

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 6, 2007

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP671-CR

Cir. Ct. No. 2004CF83

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICHARD A. HOEFT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Ashland County: ROBERT E. EATON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Richard Hoeft appeals a judgment convicting him of three counts of burglary as a repeater and an order denying his postconviction

motion. He argues that the trial court should have suppressed his confessions because the interrogators did not adequately give him *Miranda*¹ warnings and the confessions were involuntary. He also alleges ineffective assistance of trial counsel. We reject these arguments and affirm the judgment and order.

¶2 Hoeft was initially charged in Ashland County with fourteen counts of burglary and two counts of criminal damage to property. He represented himself at the preliminary hearing and filed a pro se motion to suppress his confessions. During the suppression hearing held November 9, 2004, the trial court granted his request that his standby counsel, Sam Filippo, assume full representation of him. The trial court denied the motion to suppress, finding the State's witnesses more credible than Hoeft.

¶3 By letter dated December 3, 2004, Hoeft informed Filippo that he had requested a substitution of counsel. Filippo confirmed with the State Public Defender's office that it would agree to substitute attorney Carol Conklin for Filippo. Filippo did no additional work on the case. At a telephone hearing held December 14, 2004, Hoeft asked the trial court to substitute Conklin for Filippo. Conklin indicated that she would need a continuance of the trial date scheduled for December 22 and 23. The court denied the request to substitute counsel, noting that Hoeft had filed a speedy trial demand.

¶4 On December 15, Filippo attempted to meet with Hoeft at the prison, but was turned away because Hoeft was visiting with his family. On that same date, Hoeft sent Filippo a letter stating that he wished to terminate Filippo's

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

representation. Filippo filed a motion to withdraw. At a hearing held December 20, 2004, before the court ruled on the motion to withdraw, the parties informed the court that a plea agreement had been reached. Hoeft withdrew his request to substitute Filippo. On December 21, 2004, Hoeft entered no contest pleas to three counts of burglary as a repeater and the remaining counts were dismissed and read in. At the plea hearing, Hoeft indicated that he was satisfied with Filippo's representation.

¶5 In his postconviction motion and on appeal, Hoeft argues that his confessions should have been suppressed because the deputies did not appropriately inform him of his *Miranda* rights and because the statements were involuntary. On appeal, we defer to the trial court's findings of historical fact and its assessment of the witnesses' credibility. See *State v. Hoppe*, 2003 WI 43, ¶34, 61 Wis. 2d 294, 661 N.W.2d 407. Application of constitutional principles to those facts is reviewed without deference to the trial court. *Id.*

¶6 Hoeft was interviewed by officers on July 19 and 22, 2003. On both occasions he accompanied officers on lengthy trips to the locations of burglaries committed in several counties. On July 22, Hoeft signed a statement confessing to numerous burglaries in Ashland County. The statement was written by deputy Nathaniel Deegan after they visited the sites of numerous burglaries and Hoeft assisted in locating stolen property. When they returned to Superior after approximately nine hours of touring the burglary sites, they stopped at a restaurant to eat. After eating, Hoeft signed the confession.

¶7 Hoeft's argument that the deputies did not comply with *Miranda* is based on a misunderstanding of the law and on his own testimony at the suppression hearing that the trial court found not credible. Hoeft testified that the

deputy omitted from his *Miranda* rights the warning that anything Hoeft said could be used against him in court. The trial court found that testimony not credible. Hoeft executed written waivers at the onset of interrogation that included the warning he claims was omitted. Hoeft also argues that his *Miranda* rights were not given until ten minutes after the interrogation began. Nothing in the record contradicts the trial court's finding that no matters of significance were discussed before *Miranda* warnings were given. Hoeft does not identify any incriminating statement made during that time. Hoeft also argues that he was entitled to have his *Miranda* warnings repeated when questioning resumed after a brief hiatus during which Hoeft appeared in "video court." Hoeft did not terminate the interrogation by invoking his *Miranda* rights. Therefore, the law does not require the officers to repeat the *Miranda* warnings after a nine-minute break for court appearance. See *State v. Jones*, 192 Wis. 2d 78, 86-87, 532 N.W.2d 79 (1995). Hoeft has established no *Miranda* violations that would support suppression of his statements.

¶8 The evidence the trial court found credible does not support Hoeft's argument that his statements were involuntary. Hoeft first argues that the twelve-hour duration of the interrogation was excessive. The circumstances he and the deputies described, however, would not support the conclusion that the length of the interrogation rendered the statement involuntary. The interrogation occurred at Hoeft's invitation. Nine hours of the "interrogation time" consisted of driving through several counties pointing out the sites of burglaries and describing the method of entry, items stolen and disposition of the stolen property. The deputies described a friendly atmosphere and Hoeft's cooperative attitude. The trial court did not believe Hoeft's description of yelling or other coercive conduct by the deputies. The trial court found, based on the deputies' testimony, that the length

of the interrogation was primarily based on how much Hoeft wanted to say and his degree of cooperation. He was directing the officers. Hoeft has provided no credible evidence that the deputies wore down his resistance by conducting a lengthy interrogation.

¶9 Hoeft notes that a deputy indicated at the start of the interrogation that the police had information from Hoeft's accomplice about numerous burglaries and that, during the tour of burglary sites, the deputies had to inform Hoeft of the addresses, manner of entry and a list of the items stolen. The deputy testified, however, that all of the information in the written confession came from Hoeft. Citing *Hoyt v. State*, 21 Wis. 2d 310, 316, 124 N.W.2d 47 (1963), Hoeft argues that when the police already had substantial evidence in their possession to confirm a suspect's guilt at the time the interrogation is begun, the court will resolve ambiguities surrounding various relevant factors in favor of inadmissibility of the confession. Although the deputies in this case had some evidence of Hoeft's involvement in numerous burglaries before the interrogation began, there are no ambiguities regarding the relevant factors that relate to admissibility. The trial court's findings of fact, supported by the deputies' testimony, disclose no coercive or improper police conduct. See *Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

¶10 Hoeft next complains that he was not provided with food, water, or bathroom breaks during his tour of the burglary sites. The deputies testified that Hoeft did not complain of being hungry or thirsty and did not request to use a bathroom. Even Hoeft conceded that when he told officers he was hungry, they were out in the woods where no food was available. Hoeft never testified that the absence of food and drink or need to use the bathroom influenced his decision to make all statements or sign the written statement incriminating himself.

¶11 The trial court's finding that Hoeft was not credible when he testified regarding threats and promises is also supported by the deputies' testimony. Hoeft contends that the deputies threatened to "rip his mother's house apart to look for stolen stuff" and that they promised him leniency for his cooperation. The deputies denied making any promises or threats, and the trial court found their testimony credible. Hoeft also argues that an adverse inference should be drawn from the fact that a deputy wrote the text of the confession and Hoeft merely signed the statement. The deputy fully explained the circumstances under which the confession was written, and the trial court believed that the information provided in the confession came from Hoeft's voluntary cooperation with the deputies. The deputy's writing out the statement for Hoeft's signature does not suggest any improper intimidation or coercion by the deputies.

¶12 Finally, Hoeft's argument that his trial counsel was ineffective for lack of preparation fails because he has not established the prejudice prong set out in *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). When challenging the effectiveness of counsel after a guilty or no contest plea, a defendant must show that, but for counsel's errors, he would not have pled guilty or no contest and would have insisted on going to trial. Hoeft's postconviction motion and his brief on appeal do not allege, much less establish, that his no contest plea resulted from his counsel's lack of preparedness. At the postconviction hearing, Filippo testified that he believed Hoeft's chances of acquittal on at least three of the charges was "nil" based on the strength of the State's case. Hoeft does not link his criticisms of Filippo's preparation to the three counts that he pled no contest to. The strength of the State's case and the incentive of dismissing thirteen charges strongly suggests that Hoeft accepted the plea bargain for reasons entirely unrelated to his counsel's performance, a fact confirmed by his own statement during the plea

colloquy. Because Hoeft has not established a causal link between his counsel's lack of preparedness and his decision to accept the plea bargain, he has not established any prejudice arising from his counsel's performance.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

