COURT OF APPEALS
DECISION
DATED AND FILED

July 7, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP2401-CR **Cir. Ct. No. 2005CF62**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARRELL KENYATT CAMPBELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Darrell Kenyatt Campbell appeals from a judgment of conviction after a jury convicted him of first-degree intentional homicide while armed. Campbell argues that the circuit court erred when it denied

his motion to suppress his custodial statements. Because we conclude that the circuit court properly denied the motion, we affirm.

BACKGROUND

¶2 The complaint in this case alleged that Campbell shot another man at close range during a fight. The victim died at the scene. Approximately two months later, the police arrested Campbell for the homicide. After taking Campbell into custody, the police questioned him for a little less than sixteen hours during three interrogation sessions spanning several days. During questioning, Campbell made inculpatory statements.

¶3 Campbell filed a pretrial motion to suppress his statements on two grounds: (1) he was not given the warnings required by ***Miranda v. Arizona***, 384 U.S. 436 (1966);[1] and (2) the statements were not voluntary. The circuit court held a hearing, and the State presented the testimony of three police officers involved in the interrogation sessions. Campbell presented no testimony or other evidence on his own behalf.

¶4 The testimony at the hearing established that Campbell was arrested at 5:15 p.m. on February 24, 2005. Detective Jason Smith testified that he and Detective Mark Walton questioned Campbell on that date from 9:24 p.m. until 11:46 p.m. Campbell did not appear impaired in any way. Smith testified that he read Campbell the ***Miranda*** warnings before questioning began, and Campbell

[1] Before questioning a suspect in custody, officers must inform the person of, *inter alia*, the right to remain silent, the fact that any statements made may be used in a court of law, the right to have an attorney present during questioning, and the right to have an attorney appointed if the person cannot afford one. *See* ***Miranda v. Arizona***, 384 U.S. 436, 478–479 (1966).

neither asked for an attorney nor invoked his right to remain silent. The detectives conducted the questioning in an interview room and did not use restraints or handcuffs. During the session, the detectives offered Campbell food and beverages and afforded him two ten-minute breaks. The detectives made no threats or promises to Campbell. According to Smith, Campbell did not make any incriminating statements during the interrogation. The session ended when Campbell told the detectives that he was tired and wanted to sleep and to "think about some things." The detectives took Campbell to a private cell with a bed, sink, and toilet.

¶5 Detective Timothy Heier testified that he read Campbell the ***Miranda*** warnings on February 25, 2005, at 8:57 p.m. Campbell did not ask for an attorney or invoke his right to remain silent. Heier and his partner, Detective Erik Gulbrandson, then interrogated Campbell for approximately eight hours and forty-five minutes. During the session, Campbell was not restrained or handcuffed. The detectives allowed Campbell four breaks during the questioning, and offered Campbell food, drink, and cigarettes. During the questioning, Campbell admitted that he shot the victim.

¶6 Heier testified that Campbell narrated "the order of events several times" during the first six hours of the interview session. Heier then asked Campbell to retell what happened while Heier reduced the statement to writing. After repeating a portion of his statement, Campbell told the detectives that he no longer wanted to repeat his statement "line by line." Heier testified that the detectives left the interview room, and Heier wrote down a summary of Campbell's statement. Heier then returned to the interview room and read the summary back to Campbell. Heier testified that Campbell made a correction to

the statement and then said: "it's cool and it's all the truth, I just don't want to sign anything." The session ended at 5:45 a.m. on February 26, 2005.

¶7 Detective Michael Caballero testified that he read Campbell the ***Miranda*** warnings at approximately 7:45 p.m. on February 26, 2005. Campbell stated that he was willing to answer questions without an attorney present. Caballero and his partner, Detective Timothy Duffy, then questioned Campbell for approximately four and one-half hours, interrupted by one forty-five minute break. Caballero testified that Campbell was not handcuffed or restrained during the interview and that the detectives did not threaten or promise Campbell anything to induce him to make a statement. Campbell did not provide any additional details about the homicide during this session.

¶8 The circuit court found that the detectives appropriately advised Campbell of his ***Miranda*** rights before questioning him and that Campbell agreed to give a statement each time that he was interviewed. The circuit court concluded that the statements were voluntary, and it denied Campbell's motion to suppress.

¶9 At trial, the State presented portions of Campbell's statements. The jury found Campbell guilty of first-degree intentional homicide, and the circuit court imposed a life sentence with eligibility for extended supervision after fifty years. This appeal followed.

DISCUSSION

¶10 On appeal, Campbell does not dispute the circuit court's conclusion that he received appropriate ***Miranda*** warnings. Rather, he alleges that "the sheer length of the interrogation, and the relay method of interrogation, when combined with the fact that the seminal portion of the confession was drafted by the police

outside the defendant's presence, created a situation in which the confession was produced by improper police coercion." A statement that is not voluntary is inadmissible. ***State v. Agnello***, 2004 WI App 2, ¶8, 269 Wis. 2d 260, 267, 674 N.W.2d 594, 598.

¶11 We analyze Campbell's claim using a mixed standard of review. "We defer to the circuit court's findings regarding the factual circumstances surrounding the statement. However, the application of constitutional principles to those facts presents a question of law subject to independent appellate review." ***State v. Jerrell C.J.***, 2005 WI 105, ¶16, 283 Wis. 2d 145, 155, 699 N.W.2d 110, 115 (citations omitted).

¶12 A court assesses the voluntariness of a defendant's statements by determining if the statements "are the product of a free and unconstrained will, reflecting deliberateness of choice, as opposed to the result of a conspicuously unequal confrontation in which the pressures brought to bear on the defendant by representatives of the State exceeded the defendant's ability to resist." ***State v. Hoppe***, 2003 WI 43, ¶36, 261 Wis. 2d 294, 309, 661 N.W.2d 407, 414. The court must consider the totality of the circumstances to determine if a defendant's custodial statements were voluntarily made, balancing the personal characteristics of the defendant against the pressures applied by the police. ***Agnello***, 2004 WI App 2, ¶9, 269 Wis. 2d at 268, 674 N.W.2d at 598.

> The personal characteristics to be considered may include the defendant's age, education and intelligence, physical and emotional condition, and prior experience with police. These must be balanced against police pressures and tactics used to induce admission, such as the duration of the questioning, the general conditions under which the confession took place, any excessive physical or psychological pressure brought to bear on the [defendant], any inducements, threats, or other methods used to compel

> a response, and whether the defendant was informed of his right to counsel and right against self-incrimination.

Id., 2004 WI App 2, ¶9, 269 Wis. 2d at 268–269, 674 N.W.2d at 598–599 (citations omitted).

¶13 In his appellate brief, Campbell admits that his personal characteristics are "unremarkable." He acknowledges that, at the time of the interrogation, he was thirty-six years old and had a high school equivalency degree. He further acknowledges that he did not suffer from any mental disease or defect and that he had undergone police interrogation in the past. Nothing suggests, and Campbell does not contend, that he was particularly susceptible to police pressures.

¶14 Balanced against Campbell's lack of vulnerability are the circuit court's findings regarding the factual circumstances of the interrogation. The circuit court determined that the detectives offered Campbell food, beverages, cigarettes, and breaks during each interrogation session and that Campbell was not restrained or handcuffed during the questioning. The circuit court found that Campbell was neither threatened nor promised anything to induce his answers, and the detectives stopped questioning him when he said he was tired. Further, the circuit court found that a detective read Campbell the ***Miranda*** warnings before each interview, and Campbell agreed to make a statement on each occasion. These findings are supported by the detectives' unrefuted testimony, and Campbell does not challenge them on appeal.

¶15 Instead, Campbell asserts that "the sheer length" of the interrogation rendered his statements involuntary. Campbell is incorrect. "[T]he supreme court [has] declined to adopt a rule that custody and/or interrogation of a given length is

inherently coercive." ***State v. Markwardt***, 2007 WI App 242, ¶45, 306 Wis. 2d 420, 443, 742 N.W.2d 546, 558. In the instant case, Campbell was questioned for a significant period of time, but this factor alone does not demonstrate improper pressure or coercive tactics when the questioning was accompanied by breaks and appropriate opportunities to eat and sleep. *See* ***State v. Clappes***, 136 Wis. 2d 222, 239, 401 N.W.2d 759, 767 (1987).

¶16 Campbell disagrees, citing ***Briggs v. State***, 76 Wis. 2d 313, 251 N.W.2d 12 (1977), and ***State v. Estrada***, 63 Wis. 2d 476, 217 N.W.2d 359 (1974). His citations are inapt. ***Briggs*** and ***Estrada*** discuss "sew-up confessions," that is, confessions made during an unreasonably long detention following an arrest. *See* ***Briggs***, 76 Wis. 2d at 323, 251 N.W.2d at 16. Police may not detain an accused for an unreasonably long period of time in order to extract a confession that will "sew up" the case. ***Id.***, 76 Wis. 2d at 324, 251 N.W.2d at 16. "'Any statement, even if voluntarily given by an accused, will be held inadmissible if made during a period of unreasonably long detention.'" ***Id.***, 76 Wis. 2d at 324, 251 N.W.2d at 17 (citation and one set of quotation marks omitted). The issue "'revolves solely on the point whether the [charging] delay was inordinate and the detention illegal.'" ***Id.***, 76 Wis. 2d at 324, 251 N.W.2d at 16–17 (citation and one set of quotation marks omitted).

¶17 Campbell did not move the circuit court to suppress his statements on the basis that he gave a "sew up" confession during an illegal period of detention. To the extent that his citations to ***Briggs*** and ***Estrada*** are an attempt to raise such a claim for the first time on appeal, we reject his effort to do so. *See* ***Jackson v. Benson***, 218 Wis. 2d 835, 901, 578 N.W.2d 602, 630 (1998).

¶18 We also reject Campbell's contention that, because different detectives questioned Campbell during each of the three interrogation sessions, the detectives engaged in "relay" questioning. "'Relay' questioning implies that different interrogators relieve each other in an effort to put unremitting pressure on a suspect." ***Agnello***, 2004 WI App 2, ¶21, 269 Wis. 2d at 275, 674 N.W.2d at 602. Campbell does not dispute that the questioning in this case was punctuated by breaks, and Campbell had the opportunity to sleep between sessions in a private cell with a bed.[2] This method of questioning does not reflect "unremitting pressure" using "relay-team tactics." *See* ***ibid.***

¶19 Last, Campbell asserts that the police coerced his confession by reducing it to writing outside of his presence. He contends that the detectives' conduct in this regard was "inexcusable" and improper. Campbell's position is perplexing. He offers no authority, and we know of none, to support the proposition that summarizing a custodial statement outside of the declarant's presence renders the statement involuntary. We conclude that his argument on this point is inadequately briefed. Accordingly, we will not address it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

¶20 The Record fully supports the circuit court's conclusion that the detectives did not exert improper pressure in questioning Campbell. This case involves none of the conduct identified by the supreme court as inherently coercive. *See* ***Clappes***, 136 Wis. 2d at 239, 401 N.W.2d at 767 (listing inherently

[2] In his appellate brief, Campbell describes the opportunity to sleep in a private cell as "isolation." Nothing in the Record suggests that Campbell was isolated or held incommunicado. The Record reflects only that he was given privacy to "sleep as long as [he] want[ed]" and did not "have to use the bathroom in front of other people."

coercive interrogation tactics). Campbell was afforded breaks between and during questioning sessions and allowed to eat and rest. He was not threatened or promised anything, and the questioning was not relentlessly persistent. *See* ***ibid.*** Moreover, nothing suggests that Campbell was mentally frail or otherwise vulnerable as a result of any personal characteristic. Accordingly, we agree with the circuit court's conclusion that Campbell's statements were voluntary. *See* ***id.***, 136 Wis. 2d at 235, 401 N.W.2d at 765. For the foregoing reasons, we affirm.

By the Court.—Judgment affirmed.

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