2018 IL App (5th) 160411-U

NO. 5-16-0411

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Madison County.
	)	
v.	)	No. 13-CF-2807
	)	
BRANDON CHITTUM,	)	Honorable
	)	Neil T. Schroeder,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the order of the circuit court of Madison County suppressing all statements made by the defendant after he invoked his right to counsel during a custodial interrogation conducted by law enforcement on December 19, 2013.

¶ 2 Initially, we address the motion to strike that was taken with this case. The defendant filed a motion to strike several transcripts of video recordings of police interviews arguing that the transcripts filed with the record on appeal by previous defense counsel were never admitted into evidence at the suppression hearings and that transcript A contained a material and substantial error. The State responded that the transcripts should not be stricken but rather that the record should be supplemented or corrected to

accurately reflect what was said during the recorded police interviews. Considering that the original video recordings were included with the record and reviewed by this court, we find that supplementing the record or correcting the transcripts would be wholly unnecessary. Therefore, the motion to strike is granted.

¶ 3 This appeal arises from the granting of a motion to suppress entered in the circuit court of Madison County. The defendant, Brandon Chittum, filed an amended motion to suppress statements made to Alton police after he invoked his right to counsel on December 19, 2013. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 On November 23, 2013, Courtney Coats was reported missing. As part of the investigation into her disappearance, police interviewed the defendant. The first custodial interrogation of the defendant occurred on December 19, 2013, at approximately 7:50 p.m. Detectives Kurtis McCray and Jeremiah Dressler conducted the interview, and Lieutenant Scott Golike observed the interview remotely from another room in the station. Lieutenant Golike could see and hear everything the defendant was saying in real time. Prior to the interview, the defendant was Mirandized. The defendant stated that he could read and understand the English language and that he understood his rights. He then knowingly, intelligently, and voluntarily waived those rights and the interview began.

¶ 6 After approximately 26 minutes, the defendant stated "at this point, I want a lawyer." The two detectives in the room, McCray and Dressler, concluded their questioning and left the room. The recording equipment was shut off. Approximately 10

minutes later, Lieutenant Golike, on his own initiative and not at the request of the defendant, entered the room where the defendant was being held. The recording equipment was not turned on for this interview.

¶ 7 After the unrecorded conversation with Lieutenant Golike, the defendant was booked and taken to a holding cell. Approximately 30 minutes after he was put in the holding cell, the defendant told the guard that he wanted to talk to "a detective." Lieutenant Golike retrieved the defendant and took him back to an interrogation room, this time with the video equipment turned on. During the third interview—the second recorded interview that took place after the unrecorded conversation with Lieutenant Golike—the defendant waived his *Miranda* rights, including his right to an attorney, and began to make inculpatory statements. On December 20, 2013, the defendant was charged with two counts of first-degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2012)), one count of dismembering a human body (720 ILCS 5/12-20.5(a) (West 2012)), and one count of concealment of a homicidal death (720 ILCS 5/9-3.4(a) (West 2012)).

¶ 8 On March 7, 2016, the defendant filed an amended motion to suppress all statements made after the first interview on December 19, 2013, when he invoked his right to counsel. The court held hearings on the motion on March 21, 2016, and July 12, 2016. At the March 21, 2016, hearing, on cross-examination, Lieutenant Golike testified, "I had a conversation—a brief conversation with him after the McCray/Dressler interview and before the formal interview." He then testified as follows regarding what occurred during that conversation:

"Q. Okay. Now you do say that during that time period the cameras aren't running?

A. Yes. Detective McCray, I think, shut off the video shortly after he came into the monitoring room.

Q. Okay. And he comes in there and tells you Brandon has asked for an attorney?

A. He doesn't need to tell me that, I watched it.

Q. Right. I'm sorry, you saw it yourself. So at that point you go into the interrogation room and speak to Brandon?

A. Not immediately. There was some time passed, but at some point I went to the door and spoke to him casually while he was still in the interview room.

* * *

Q. Okay. And during this casual conversation with Brandon you do convey to him that his wife is now at the Collinsville Police Department?

A. I don't know if I said she was at the—I said that later in the interview, but I don't know if I knew that that's—like I'm not sure I knew they weren't interviewing her at her house, so we very likely had a brief conversation about his wife's status after he asked, but I don't know if right at that time if I knew she was actually at the Collinsville PD or not.

Q. Well you advised her that—I'm sorry, you advised Brandon during this conversation where the cameras are off, you advised him that law enforcement was making contact with her?

A. I'm pretty sure that happened.

* * *

Q. Okay. And during that conversation, didn't you convey to him that he needed to talk with you so that he could clear his wife of any involvement?

A. Honestly the majority of the conversation with him was regarding Patrick Chase is testifying, we perceive Patrick Chase as the main offender, the priority offender. He was cooperating. I was making sure that he knew that. That was our conversation.

Q. But my question was, when you go in there about 10 minutes after he's asked for an attorney, didn't you convey to him that he needed to talk to you in order to clear his wife's name from having any involvement in this case?

A. The only questions that came up in that were from your client and he was asking about his wife's status. I told him we'll be interviewing your wife, we're gonna have to have that car now. Like—and my point there is, you need to be able to either sink or swim with what Patrick Chase is saying.

So my point is, I don't think he was a full believer that Patrick Chase was talking, so I was just merely pointing out the fact that your co-defendant is talking, maybe you need to consider that."

¶ 9 On September 13, 2016, the trial court entered a written order granting the motion to suppress. In its order, the court found that "[t]he ten to fifteen minute conversation Lt. Golike had with the defendant was precisely about convincing him that he should reconsider his decision to request an attorney. Very shortly after this conversation, and as an apparent direct result thereof, the defendant did exactly that."

¶ 10 On September 22, 2016, the State filed a notice of appeal under Illinois Supreme Court Rule 604(a)(1) (eff. Dec. 3, 2015) and a certification of substantial impairment of its ability to prosecute.

¶ 11 ANALYSIS

¶ 12 An appeal of a trial court's ruling on a motion to suppress presents questions of both law and fact. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). Any finding of fact or credibility determination made by the trial court will be given great deference and will only be reversed if it is against the manifest weight of the evidence. *Id*. The trial court is in the best position to determine and weigh the credibility of witnesses, observe the witnesses' demeanor, and resolve conflicts in testimony. *Id*. This court will review *de novo* the ultimate legal question raised in the appeal. *Id*.

¶ 13 "In *Miranda v. Arizona*, the [United States Supreme] Court determined that the Fifth and Fourteenth Amendments' prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney."

Edwards v. Arizona, 451 U.S. 477, 481-82 (1981) (citing *Miranda v. Arizona*, 384 U.S. 436, 479 (1966)). Under *Miranda*, once a person subject to a custodial interrogation requests counsel, " 'the interrogation must cease until an attorney is present.' " *Id.* at 482 (quoting *Miranda*, 384 U.S. at 474). "[I]t is inconsistent with *Miranda* and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel." *Id.* at 485. The *Edwards* Court created a bright-line rule stating "we now hold that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Id.* at 484. In applying the *Edwards* rule, the United States Supreme Court explained in *Oregon v. Bradshaw* that in ruling on a motion to suppress, the first inquiry is whether, after invoking one's right to counsel, the accused himself initiates further communication with law enforcement. *Oregon v. Bradshaw*, 462 U.S. 1039, 1044 (1983). Should the court determine that the accused reinitiated further contact, the second inquiry is whether defendant's subsequent waiver to the right to counsel was "knowing and intelligent and found to be so under the totality of the circumstances, including the necessary fact that the accused, not the police, reopened the dialogue with authorities." (Internal quotation marks omitted.) *Id.* at 1046.

¶ 14 In this case, the trial court applied the rule in *Edwards* and additionally seemingly conducted the second part of the *Bradshaw* inquiry regarding the totality of the circumstances. However, on appeal the State argues that this court should find that the totality of the circumstances analysis applied in *Morgan* is the appropriate rule (*People v.*

Morgan, 67 Ill. 2d 1 (1977)) because it contends that the defendant voluntarily waived his right to counsel when he requested to speak with detectives from his holding cell. We disagree with the State because the crux of this case is whether the police reinitiated contact with the defendant when Lieutenant Golike, of his own volition, entered the room where the defendant was being held, with the intent to persuade the defendant to reconsider invoking his right to counsel, and before counsel had been made available to him. Therefore, we find that *Edwards* and successors are applicable to the case at hand.

¶ 15 In its order, the trial court found "that Lt. Golike initiated further conversation with the defendant after he invoked his right to counsel." During the suppression hearing, Lieutenant Golike admitted that he reinitiated contact with the defendant by going to the room where the defendant was being held and having an unrecorded conversation with him. He testified, "I had a brief talk with him at the door and then he actually asked questions of me." He further testified that his purpose for going into the room and speaking with the defendant was to convey information to him that would persuade him to reconsider asking for an attorney and instead waive his *Miranda* rights and speak with police without counsel. The court found that any waiver of *Miranda* by the defendant was a direct result of the unrecorded conversation with Lieutenant Golike.

¶ 16 The trial court's findings are not against the manifest weight of the evidence. It is apparent from the State's own evidence that under *Edwards*, the defendant's statements should be suppressed. Furthermore, because the police reinitiated contact with the defendant after he invoked his right to counsel, application and discussion of the second prong of the *Bradshaw* test is unnecessary.

¶ 17 The order of the circuit court of Madison County is hereby affirmed.

¶ 18 Affirmed.