COURT OF APPEALS
DECISION
DATED AND FILED

March 27, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-3286-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GEORGE L. JONES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Milwaukee County: DIANE S. SYKES and JOHN E. McCORMICK, Judges. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. George L. Jones appeals from a judgment of conviction entered following his guilty plea to one count of first-degree intentional

homicide, contrary to WIS. STAT. § 940.01 (1997-98).[1] He also appeals from an order denying his postconviction motion. Jones claims: (1) his statements should have been suppressed by the trial court because they were "sew-up" confessions, improperly obtained by the police after detaining Jones for an unreasonable length of time following his arrest; and (2) his trial counsel ineffectively assisted him on the "sew-up" issue. We affirm.[2]

I. BACKGROUND

¶2 The police arrested Jones on November 21, 1997, in connection with the death of Shameika Carter, who had been strangled. The police interrogated Jones on the day of his arrest, and he denied killing Carter. Police questioned Jones again on November 22nd. During this interrogation, Jones told the police that, after a blackout, he woke up next to Carter's dead body and then hid her body. On November 23rd, Jones gave the police a written statement tracking his oral statements from the prior day.

¶3 Later on November 23rd, the police—who believed Jones was possibly involved in a number of similar homicides—again questioned Jones but received no new information from him. Police tried to elicit information from Jones about the other homicides again on November 24th, but Jones gave no information regarding these cases. During this interview, however, Jones admitted

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[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

The Honorable Diane S. Sykes presided over the suppression hearing. The Honorable John E. McCormick decided the postconviction motion.

[2] An order denying a motion to suppress or a motion challenging the admissibility of a statement may be reviewed "on appeal from a judgment of conviction," despite a guilty plea. WIS. STAT. § 971.31(10).

he choked Carter. The police questioned Jones twice on November 25, 1997, about the other homicides. Although Jones eventually discussed the other homicides, he did not admit any involvement. On November 26th, the State filed a criminal complaint charging Jones with first-degree intentional homicide for Carter's death.

¶4 Jones requested a ***Miranda-Goodchild*** hearing to determine whether the police properly advised him of his rights and whether his custodial statements were made voluntarily.[3] At the conclusion of the hearing, the trial court denied Jones's motion to suppress his statements. The trial court found that Jones had been fully advised of his ***Miranda*** rights and "at all times the statements were voluntary and uncoerced." The trial court also found that his detention "was justified and reasonable," Jones filed a postconviction motion claiming that the trial court erred by not suppressing his statements as, in his opinion, illegal "sew-up" confessions. Jones also claimed ineffective assistance of counsel. The postconviction court denied Jones's motion.

II. DISCUSSION

A. Sew-Up Confession

¶5 Jones claims the trial court should have suppressed his statements, except for his first, as a "sew-up" because these statements were the products of an unlawfully prolonged detention, imposed on him by the police for the purpose of

[3] *See* ***Miranda v. Arizona*** 384 U.S. 346 (1966); ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

obtaining a confession.[4] "The law is well settled that any statement obtained from a defendant during a period of *unreasonable* detention is inadmissible in evidence." ***State v. Estrada***, 63 Wis. 2d 476, 490, 217 N.W.2d 359, 367 (1974) (emphasis in original); *see* ***State v. Hunt***, 53 Wis. 2d 734, 741, 193 N.W.2d 858, 864 (1972) (unreasonable detention violates defendant's right to due process); *see also* ***Briggs v. State***, 76 Wis. 2d 313, 325, 251 N.W.2d 12, 16–17 (1977). A detention is unreasonable if the police continue to detain an arrested person for the purpose of "sewing up" the case by obtaining or extracting a confession or culpable statements to support the arrest or guilt. ***Phillips v. State***, 29 Wis. 2d 521, 535, 139 N.W.2d 41, 47 (1966). The determination of whether a detention was reasonable is made on a case by case basis. ***Estrada***, 63 Wis. 2d at 490, 217 N.W.2d at 367. "The trial court's findings on the reasonableness of a detention will not be upset on appeal unless they are clearly erroneous." ***State v. Carter***, 33 Wis. 2d 80, 90–91, 146 N.W.2d 466, 472 (1966).

¶6 There is no set period of time during which questioning can take place, but beyond which a suspect must either be charged or released. ***Hunt***, 53 Wis. 2d at 742, 193 N.W.2d at 864. Instead, a post-arrest detention is permitted as long as "the purpose is reasonable and the period of detention is not unjustifiably long." ***Id.***, 53 Wis. 2d at 742, 193 N.W.2d at 864; ***State v. Wallace***, 59 Wis. 2d 66, 77, 207 N.W.2d 855, 861 (1973). Accordingly, "the question revolves solely

[4] Jones does not claim that the statements he made to the police were involuntary, nor does he claim a violation of ***County of Riverside v. McLaughlin***, 500 U.S. 44 (1991) (probable cause determination required within 48 hours of warrantless arrest). Indeed, the record reflects that Jones was fully advised of his rights, pursuant to ***Miranda***, every time the police interrogated him. *See* ***State v. Hunt***, 53 Wis. 2d 734, 742, 193 N.W.2d 858, 864 (1972) (The "sew-up" issue does not concern the voluntariness of a confession but rather whether a defendant is held without charge for an unreasonable length of time.).

on the point whether the delay was inordinate and the detention illegal." ***Krueger v. State***, 53 Wis. 2d 345, 357, 192 N.W.2d 880, 886 (1972).

¶7 Jones argues that the police had probable cause to charge him with Carter's murder after his first statement and thus, his continued detention after this point was unreasonable. We disagree. "A confession does not become inadmissible as a 'sew-up' confession merely because the state, prior to the confession, had information sufficient to sustain a charge." ***Krueger***, 53 Wis. 2d at 357, 192 N.W.2d at 886.

¶8 The record reflects that the detention was both for proper purposes and not unjustifiably long. The trial court found:

> There were multiple homicides under investigation over and above the one in the instant case; and therefore, [the police] conduct was justified and reasonable and there was not any undue delay in bringing [Jones] into court on the homicide that he was eventually charged with, nor do I find that this conduct was unconstitutional in any way or designed to elicit an unconstitutional sole confession.

"Activities that the authorities might reasonably undertake in order to determine whether to release or to charge include interrogating the suspect or witnesses, checking out the story told by the suspect or witnesses, and gathering evidence." ***Wagner v. State***, 89 Wis. 2d 70, 76, 277 N.W.2d 849, 852 (1979), *citing* ***Hunt***, 53 Wis. 2d at 742, 193 N.W.2d 864. In the instant case, Jones's story was evolving during his detention. On the date of his arrest, Jones denied any involvement in Carter's death, while the following day he told the police he woke up next to the victim's dead body after a blackout. Two days later, he admitted to choking the victim. Based on the trial court's findings of these on-going investigations, as well as Jones's initial denial of any involvement with Carter's death, we cannot

conclude that Jones was illegally detained. ***State v. Yang***, 201 Wis. 2d 725, 735, 549 N.W.2d 769, 773 (Ct. App. 1996) (we must accept the findings of the trial court unless they are clearly erroneous). Accordingly, the statements are not suppressible.

B. Ineffective Assistance of Counsel

¶9 Jones also claims that his trial counsel ineffectively represented him at the ***Miranda-Goodchild*** suppression hearing on the "sew-up" issue. In order to establish that he did not receive effective assistance of counsel, Jones must prove: (1) that his lawyer's performance was deficient; and (2) that "the deficient performance prejudiced the defense." ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). A lawyer's performance is not deficient unless he or she "made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." ***Id.***, 466 U.S. at 687. To prove prejudice, Jones must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69, 76 (1996), (quoting ***Strickland***, 466 U.S. at 694).

¶10 We need not address both the deficient performance and prejudice components if Jones cannot make a sufficient showing on one. ***Strickland***, 466 U.S. at 697. The issues of performance and prejudice present mixed questions of fact and law. ***Sanchez***, 201 Wis. 2d at 236, 548 N.W.2d at 76. Findings of historical fact will not be upset unless they are clearly erroneous. ***Id.*** Where, as here, the postconviction court did not preside over the trial proceedings, we review the postconviction court's findings of fact *de novo*. ***State v. Herfel***, 49 Wis. 2d

513, 521, 182 N.W.2d 232, 237 (1971). The questions of whether counsel's performance was deficient or prejudicial are legal issues we review independently. ***Sanchez***, 201 Wis. 2d at 236–237, 548 N.W.2d at 76.

¶11 Jones asserts that he was prejudiced by trial counsel's failure to ask the police officers who testified at the suppression hearing questions regarding the length of Jones's detention, specifically: (1) how long Jones was detained, and (2) why Jones was held so long without being charged. Jones contends that this failure "is directly responsible for the inadequate record" on the "sew-up" issue. Significantly, however, Jones has not demonstrated how any additional questioning by his trial lawyer would have led to the suppression of his statements. Indeed, Jones makes no offer of proof as to the precise nature of what the police officers would have said had trial counsel questioned them further. It was Jones's burden to show by offer of proof at the postconviction hearing that he was prejudiced by his trial lawyer's failure to, in Jones's opinion, adequately question witnesses. We cannot predicate a finding of prejudice on excluded evidence not of record and not covered by an offer of proof. *See* WIS. STAT. § 901.03(1)(b); *see* ***Nelson v. State***, 54 Wis. 2d 489, 497–498, 195 N.W.2d 629, 633 (1972). Thus, the postconviction court properly concluded that Jones failed to demonstrate that

trial counsel would have elicited any contrary information through further questioning.[5]

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[5] Jones also asserts that the postconviction court's decision failed to address conflicts between the testimony and the police reports. Jones, essentially repeating his argument that he was unlawfully detained, contends that these conflicts "demonstrate conclusively that … the police … used every opportunity to extract more and more information from Mr. Jones about the Shameika Carter homicide." We have already concluded, however, that the police detention was reasonable. Moreover, a trial court's findings of fact on these alleged conflicts are implicit in the trial court's denial of Jones's postconviction motion. *See* ***State v. Gruen***, 218 Wis. 2d 581, 592, 582 N.W.2d 728, 732 (Ct. App. 1998) (court's determination implicitly accepts fact that officer had duty to investigate). Consequently, we reject Jones's assertion that the postconviction court improperly denied his motion.