**COURT OF APPEALS
DECISION
DATED AND FILED**

May 13, 2008

**David R. Schanker
Clerk of Court of Appeals**

Appeal No. 2007AP1216-CR **Cir. Ct. No. 2005CF5201**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSÉ MATAMOROS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KAREN E. CHRISTENSON, Judge. *Affirmed*.

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

¶1 CURLEY, P.J. José Matamoros appeals from a judgment of conviction entered after a jury found him guilty of one count of armed robbery, one count of false imprisonment while using a dangerous weapon, and two counts of substantial battery while using a dangerous weapon, all as party to a crime, contrary to WIS. STAT. §§ 943.32(2), 940.30, 940.19(2), 939.63, and 939.05 (2003-04).[1] On appeal, he argues that the trial court erred when it denied his motion to suppress his custodial statements and when it excluded evidence related to a civil suit filed by a victim, which he contends violated his constitutional right to present a full defense. Because the record supports the trial court's findings that Matamoros received his ***Miranda*** warnings and knowingly, intelligently, and voluntarily waived those rights, and because the trial court's decision to exclude testimony related to the victim's civil suit constituted harmless error, we affirm.[2]

I. BACKGROUND.

¶2 This appeal arises out of an incident that occurred on September 9, 2005. Around 9:00 p.m. on that night, José Sandoval drove from his job at Frontier Auto, a car dealership, to the auto body shop that he owned. His fiancée, who was the office manager, was expecting him. Sandoval testified at trial that as he got out of his vehicle upon arriving at his auto body shop, two men he did not know approached him with a gun and demanded money while threatening to shoot him. The men pushed Sandoval into the office of the auto body shop, where his fiancée, who was seven-months pregnant at the time, sat at a desk.

¶3 One of the men held a gun to Sandoval's head, while the other went through his pockets and took approximately $1300 in cash from him. The men continued to demand money, and when Sandoval denied having any more, they threatened to shoot his fiancée. Sandoval was then struck in the back of the head

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

[2] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

with the gun, which caused him to fall to the floor. His hands were handcuffed behind his back and tape was placed across his eyes. His fiancée's eyes likewise were covered with tape and her hands were taped together.

¶4 Shortly thereafter, a third man joined the other two men. Sandoval recalled that the third man did not speak. Sandoval then was taken from the office area to the back of the shop where he was repeatedly threatened and burned on his face and arms.

¶5 Before Sandoval was taken to the back of the shop, however, one of Sandoval's employees, who was working at the time, heard screaming and Sandoval's voice. The employee looked into the office area and saw two men with Sandoval, who was kneeling with his head down. The employee saw that one of the men had a gun. The employee was able to leave from the back door of the auto body shop, and he ran to get help. The police were called and arrived shortly thereafter.

¶6 Upon arrival, the police found Sandoval and his fiancée with their eyes duct-taped over and their hands bound. Matamoros and the two other men were found hiding inside the auto body shop. Sandoval was wearing a gold chain at the time of the incident, which the men took from him. When Matamoros was searched, he had Sandoval's necklace and approximately $1300 in his pockets, along with the key to the handcuffs that had been placed on Sandoval.

¶7 Following Matamoros' arrest, he was interviewed twice by detectives. The first interview took place at 4:00 a.m. on the morning following the incident. The questioning was in English and the detective who interviewed Matamoros testified at the ***Miranda-Goodchild*** hearing that at no point did it appear that Matamoros lacked understanding or an ability to follow what the officer was saying.[3] In addition, the detective testified that Matamoros did not ask for an interpreter.

¶8 According to the detective, Matamoros told him he knew Sandoval because the two had worked together at Frontier Auto. Matamoros said that shortly after meeting Sandoval, he had learned that Sandoval was dealing kilos of cocaine. Matamoros told the detective that he and two other men he knew believed that Sandoval would have approximately $100,000 from drug dealing on the night of the incident, which the three planned to take and divide three ways.

¶9 On the night of the incident, Matamoros said that he drove the two men to Sandoval's auto body shop and waited in the vehicle while they went in. Matamoros said that he waited in the car because Sandoval knew him, and Matamoros was concerned that Sandoval would have his men retaliate against him. As a result, the other two men were supposed to blindfold Sandoval. When Matamoros entered the auto body shop, he claimed that he did not have an opportunity to talk to Sandoval because the police arrived shortly after he went in. In addition, Matamoros told the detective that he did not see anyone armed when he went inside the auto body shop.

¶10 The first interview lasted approximately two hours. After the interview concluded, Matamoros signed a statement documenting that he had been advised of his ***Miranda*** rights.[4] In addition, Matamoros signed the end of the

[3] ***Miranda***, 384 U.S. 436; ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

[4] The statements were not included in the appellate record. Therefore, we rely on the testimony related to the statements to discern their contents.

statement indicating that he agreed with the information reflected therein. During the ***Miranda-Goodchild*** hearing, the detective denied telling Matamoros that if Matamoros did not cooperate, the officer would have the licensing for his business suspended. The detective testified that he gave Matamoros hot chocolate to drink during the interview.

¶11 Matamoros was interviewed a second time by a different detective at 5:21 p.m. on the day following the incident. The detective who conducted the second interview read Matamoros his ***Miranda*** rights, following which Matamoros said that he would make a statement; however, Matamoros declined to sign at the end of the paragraph in the statement indicating that he had been advised of his rights. After Matamoros' entire statement was documented, he again refused to sign. The statement was read over with Matamoros and he verified that it was true and correct.

¶12 According to the second detective, Matamoros did not give any indication that he was unable to understand the officer due to language difficulties, nor did Matamoros indicate that he wished to talk to someone who spoke Spanish. Furthermore, Matamoros did not ask for an attorney. The detective denied threatening Matamoros by telling him he would lose his license to do business in Milwaukee if he did not cooperate. During the interview, which lasted approximately two hours, Matamoros was given cigarettes and water.

¶13 Matamoros sought to suppress both of his statements.[5] The trial court, noting the contradictions in the testimony that was offered at the hearing, made the following factual findings:

> I would note, first of all, that Mr. Matamoros is an individual of over 40 years old ….
>
> Mr. Matamoros is not a teenager. There is no indication that he suffers from learning disabilities or from any kind of mental handicaps whatsoever. I would say to the contrary from the testimony that I heard here. The things that came out as sort of asides in the testimony of the detectives were interesting.
>
> I found interesting [one of the detective]'s recollection that Mr. Matamoros had come here and lived in New Orleans and had been doing some productive work … [the detective] testified that he remembered this because he thought he was very impressed with Mr. Matamoros and how Mr. Matamoros had succeeded in this country.

¶14 In addition, the trial court noted that although Matamoros was born in Cuba, he had been in the United States for twenty-five years, during which time he held a number of jobs. The trial court referenced that Matamoros was self-employed at the time of his arrest, which it found "speaks of his abilities, mental abilities and the ability to persevere and work hard." All of these factors led the trial court to conclude that Matamoros was not someone who would be "easily overborne."

¶15 The trial court also referenced letters in its file that were sent from Matamoros, two of which were handwritten, and which the court deemed to "carry the indicia of somebody who is intelligent, educated, and attentive to detail." The

[5] Matamoros also filed a motion to suppress the on-scene identification of him. No issues were raised in this appeal regarding the resolution of that motion.

trial court took into account Matamoros' seven prior convictions, with one conviction relating to federal drug trafficking, which the trial court concluded "implies a certain degree of sophistication in terms of the doings of the courts and the ways that the systems operate." Finally, the trial court explained that the duration of the interviews amounted to a relatively short period of questioning.

¶16 The trial court denied the motion, holding that both statements would be admissible at trial based on its finding that the detectives were more credible than Matamoros and its conclusion that Matamoros freely, voluntarily, and intelligently waived his rights. In addition, the court concluded that there was no indication of any threats, promises, or improper coercive behavior on the part of either of the detectives.

¶17 A jury found Matamoros guilty of one count of armed robbery, one count of false imprisonment, and two counts of substantial battery while using a dangerous weapon, all as party to a crime. During the trial, Matamoros attempted to introduce the fact that Sandoval had filed a civil lawsuit against him seeking money damages. He argued that this fact reflected on Sandoval's bias and motive. The trial court refused to permit its introduction for impeachment purposes. Matamoros now appeals. Additional facts are provided in the remainder of this opinion as needed.

II. ANALYSIS.

A. Matamoros' statements were voluntary and properly admitted into evidence.

¶18 Matamoros argues that he did not make a knowing and voluntary waiver of his ***Miranda*** rights. "Under the due process clause of the Fourteenth Amendment, confessions that are not voluntary are not admissible." ***State v.***

Agnello, 2004 WI App 2, ¶8, 269 Wis. 2d 260, 674 N.W.2d 594. To determine voluntariness, we consider the totality of the circumstances. ***State v. Hoppe***, 2003 WI 43, ¶38, 261 Wis. 2d 294, 661 N.W.2d 407.

¶19 "In examining whether a confession was rationally and deliberately made, it is important to determine that the defendant was not the 'victim of a conspicuously unequal confrontation in which the pressures brought to bear on him by representatives of the [S]tate exceed[ed] the defendant's ability to resist.'" ***State v. Clappes***, 136 Wis. 2d 222, 236, 401 N.W.2d 759 (1987) (citation omitted). Before there will be a finding of involuntariness, "[c]oercive or improper police conduct" must be established. ***Hoppe***, 261 Wis. 2d 294, ¶37.

¶20 A voluntariness determination thus requires that Matamoros' personal characteristics be balanced against the police pressures that were exerted upon him prior to his confession. *See* **Clappes**, 136 Wis. 2d at 236. The Wisconsin Supreme Court explained the factors to be balanced as follows:

> The relevant personal characteristics of the confessor include his age, his education and intelligence, his physical and emotional condition, and his prior experience with the police. These factors must be balanced against the police pressures and tactics which have been used to induce the admission, such as the length of the interrogation, any delay in arraignment, the general conditions under which the confessions took place, any excessive physical or psychological pressure brought to bear on the declarant, any inducements, threats, methods or strategies utilized by the police to compel a response, and whether the individual was informed of his right to counsel and right against self-incrimination.

Id. at 236-37.

¶21 We review with deference the trial court's findings of historical facts related to the voluntariness of a confession, and we will affirm the findings so long as they are not clearly erroneous. ***Agnello***, 269 Wis. 2d 260, ¶8. In contrast, we independently apply constitutional principles to the historical facts. ***Id.*** It is the State's burden to establish the voluntariness of Matamoros' statements by a preponderance of the evidence. *See* ***id.***

¶22 Matamoros bases his contention that he did not make a knowing and voluntary waiver of his ***Miranda*** rights on the following: his ***Miranda*** rights should have been provided to him in his native language of Spanish; he was awoken at 4:00 a.m. and was "asked to understand warnings in a foreign language in a state of some disorientation and fatigue"; "the setting was uncomfortable and Matamoros was cold and without shoes"; and he "was placed into a very small room with a very large detective, a scenario which would have been rather intimidating."[6] In addition, Matamoros claims that the fact that his interrogations were not audiotaped supports his position.

¶23 Other than referencing his own self-serving testimony—from both the ***Miranda-Goodchild*** hearing and the trial—Matamoros does not argue that the trial court's findings are clearly erroneous, but rather, disputes the inferences the trial court drew from the facts. However, "[w]hen more than one reasonable inference can be drawn from the credible evidence, this court must accept the inference drawn by the trial court." ***Tang v. C.A.R.S. Prot. Plus, Inc.***, 2007 WI App 134, ¶19, 301 Wis. 2d 752, 734 N.W.2d 169. Furthermore, to the extent that Matamoros relies on his trial testimony to supplement his argument that the trial court erred when it denied his motion to suppress, such reliance is improper. *See* ***State v. Mikkelson***, 2002 WI App 152, ¶21, 256 Wis. 2d 132, 647 N.W.2d 421

[6] Matamoros' shoes were used as evidence at trial.

("We are aware of no authority that permits an appellate court to overturn a suppression ruling based on evidence that was not part of the record at the suppression hearing.").

¶24 We agree with the State that Matamoros indirectly challenges the trial court's findings by implying that the court should have found him more credible. This is problematic given that "[i]t is well settled that the weight of the testimony and the credibility of the witnesses are matters peculiarly within the province of the trial court acting as the trier of fact" because it has a "superior opportunity … to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony." ***Kleinstick v. Daleiden***, 71 Wis. 2d 432, 442, 238 N.W.2d 714 (1976) (footnote omitted). This court does not resolve conflicts in the testimony. *See* ***Tang***, 301 Wis. 2d 752, ¶19.

¶25 After hearing testimony during the ***Miranda-Goodchild*** hearing, the trial court found: the duration of the interviews of Matamoros were relatively short; "[t]here was no attempt on the part of the police to intimidate [Matamoros] through freezing"; Matamoros was not credible with respect to his testimony that he requested an interpreter and an attorney; although the detective who conducted the second interview was a large man, there was no indication that the detective used his size to intimidate Matamoros; and Matamoros was able to understand his rights, which were provided to him in English. These findings are supported by the record.

¶26 Matamoros cites WIS. STAT. § 972.115's requirement that all custodial interrogations of persons suspected of committing felonies be recorded, unless impractical to do so; yet, he concedes that his interrogations took place prior to the statute's effective date. *See* 2005 Wis. Act 60, § 51(2) (Section

972.115 first applies to custodial interrogations of adults "conducted on January 1, 2007."). Despite this concession, Matamoros argues that "there was no impracticality in this case," and the State's failure to provide an objective rendition left "the door open for the detectives [to] bank on their perceived superior credibility and characterize the exchange as they saw fit." Because, by his own admission, § 972.115's requirements do not apply to Matamoros, and, as previously discussed, credibility determinations are for the trial court to make, we are not persuaded by this argument.

¶27 We conclude the State met its burden of proving that Matamoros' statements were voluntary and affirm the trial court's decision regarding their admissibility.

B. The trial court decision to exclude evidence related to a civil suit filed by Sandoval was harmless error.

¶28 Matamoros argues that the trial court erred when it refused to allow him to impeach Sandoval with evidence related to a civil suit Sandoval filed, which Matamoros claims established Sandoval's bias and motive to falsify. According to Matamoros, the fact that Sandoval filed a civil suit was relevant because a guilty verdict in the criminal trial would significantly advance his efforts to recover a money judgment, and, as such, "the filing, pursuit and pendency of the civil suit would show bias." The same could be said, he argued, of Sandoval's filing lis pendens with respect to Matamoros' real estate, which gave Sandoval a motive to falsify.

¶29 During cross-examination of Sandoval, Matamoros' attorney sought to elicit testimony related to Sandoval's civil lawsuit. The prosecutor objected as to relevancy, and in response, Matamoros' attorney argued:

> [The civil l]awsuit is relevant, Your Honor, because Mr. Sandoval has basically put lis pendens on all of the real estate owned by Mr. Matamoros, and attached to that lawsuit is the complaint, the criminal complaint in this case.
>
> If Mr. Matamoros loses this case, that is basically summary judgment in the civil case, which means then that he can probably pretty much end up liquidating the property.
>
> So that is motive for falsifying today and I believe it should be brought on with the jury, [to] determine whether or not it is sufficient motive for him to falsify.

The prosecutor disagreed and argued that because there was no evidence of recent fabrication on Sandoval's part, there was no basis for testimony related to the civil proceedings initiated by Sandoval.

¶30 The trial court sided with the State, stating that testimony related to the civil proceedings suggested that the incident was fabricated so that Sandoval could go after Matamoros' property. The court noted that if Matamoros' attorney could establish some basis to support that theory, he could question Sandoval about the civil lawsuit.

¶31 The following day, the trial court revisited the issue at the request of Matamoros' attorney, who again argued that he should be allowed to introduce evidence of Sandoval's civil lawsuit because it established a motive to falsify. The trial court held:

> There is no showing whatsoever in this record that [Sandoval's] testimony at trial is significantly different from what he told the officers on the night of the crime or that it's inconsistent with what the officers observed on the night of the crime or the alleged crime.

> In order for [the civil] lawsuit to be relevant for the purpose that you put forward, we would have to assume that all of these events had been cooked up or concocted by [Sandoval] who testified first in order to allow him to obtain Mr. Matamoros' property.
>
> And I repeat my ruling that there is no showing that that is the case. And, therefore, the civil lawsuit is an extrinsic matter.

¶32 Matamoros contends that the question of "fabrication" does not pertain to the admissibility of the evidence and that in excluding testimony related to Sandoval's civil lawsuit, the trial court prevented him from presenting a full defense, in violation of his constitutional rights to confrontation and compulsory process.[7] He references the trial court's statement instructing the jury: "In determining the credibility of each witness and the weight you give to the testimony of each witness, consider these factors: Whether the witness has an interest or lack of interest in the result of this trial [and] … possible motives for falsifying testimony …." This statement, Matamoros contends, directly relates to the evidence he sought to introduce.

¶33 We agree with Matamoros that the trial court erred when it seemingly required him to show fabrication as a prerequisite before it would consider admitting testimony related to Sandoval's civil lawsuit. "The bias or prejudice of a witness is not a collateral issue and extrinsic evidence may be used to prove that a witness has a motive to testify falsely." ***State v. Williamson***, 84 Wis. 2d 370, 383, 267 N.W.2d 337 (1978); *see also* ***State v. McCall***, 202 Wis. 2d 29, 37, 549 N.W.2d 418 (1996) ("[Both the Wisconsin Supreme Court] and the United States Supreme Court have recognized that a defendant's opportunity to

[7] Although Matamoros argues that his right to compulsory process was violated, it appears that Matamoros' right to confrontation is the key issue.

explore the subjective motives for the witness's testimony is a necessary ingredient of a meaningful cross-examination."). We nevertheless conclude that if the trial court's decision to exclude testimony related to Sandoval's civil lawsuit violated Matamoros' confrontation rights, the error was harmless. *See* ***State v. Weed***, 2003 WI 85, ¶28, 263 Wis. 2d 434, 666 N.W.2d 485 (confrontation challenges subject to harmless error analysis).

¶34 The Wisconsin Supreme Court has set forth the harmless-error analytical framework to be employed in situations such as this.

> To assess whether an error is harmless, we focus on the effect of the error on the jury's verdict. This test is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. We have held that in order to conclude that an error did not contribute to the verdict … a court must be able to conclude beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error. In other words, if it is clear beyond a reasonable doubt that a rational jury would have convicted absent the error, then the error did not contribute to the verdict.

Id., ¶ 29 (citations and internal quotation marks omitted).

¶35 Here, as the State points out, the jury was presented with overwhelming evidence of Matamoros' involvement in the crimes at issue. His involvement was established by his presence in the auto body shop where he was found hiding by the police; the fact that he had Sandoval's necklace and approximately $1300 in his pockets, along with the key to the handcuffs that had been placed on Sandoval; the trial testimony of one of his accomplices; and his own statements to the police.

¶36 Despite this plethora of evidence and testimony connecting him to the incident, Matamoros argues that "it was essential for [him] to counter

Sandoval's testimony because Sandoval made allegations which established Matamoros as a willing participant in the criminal acts. It was therefore critical for Matamoros to show the jury that Sandoval had a financial interest in the outcome of the criminal trial." We are not persuaded by this argument, given that neither Sandoval nor his fiancée identified Matamoros as one of the individuals involved in the incident because, as they testified, their eyes were taped over when the third person, who the jury found was Matamoros, joined the other two men at the auto body shop.[8] Matamoros concedes in his reply brief that Sandoval did not provide an eyewitness identification of him.

¶37 We conclude beyond a reasonable doubt that a rational jury would have found Matamoros guilty even if the trial court had allowed Sandoval to be cross-examined regarding the civil lawsuit, and accordingly, that the trial court's decision to exclude that testimony did not contribute to the verdict against him. *See* ***Weed***, 263 Wis. 2d 434, ¶29. Because the trial court's decision to exclude cross-examination of Sandoval in this regard amounted to harmless error, we affirm.[9]

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[8] Although Sandoval testified to seeing Matamoros' vehicle outside the auto body shop after the incident, he acknowledged that he did not know if it was there previously when he drove down the street.

[9] Matamoros' attorney certified that the appendix to Matamoros' brief complies with WIS. STAT. RULE 809.19(2)(a), specifically, that it contains relevant trial court record entries, the trial court's findings or opinion, and portions of the record essential to our understanding of the issues. It does not. Instead, the appendix contains only the judgment of conviction entered against Matamoros. We remind counsel that a deficient appendix places an unwarranted burden on the reviewing court and could be grounds for imposition of a penalty or costs. *See* WIS. STAT. RULE 809.83(2); *see also* ***State v. Bons***, 2007 WI App 124, ¶¶20-25, 301 Wis. 2d 227, 731 N.W.2d 367 ("A judgment of conviction tells us absolutely nothing about how the trial court ruled on a matter of interest to the appellant.").

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

¶38 FINE, J. (*concurring*). I join in the Majority's opinion except its conclusion that the trial court erred in excluding evidence that one of the victims had sued the defendant. In my view, the trial court applied the proper considerations in excluding the evidence and, therefore, did not err.

¶39 A trial court's decision to admit or exclude evidence is a matter vested in the trial court's discretion, and we will not reverse unless the trial court erroneously exercised that discretion. ***State v. Sullivan***, 216 Wis. 2d 768, 780–781, 576 N.W.2d 30, 36 (1998) ("An appellate court will sustain an evidentiary ruling if it finds that the circuit court examined the relevant facts; applied a proper standard of law; and using a demonstrative rational process, reached a conclusion that a reasonable judge could reach.").

¶40 The first hurdle evidence must clear is that it be relevant. WIS. STAT. RULE 904.02. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." WIS. STAT. RULE 904.01. I agree with the trial court that the evidence that one of the victims sued the defendant was, under RULE 904.01, marginally relevant. But that does not end our inquiry. All "relevant" evidence is not admissible. The applicable rule here is WIS. STAT. RULE 904.03:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The trial court cogently recognized that because the suing victim's trial testimony tracked both his statements to the police the night he was robbed at gun point by the defendant and his cohorts as well as contemporaneous observations made that night by the police, the danger of unfair prejudice to the State and a confusion of the issues that would mislead the jury substantially outweighed the marginal, almost *de minimis*, probative value of the evidence. Significantly, the defendant never even made an offer of proof, as he could have done by calling the victims at a hearing under WIS. STAT. RULE 901.03, that either victim contemplated a civil lawsuit when they spoke to the police the night they were robbed and bound. Indeed, common sense tells us that few victims at the time of their distress even think of suing their predators, most of whom have no money or property to make such a suit worthwhile.

¶41 In my view, the trial court was, to use a slang phrase, "right on." It did not err. Accordingly, I respectfully concur.