2020 IL App (1st) 172057-U

FIRST DIVISION
May 18, 2020

No. 1-17-2057

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 15 CR 2721
	)	
	)	
JUAN TORRES,	)	Honorable
	)	Richard Dennis Schwind,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
PRESIDING JUSTICE GRIFFIN and JUSTICE HYMAN concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion to suppress his statements. The court did not err in denying defendant's motion *in limine*.

¶ 2 Defendant appeals from the trial court's denial of his motion to suppress statements and from the denial of his motion *in limine*. Defendant argues that the trial court erred in denying his motion to suppress because defendant was not properly informed of his *Miranda* rights before giving a custodial confession. In addition, defendant argues that the court should have granted his motion *in*

limine to prevent the victim, Jane Doe (J.D.),[1] from reading a letter she wrote to defendant in open court. For the following reasons, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with the sexual assault of 14-year-old, J.D., both vaginally and anally on multiple occasions over a period of months in 2014. He also impregnated her. Following a jury trial, defendant was convicted of one count of aggravated criminal sexual assault (720 ILCS 5/11- 1.30(a)(2) (West 2014)) and three counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2014)), and was sentenced to life in prison for the aggravated criminal sexual assault conviction, to be served consecutively to three consecutive thirty-year prison terms for the three criminal sexual assault convictions.

¶ 5 Prior to trial, defendant filed a motion to suppress his custodial statements, arguing that the *Miranda* warning given by ASA Katherine Lavine prior to his confession was insufficient. Defendant alleged that although she had advised him of his right to counsel, she did not advise him that the right to counsel was operative both before and during questioning.

¶ 6 At the hearing on the motion, Streamwood Police Officer Claudio Mercado testified that defendant was arrested in this case on January 24, 2015 and was taken to an interview room in the Streamwood Police Department. Before defendant was questioned, Officer Mercado read defendant *Miranda* warnings from a pre-printed Streamwood Police Department "Waiver of Rights" form. Defendant asked no questions about his rights and did not indicate that he did not understand them.

[1] In an attempt to protect the identity of the victim, we will refer to her as Jane Doe or J.D.

Defendant then signed a form confirming that he understood his rights and that he was willing to answer questions.

¶ 7 The first interview lasted for a little over an hour. Defendant was then transported to the hospital, complaining of breathing difficulties. After defendant returned to the station the next day, ASA Lavine gave defendant *Miranda* warnings before their discussion, informing him that he had a right to have an attorney present. ASA Lavine also asked defendant whether he understood his rights under *Miranda* and defendant acknowledged that he did. After answering questions for under an hour, defendant took a cigarette break. After the break, questioning resumed for about twenty minutes. All three interviews were audio and video recorded. The reading of the *Miranda* warnings and defendant's acknowledgment that he understood those warnings were reflected on the recordings.

¶ 8 Defendant testified at the hearing and stated that before the first round of questioning, Officer Mercado had informed him that he had a right to an attorney. He also stated that, before the second round of questioning, ASA Lavine had informed him that he had the right to have an attorney present. Defendant admitted that he had been arrested on seventeen prior occasions and had received *Miranda* warnings at least ten times. Despite his familiarity with the criminal justice system, defendant claimed that he was unaware that his "right to counsel" meant that he could have counsel present during custodial questioning and claimed the he could not recall telling Dr. Jasinski (who had examined defendant for fitness) that he understood that his right to counsel encompassed all stages of the custodial interview process, including before questioning.

¶ 9 Dr. Jasinski testified at the hearing on defendant's motion that defendant had told him that he believed that he had the right to counsel both "when you get arrested" and "when you're being

questioned." The trial court then denied defendant's motion finding that defendant's claimed ignorance about when and how his right to counsel attached was not credible. The court stated:

> "When [Dr. Jasinski] said you have a right to an attorney, the Defendant was asked what does that mean. He says, well, you get an attorney when you're arrested, and you read that in combination with you're free – if you can't afford an attorney, one will be given – afforded to you and free of charge, the Defendant said that meant you had a right to have an attorney with you when you're questioned.
>
> Again, from the [People v.] Bernasco case, the rights need not mean the ability to understand far reaching legal and strategic effects of waiving one's rights intelligently and knowingly, one must at least understand, basically, what the rights encompass and minimally what their waiver will entail. That's exactly what the Defendant exhibited to the doctor when he said . . . months later that are what – that's what the rights mean.
>
> Looking at Defendant's age, and background, and intelligen[ce], and I don't believe it means school intelligence, or school educated intelligence, I believe you can look at intelligence, also, as to just dealing in life type of intelligence or quote, unquote, what's known as, "street smarts." And when . . . questioned even further, of those 12 times he was given Miranda warnings orally10 times and written Miranda warning twice.
>
> * * *
>
> So, whether or not the Defendant knew he could have an attorney and he could remain silent and have an attorney before he said anything, look at all the circumstances. The Defendant was told he could have a right to an attorney, and he said he knew that you get an

attorney when you're arrested. That's what he told the doctor. And if you can't afford one, one would be provided for him free of charge.

* * *

Defense makes - - tries to make headway that they were never - - the rights were never explained to the Defendant in detail. I don't know why you would explain something in detail to someone if you ask them do you understand and they say yes. Why would you go any further. If the person says, yes, I understand. Well, do you understand what it really means? That's not what the case law requires.

* * *

I find that the Defendant knew what his Miranda warnings were [. . .]."

¶ 10 Defendant also filed a pre-trial motion *in limine* to bar the admission of a letter that J.D. wrote to defendant a day after defendant was in custody. The letter said in part:

"Dear Daddy,

What happen with both of us was wrong but nothing can change . . . your my dad and I will always love you it will be sad that I won't be able to see you but I love so you much and it's going to hurt really bad that I can't talk or able to see you. I will be your daughter no matter what, even what you did to me . . . I'm going to miss you daddy your my king and I'm your little princess. Bye daddy I love you.

Tu mija (your daughter)"

¶ 11 The prosecutor argued that the evidence was relevant to show J.D.'s "state of mind, why she didn't tell, what her feelings were about [defendant], at the time." The prosecutor also explained that during his custodial interrogation, defendant had acknowledged receipt of the letter, read the

letter, and signed it, and that those events were on the same videotape that the jury would view in the prosecution's case-in-chief. The videotape showed that after reading the letter to himself, defendant handed the letter back to ASA Lavine and said that J.D.'s letter had acknowledged that "what we both did was wrong." After hearing these arguments for admitting the letter, the trial court denied defendant's motion *in limine*.

¶ 12 J.D. testified that defendant sexually assaulted her throughout the summer of 2014 when she stayed with him and her stepmother. J.D. was 14 years old at that time. Defendant and her stepmother were living at the stepmother's sister's house.

¶ 13 J.D. testified that the first assault occurred in July, when defendant woke her during the night, took off her leggings and underwear, and put his penis in her vagina. J.D. testified that she did not want him to do this. On the second occasion, defendant sexually assaulted J.D. on the cement patio outside. On another occasion, he put his penis in her anus. On yet another occasion, David walked into her bedroom while defendant was on top of her. (David later corroborated this and testified that one night, noticing that J.D.'s bedroom door was open and sensing that something was amiss, he had looked into the bedroom and saw defendant standing naked in the room.)

¶ 14 J.D. explained that defendant sexually assaulted her "every other day" throughout the rest of the summer of 2014, in "[h]is bedroom, in the back room, the shed, and outside in the backyard on the concrete." When school started in the fall, J.D. stayed with defendant every weekend, and he sexually assaulted her twice per weekend. He never wore a condom and would ejaculate inside of her.

¶ 15 In November 2014, J.D. took a pregnancy test, discovered that she was pregnant, and told her cousin I.O. J.D. also told defendant that she was pregnant, but defendant told her to tell people that her then-boyfriend, had impregnated her. J.D. delivered a stillborn fetus on February 27, 2015.

¶ 16 J.D. wrote a letter to defendant shortly after his arrest. In the letter, J.D. said she still loved her father but that what happened was wrong. J.D. read the letter aloud in court.

¶ 17 I.O. testified that J.D. told her that defendant had impregnated her and identified People's Exhibit 1 as an image of the pregnancy test result confirming that J.D. was pregnant. I.O. was with J.D. when she took that test. I.O. spoke with defendant, who told her not to tell anyone about the pregnancy.

¶ 18 Officer Mercado testified that when defendant was first questioned, defendant denied doing anything inappropriate to J.D. Defendant confessed during the second and third rounds when ASA Lavine was present. ASA Lavine asked defendant why he did it, and defendant responded, "[w]hy it happened? She wanted it." Officer Mercado showed defendant J.D.'s letter. After defendant read the letter, he returned it to ASA Lavine, commenting that J.D., in the letter, had said that "what we both did was wrong." The jury viewed the videotapes of the second and third rounds of questioning, wherein defendant confessed.

¶ 19 Officer Mercado testified that in April 2015 he obtained a buccal swab from defendant's mouth for DNA testing. He placed the sample in a plastic bag that he sealed, signed, inventoried, and secured in an evidence locker at the Streamwood Police Department.

¶ 20 Dr. Pamourn Kulsakdinun testified that on February 27, 2015, J.D. delivered a stillborn fetus. She took tissue from the fetus, put it in a container, sealed it, put it in a plastic bag labeled with J.D.'s name, and gave it to detectives.

¶ 21 Detective Knoll of the Streamwood Police Department testified that in February 2015 he obtained a sealed and packaged fetal tissue sample from Dr. Kulsakdinun. He inventoried, labelled, and secured that item in the Streamwood Police Department evidence locker.

¶ 22 The parties stipulated that Officer Crawford of the Streamwood Police Department transported these two sealed items -defendant's buccal swab obtained by Officer Mercado, and the fetal tissue sample obtained by Detective Knoll- to the Illinois State Police crime lab in Chicago. The parties further stipulated that "a proper chain of custody was maintained at all times."

¶ 23 Angela Kaeshamer, a forensic scientist at the Illinois State Police Forensic Science Center in Chicago, was assigned to conduct DNA analysis in this case. She explained that all incoming evidence is received by evidence technicians at the lab who then log the item into the computer system and deposit it in the office vaults. When Kaeshamer is assigned to a case, she determines where the evidence is located by accessing the computer system, which in turn tells her the precise location of the evidence in the vault as entered by the evidence technicians. Id. All evidence that she received in this case arrived in sealed condition.

¶ 24 Kaeshamer testified that Janet Galvan, an Illinois State Police evidence technician, was the first person to take custody of the fetal tissue sample from the Streamwood Police Department. The sample was in a sealed ziplock bag that was contained inside a larger, sealed manila envelope. Kaeshamer obtained a DNA profile from this evidence.

¶ 25 Kaeshamer testified that Alex Mikos, another Illinois State Police evidence technician, was the first person to take custody of defendant's sealed buccal swab, from which she obtained a DNA profile from defendant. Kaeshaner testified that Vera Kucmarski, another Illinois State Police

evidence technician, was the first person to take custody of J.D.'s sealed buccal swab, from which Kaeshamer obtained J.D.'s DNA profile.

¶ 26 Having obtained DNA profiles from this evidence, she resealed the evidence and returned it to the Streamwood Police Department. She emailed the DNA profiles to the Forensic Science Laboratory in Joliet for paternity analysis. Kaeshamer agreed that she maintained "all proper controls" and "a proper chain of custody" at all times while working on this evidence.

¶ 27 Christopher Webb, an Illinois State Police forensic biologist working in the Joliet Forensic Science Laboratory, testified that he received the DNA profiles from Kaeshamer and, following his analysis of that data, concluded that the probability that defendant had parented the fetus was 99.99%.

¶ 28 The People rested and the trial court denied defendant's oral motion for a directed verdict. Defendant rested.

¶ 29 After hearing all of the evidence, the jury found defendant guilty of one count of aggravated criminal sexual assault and three counts of criminal sexual assault. The trial court denied defendant's motion for a new trial, and sentenced him to life in prison for aggravated criminal sexual assault and imposed consecutive thirty-year prison terms on each of the criminal sexual assault convictions, for a total of ninety years, to run consecutively to the life sentence. This appeal followed.

¶ 30 ANALYSIS

¶ 31 Defendant first argues that the trial court erred in denying the motion to suppress his incriminating statements made after receiving inadequate *Miranda* warnings. Specifically, defendant complains that the warning he received under *Miranda v. Arizona*, 384 U.S. 436 (1966), provided by

the ASA Lavine, was deficient as a matter of law because *Miranda* entitled him not just to a warning that he had the right to have counsel present during questioning, but a warning that he had the right to have counsel present before and during any questioning, and that the warning here did not fully apprise him of his rights.

¶ 32 The standard of review applicable to a ruling on a motion to quash an arrest and suppress evidence is twofold. The trial court's factual findings and credibility determinations are upheld unless they are against the manifest weight of the evidence. *People v. Jones*, 215 Ill. 2d 261, 267-68 (2005). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *People v. Rockey*, 322 Ill. App. 832, 836 (2001). After the trial court's factual findings are reviewed, the court's ultimate legal rulings are reviewed *de novo*. *Jones*, 215 Ill. 2d at 268. As this case presents a legal question, we review defendant's claim de novo. *Id*.

¶ 33 In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the Supreme Court held that before conducting a custodial interrogation, law enforcement officers must administer warnings to the defendant sufficient to inform him of his privilege against self-incrimination. "The four essential elements of the warning that is required to be given to a defendant in custody before questioning are: (1) the defendant must be told of his right to remain silent; (2) that anything he says may be used against him; (3) that he has the right to have counsel present before and during questioning; and (4) that he is entitled to have counsel appointed if he cannot afford one." *People v. Martinez*, 372 Ill. App. 3d 750, 754 (2007). However, the Supreme Court has "never insisted that *Miranda* warnings be given in the exact form described in that decision." *Duckworth v. Eagan*, 492 U.S. 195, 202 (1989). Rather, a "commonsense" interpretation of the warnings is acceptable, and warnings will not be set aside so long as they reasonably convey the rights outlined in *Miranda*. *Powell*, 559

U.S. at 63. "The rigidity of *Miranda* [does not] exten[d] to the precise formulation of the warnings given a criminal defendant,' and that 'no talismanic incantation [is] required to satisfy its strictures.' " *Id*. at 202-03 (quoting *California v. Prysock*, 453 U.S. 355, 359 (1981)). A court of review does not need to "examine *Miranda* warnings as if construing a will or defining the terms of an easement." *Id*. at 203. "The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.' " *Id*. at 203 (quoting *Prysock*, 453 U.S. at 361).

¶ 34 As defendant has acknowledged, this court has already considered, and rejected, the claim that a defendant's *Miranda* warnings were defective when a defendant was not specifically advised that he had the right to have an attorney present before and during questioning. In *People v. Walton*, 199 Ill. App. 3d 341 (1990), the defendant argued that his confession was inadmissible because a police officer failed to advise him of his right to have an attorney present before and during interrogation. At a hearing on the defendant's motion to suppress, a police officer testified that he gave the defendant the *Miranda* warnings " 'conversationally.' " *Id*. at 342. The State then asked the officer whether he gave each of the individual warnings, and the officer answered that he had. When asked whether the officer advised the defendant that he could have a lawyer present during questioning, the officer responded, " 'I don't know if I said that.' " *Id*. at 343. The trial court denied the defendant's motion to suppress.

¶ 35 The defendant appealed. This court determined that the *Miranda* warnings given to the defendant "in their totality, were sufficient in that they 'reasonably conveyed' to defendant his rights as required by *Miranda*." *Id*. at 344. We found that the defendant:

> "was specifically informed that he 'had the right to consult with a lawyer.' While the better practice would be for the police to make explicit that [a] defendant's right to consult with a

lawyer may be both before and during any police interrogation, we hold that the language used in this case was sufficient to *imply* the right to counsel's presence during questioning." (Emphasis in original.) *Id*.

¶ 36 We also noted that "no restrictions were stated by the police in the present case as to *how, when, or where* [the] defendant might exercise his right 'to consult with a lawyer.' " (Emphasis in original.) *Id*. at 344-45. Finally, we noted that an opposite conclusion, *i.e.*, a finding that the warnings were insufficient because the defendant was not specifically told that he had the right to consult with a lawyer before and during questioning, "would be to import a rigidity to the *Miranda* warnings and to require a 'talismanic incantation,' both of which actions have been explicitly disapproved by the [Supreme] Court." *Id*. at 345.

¶ 37 Likewise, in *People v. Martinez,* 372 Ill. App. 3d 750, 754 (2007), the defendant argued that his *Miranda* warnings were defective because he was not advised of his right to have an attorney present during questioning and to consult with one prior to questioning. On appeal, we noted that the Supreme Court has never insisted that *Miranda* warnings must be given "in the exact form described in *Miranda.*" Instead, we noted that "*Miranda* warnings must reasonably convey to a suspect his rights." *Id*. (citing *Duckworth,* 492 U.S. at 202-03). We also relied on *Walton* to find that the "defendant has failed to show that the trial court erred in denying his motion to suppress under *Miranda*." *Id*. at 755.

¶ 38 As stated, defendant acknowledges that the holdings of *Walton* and *Martinez* are contrary to his position on appeal but argues that this court should not follow those decisions because they contradict *Miranda*, *Prysock*, and *Duckworth*. We disagree. *Walton* and *Martinez* are consistent with this court's numerous holdings that *Miranda* warnings do not have to be precisely recited, but

they must reasonably convey a defendant's rights. These holdings, in turn, are consistent with the Supreme Court's statement that *Miranda* warnings need not be " 'talismanic incantation[s].' " *Duckworth*, 492 U.S. at 202-03 (quoting *Prysock*, 453 U.S. at 359).

¶ 39 In this case defendant admittedly was advised that he had the right to remain silent; that he had the right to an attorney and the right to have that attorney present during questioning; that anything he said could be used against him in court; and that if he could not afford an attorney, one would be appointed for him. Similar to *Walton* and *Martinez,* the failure to include a statement that the defendant could have an attorney present before and during questioning does not render the *Miranda* warnings that defendant received fatally defective. Accordingly, defendant has failed to show that the trial court erred in denying his motion to suppress under *Miranda*.

¶ 40 Defendant also argues that the trial court erred when it denied his motion *in limine* to bar the admission of J.D.'s letter, which she read in open court. Defendant argues that the letter was a prior consistent statement that improperly bolstered J.D.'s testimony that defendant had sexually assaulted her. Defendant argues that these comments may have caused the jury to believe that defendant impregnated J.D. Interestingly, despite his argument above, defendant argues that he "does not contend that the error in admitting the note by itself denied him a fair trial but that the cumulative effect of this error with the error in admitting Torres's incriminating statements was to deny him a fair trial."

¶ 41 We have already determined that no error occurred in admitting defendant's custodial statements. We therefore find that there was therefore no cumulative effect in allowing J.D. to read her letter to the jury.

¶ 42 With respect to the letter, "as a general rule, a trial court's ruling on a motion *in limine* regarding the introduction or exclusion of evidence is reviewed under an abuse of discretion standard." *People v. Richter*, 2012 IL App (4th) 101025, ¶ 97. At the hearing on the motion *in limine* in this case, the prosecutor explained that J.D.'s reading of the letter was permissible because its contents were already "part of [defendant's] statement to police on video," that the jury was going to view the video during the prosecution's case-in-chief, and that it was "a little late to redact" that portion of his statement. When J.D. read the letter aloud at trial, the jury had already watched the portion of defendant's videotaped custodial interview during which he read the letter silently to himself, and, upon handing it back to ASA Lavine, stated that J.D. had commented in the letter that "what we both did was wrong." The trial court therefore did not abuse its discretion when it allowed J.D. to read the letter in open court that contained the same relevant remarks that defendant himself had read and paraphrased to ASA Lavine during his interview, and as was seen and heard by the jury via the videotape.

¶ 43 We also note that even if the admission of defendant's inculpatory statements and J.D.'s letter was error, any error was harmless where the evidence against defendant was overwhelming. J.D., testified that defendant had sexually assaulted on multiple occasions and impregnated her, and her account was corroborated by her cousin I.O.'s testimony and the testimony of David. Finally, DNA evidence proved that defendant had impregnated J.D. The evidence against defendant was clearly overwhelming.

¶ 44 CONCLUSION

¶ 45 In light of the foregoing, we affirm the judgment of the trial court

¶ 46 Affirmed