then under cold water for the same amount of time. Defendant then grabbed a towel, wet it, and placed it into the freezer. He went to a neighbor's house to borrow

some burn cream. When he returned, he wrapped the frozen towel around Z.R.'s hands. As he was applying the burn cream, he saw that the skin was coming off of Z.R.'s hands.

¶ 36 Defendant testified at trial that he filled the pan used to cook the chicken nuggets with water so that they would separate. He placed the cooked chicken nuggets on a table and went to the bathroom. When he returned, defendant found that Z.R. had burned herself. Defendant went to a neighbor's residence to get some antibiotic cream, which he applied to Z.R.'s hands. The skin on Z.R.'s hands came off as he rubbed them, and she was screaming loudly. Defendant's mother phoned and advised that he should run water over Z.R.'s hands. Defendant ran cold water over Z.R.'s hands, but the skin continued to come off.

¶ 37 Defendant testified he told ASA Gleason this version of the manner in which Z.R.'s hands had been burned. ASA Gleason responded that no one would believe he made chicken nuggets that way and that defendant could "make it easier" on himself, and would be charged with only a misdemeanor, if he altered his statement. Defendant altered his statement saying that, instead of running cold water on Z.R.'s hands, he had ran hot water on them for two to three minutes. Defendant believed he would be allowed to go home by so changing the details of his story. Defendant signed the written statement where directed.

¶ 38 Defendant testified that he altered his statement, where he implicated himself by admitting he ran hot water over Z.R.'s hands, was not true and was not voluntarily given.

¶ 39 On cross-examination, defendant said that, although parts of his statement were read to him, the statement was never read to him in its entirety.

¶ 40 In rebuttal, Detective Skrip testified that neither she, nor ASA Gleason, told defendant to alter his account of how Z.R. received her burns.

¶ 41 At the close of all the evidence, the trial court found defendant's testimony not credible and found that the testimony of the State's witnesses to be credible. The trial court convicted defendant of four counts of heinous battery, four counts of aggravated battery to a child, two counts of aggravated domestic battery and two counts of aggravated battery. The court later merged those counts and sentenced defendant to two concurrent terms of six years' imprisonment. Defendant appeals.

¶ 42 On appeal, defendant argues that the trial court erred by not granting his motion to suppress his oral and written statements to ASA Gleason. Although those statements were made after he was advised of his *Miranda* rights, defendant argues that those later statements were "inextricably interwoven" with his earlier inculpatory statements to Detective Skrip and, therefore, were inadmissible.

¶ 43 "Where a defendant challenges the admissibility of his confession through a motion to suppress, the State has the burden of proving the confession was voluntary by a preponderance of the evidence." *People v. Braggs*, 209 Ill. 2d 492, 505 (2003) (citing 725 ILCS 5/114-11(d) (West 2000)). In reviewing a trial court's ruling on a motion to suppress, "we will accord great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence." *People v. Flores*, 2014 IL App (1st) 121786, ¶ 35 (citing *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001)).

¶ 44 Here, although defendant asks this court to reverse the trial court's ruling as contrary to the manifest weight of the evidence, defendant does not dispute the court's factual findings. Rather, defendant challenges the trial court's legal conclusion that the oral and written statements he made to ASA Gleason were admissible. "[W]e will review *de novo* the ultimate question of the defendant's legal challenge to the denial of his motion to suppress." *Id*.

¶ 45 "A confession is voluntary if it is the product of free will, rather than the product of the inherently coercive atmosphere of the police station." *People v. Nicholas*, 218 Ill. 2d 104, 115 (2005). As a guard against self-incrimination, statements made in response to custodial interrogation must be suppressed unless they are preceded by *Miranda* warnings. U.S. Const. Amend. V-Self-Incrimination; *Miranda v. Arizona*, 384 U.S. at 478-79.

¶ 46 The failure to give defendant his *Miranda* warnings before his initial inculpatory statement does not necessarily require the suppression of later warned statements. *People v. Loewenstein*, 378 Ill. App. 3d 984, 990 (2008); *Oregon v. Elstad*, 470 U.S. 298, 314 (1985); *People v. Fuller*, 141 Ill. App. 3d 737, 743 (1986). The United States Supreme Court has held that, although "*Miranda* requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made." *Elstad*, 470 U.S. at 309. "[A]bsent deliberatively coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement. In such circumstances, the finder of fact may reasonably conclude that the suspect made a rational and intelligent choice whether to waive or invoke his rights." *Id.* at 314.

¶ 47 In *Missouri v. Seibert*, 542 U.S. 600 (2004) (plurality op.) (Kennedy, J., concurring), the Supreme Court held that the rule in *Elstad* is to be followed, unless police have engaged in a two-step technique of "question first-warn later" in which officers deliberately withhold *Miranda* warnings while a suspect is initially questioned. *Id*. at 604. The *Seibert* Court noted that there are situations where officers do not deliberately withhold *Miranda* warnings, and that "[a]n

officer may not realize that a suspect is in custody and warnings are required. The officer may not plan to question the suspect or may be waiting for a more appropriate time." *Id*. at 620.

¶ 48 Since *Elstad* and *Seibert* have been decided, the *Elstad* standard has been applied, unless it is shown that police deliberately attempted to evade the requirements of *Miranda* by not offering those warnings until after a defendant has confessed. See *People v. Lopez*, 229 Ill. 2d 322, 360-61 (2008); *Loewenstein*, 378 Ill. App. 3d at 992-93 (collecting cases).

¶ 49 In *Loewenstein*, the State appealed the trial court's suppression of the defendant's second statement to police made after he received *Miranda* warnings when the defendant had confessed a day earlier to possessing a handgun. *Id*. at 988-89. Noting the rule in *Elstad* applied in the absence of intent by the defendant's interrogators to circumvent *Miranda* under *Seibert*, we found no evidence that the police employed a two-step interrogation method. *Id*. at 993. Thus, we considered whether the second statement was voluntarily made based on the " 'surrounding circumstances and the entire course of police conduct with respect to the suspect[.]' " *Id*. (quoting *Elstad*, 470 U.S. at 318). We noted the issuance of *Miranda* warnings prior to the defendant's second statement, as well as the presence of the defendant's initials next to the *Miranda* warnings and his signature on the form, and the absence of coercive tactics by the officers. *Loewenstein*, 378 Ill. App. 3d at 993. We found that, because the second statement was voluntary, its suppression was not required. *Id*.

¶ 50 The same result was reached in *People v. Harris*, 389 Ill. App. 3d 107 (2009), where the defendant made an inculpatory statement during questioning and prior to her arrest. *Id*. at 110. After the defendant made her statement, questioning ceased, and she was informed of her *Miranda* rights. *Id*. After initially recanting her admission, the defendant was again advised of her *Miranda* rights twice more before giving a videotaped statement. *Id*. at 110-12.

¶ 51 Applying *Elstad* and *Seibert*, we held that the detectives did not deliberately employ a two-step strategy "to undermine *Miranda* or to evade its requirements," noting that "the detectives were understandably surprised by [the] defendant's spontaneous admission" and stopped further questioning at that point. *Id*. at 123.

¶ 52 Here, as in *Loewenstein* and *Harris*, there is no evidence to indicate that the police engaged in an intentional process to prevent defendant from asserting his *Miranda* rights, or that Detective Skrip delayed the issuance of *Miranda* warnings.

¶ 53 According to Detective Skrip's testimony, which the trial court found to be credible, defendant was arrested on January 15 at the police station. His initial account of the incident did not coincide with Z.R.'s injuries or medical records. Detective Skrip returned to the holding area where defendant was being held, she told defendant that she had contacted the office of the Cook County State's Attorney, and that, when the ASA arrived, she and the ASA would "be in there to talk to him again." At that point, when defendant made an inculpatory statement, Detective Skrip told defendant that they would "have a full conversation about this" once the ASA was there. Defendant initiated the second contact with Detective Skrip when he knocked on the door of the holding area and made a second inculpatory statement. Detective Skrip again told defendant they would "talk about it" when the ASA arrived.

¶ 54 Prior to ASA Gleason's arrival, defendant's inculpatory statements to Detective Skrip were not the result of police interrogation. In fact, each time, the detective had attempted to stop defendant from talking until the ASA arrived to take a statement. Under *Elstad*, even though defendant made initial inculpatory statements while in custody and prior to his *Miranda* warnings, his oral and written admissions that were made following ASA Gleason's informing him of his *Miranda* rights were admissible, based on the surrounding circumstances.

¶ 55 In conclusion, the trial court did not err by denying defendant's motion to suppress his oral and written statements to ASA Gleason, despite the suppression of the earlier statements he made to Detective Skrip prior to the issuance of *Miranda* warnings. Accordingly, the judgment of the trial court is affirmed.

¶ 56 Affirmed.