COURT OF APPEALS
DECISION
DATED AND FILED

August 11, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP1434-CR **Cir. Ct. No. 2004CF005277**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ISAIAH TREVOR REYNOSA,

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. Isaiah Trevor Reynosa pled guilty to first-degree intentional homicide, party to a crime. *See* WIS. STAT. §§ 940.01(1)(a) and 939.05

(2003-04).[1] The only issue on appeal is whether the trial court erred when it denied Reynosa's pretrial suppression motion.[2] We affirm.

BACKGROUND

¶2 An arrest warrant had been issued for Reynosa in connection with the murder of Luis Trevino. Ramon Candelario, the executive director of the Latin Community Center, had known Reynosa for several years. After Reynosa told him that he wanted to turn himself in, Candelario arranged for police to take Reynosa into custody at the community center after Reynosa said good-bye to family members.

¶3 Reynosa was arrested at approximately 11:30 p.m. on September 17, 2004. Reynosa's first custodial interrogation began at 2:41 a.m. on September 18, 2004 and lasted until 7:46 a.m. A second custodial interrogation was held the next day, September 19, from 2:56 a.m. until 6:01 a.m. A short, thirty-minute interrogation began at 10:36 a.m. on September 19. Another thirty-minute interrogation occurred later that day, beginning at 7:30 p.m. In his statements, Reynosa inculpated himself in Trevino's murder.

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] A defendant may appeal the denial of a motion to suppress evidence even though he or she has pled guilty. *See* WIS. STAT. § 971.31(10).

DISCUSSION

¶4 Reynosa contends that statements he gave to police after his arrest should have been suppressed as not voluntary because he was intoxicated.[3]

¶5 A trial court's ruling on a motion to suppress evidence presents a mixed question of fact and law. ***State v. Casarez***, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385. We will not reverse the trial court's findings of fact unless they are clearly erroneous. ***Id.*** "'[T]he 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.'" ***State v. Young***, 2009 WI App 22, ¶17, __ Wis. 2d __, 762 N.W.2d 736 (quoted source omitted). Accordingly, we will "'not reweigh the evidence or reassess the witnesses' credibility, but will search the record for evidence that supports findings the trial court made, not for findings it could have made but did not.'" ***Id.*** (quoted source omitted). We review the application of constitutional principles to the factual findings *de novo*. *See* ***Casarez***, 314 Wis. 2d 661, ¶9.

¶6 The principles of law governing the voluntariness inquiry are summarized in ***State v. Hoppe***, 2003 WI 43, ¶36, 261 Wis. 2d 294, 661 N.W.2d 407. There, the court observed that a defendant's statements are voluntary "if they 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

[3] Reynosa does not differentiate between the three interrogations in his argument. That lack of focus is immaterial.

exceeded the defendant's ability to resist." ***Id.*** (citing ***State v. Clappes***, 136 Wis. 2d 222, 236, 401 N.W.2d 759 (1987)).

¶7 A necessary prerequisite for a finding of involuntariness is coercive or improper police conduct. ***Id.***, ¶37 (citing ***Colorado v. Connelly***, 479 U.S. 157, 167 (1986); ***Clappes***, 136 Wis. 2d at 239). The voluntariness of a confession is evaluated on the basis of the totality of the circumstances surrounding that confession. ***Id.***, ¶38 (citing ***Clappes***, 136 Wis. 2d at 236). This analysis involves a balancing of the personal characteristics of the defendant against the pressures and tactics used by law enforcement officers. ***Id.*** (citing ***Clappes***, 136 Wis. 2d at 236). A defendant's statement is not involuntary merely because the defendant was intoxicated. *See* ***Connelly***, 479 U.S. at 163-67.

¶8 With those standards in mind, we turn to the facts of this case. At the suppression hearing, Reynosa's mother, aunt, and cousin all testified that Reynosa had been drinking heavily and smoking marijuana in the days immediately preceding his arrest. Candelaria testified that Reynosa had a large can of beer with him when he arrived at the Community Center at about 10:00 p.m. on the night of September 17. Candelaria described Reynosa as "real emotional" and testified that Reynosa seemed drunk.

¶9 Detective Paul Formolo testified that he conducted the first interrogation of Reynosa after his arrest. He and his partner questioned Reynosa for approximately five hours. The interrogation began three hours after Reynosa's arrest. Formolo first asked Reynosa background "pedigree" questions. Formolo asks the pedigree questions first so he can judge whether the person is understanding the questions. According to Formolo, Reynosa appeared

"oriented," was "aware of [his] surroundings," and was able to accurately describe his family background.

¶10 Formolo then read Reynosa the ***Miranda***[4] rights. Reynosa told Formolo that he understood them and he was willing to answer questions about Trevino's homicide. Reynosa "appeared to be paying attention" when Formolo read the ***Miranda*** rights, and he did not have any questions about the rights. Formolo testified that Reynosa did not ask for an attorney at any time during the interrogation nor did he ask Formolo to stop the interrogation. Formolo was not armed, and Reynosa was not handcuffed or chained. Formolo did not threaten Reynosa or make any promises to him. Two breaks were taken during the interview. Reynosa was given a slice of pizza, a breakfast sandwich, hash browns and a soda.

¶11 Reynosa gave a narrative statement to the detectives. Formolo testified that Reynosa appeared "coherent" and nothing suggested that he was confused or intoxicated. Reynosa reviewed the statement at the end of the interrogation, some changes were made, and Reynosa signed the statement. Formolo testified that "for the most part [Reynosa was] very relaxed, polite, [and] soft-spoken." Reynosa did get "very emotional" at times and "would cry a lot." Formolo asked Reynosa if he was under the influence of intoxicants, and Reynosa told him that he was not. Reynosa told Formolo that he had two beers before his arrest. Formolo testified that Reynosa did not smell of alcohol or marijuana.

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

¶12 Formolo testified that he questioned Reynosa a second time for approximately three hours on September 19, 2004, beginning at 2:56 a.m. Formolo again read Reynosa his ***Miranda*** rights, and Reynosa agreed to answer questions. Reynosa was coherent and not confused. He did not ask for an attorney nor did he refuse to answer any questions. Reynosa was not as emotional as he had been during the first interrogation, and he was "very cooperative" and "a little bit more … relaxed." Formolo did not threaten Reynosa or make any promises to him. Two breaks were taken during the interview, and Reynosa was given three glasses of water and a candy bar.

¶13 Formolo testified that he met with Reynosa for approximately thirty minutes later that morning to obtain physical evidence from him and that Reynosa again was cooperative, coherent and not confused.

¶14 Officer Patrick Pajot was one of the officers who arrested Reynosa at the community center. Pajot testified that he knew Reynosa from prior contacts and that Reynosa was crying and "seemed very upset" as he said good-bye to family members before the arrest. Pajot did not see Reynosa with any beer before the arrest. Pajot did not smell alcohol or marijuana on Reynosa's breath.

¶15 Officer Michael Michalski also participated in Reynosa's arrest. Michalski testified that he stood "very close" to Reynosa and that he did not observe anything unusual about Reynosa's demeanor. On a booking form, Michalski answered "no" to a question asking whether Reynosa appeared under the influence of an intoxicant. Michalski reviewed the form with Reynosa, and Reynosa signed the form.

¶16 Detective Charles Mueller testified that he questioned Reynosa for approximately thirty minutes on September 19, 2004, beginning at 7:30 p.m.

Mueller read the ***Miranda*** rights to Reynosa, and Reynosa agreed to speak with Mueller. Mueller showed some photographs to Reynosa, and Reynosa "began to tear up" and started "shaking." Mueller did not ask Reynosa any questions, but Reynosa told him a long, inculpatory narrative about the homicide. Mueller testified that Reynosa was coherent, not confused, and did not appear to be under the influence of intoxicants. Reynosa appeared "very remorseful" and "pretty upset." Mueller did not threaten Reynosa or make any promises to him.

¶17 On appeal, Reynosa argues that the police "failed to observe, willfully ignored or misrepresented their observations concerning [his] level of intoxication." Reynosa relies on testimony from his family members and Candelaria, and notes that the police testimony "conflicts incredibly" with their testimony. Reynosa describes Candelaria as "the one person … who had nothing to gain or lose by exaggeration or minimization of Reynosa's condition" on the night of Reynosa's arrest. Based on Candelaria's testimony, Reynosa asks this court to "find the credibility of the police witnesses to be deficient as a matter of law."

¶18 In this case, the trial court stated that the testimony of the arresting officers and detectives was "wholly persuasive and credible." The court singled out the observations of Officers Pajot and Michalski as "very credible," in part because they do not testify in court as often as the detectives. The court stated that the officers' credibility was easier to assess than the detectives who were more experienced witnesses.

¶19 The court expressly found that the testimony of Reynosa's family members was not persuasive. The court stated they were "clearly biased" witnesses with a "very significant" interest in the case.

¶20 As for Candelaria's testimony, the court noted that "[t]here were a number of times when he had to stop in order to get control of himself before he could continue with his testimony," which reflected the "sadness" of Reynosa's arrest. The court noted that Candelaria saw Reynosa holding a beer and that Reynosa seemed "a little drunk."

¶21 The court noted that the various written forms completed incident to the arrest indicated that Reynosa did not appear to be under the influence of alcohol or drugs. The court also relied on the "credible" testimony of the detectives that Reynosa "was not suffering from a degree of intoxication that they could note." Although "it [wa]s clear that [Reynosa] had been drinking," the court found that "[Reynosa] was not so intoxicated that he was incapable of waiving his ***Miranda*** rights and giving a voluntary statement." The court concluded that there had not been any coercive police conduct, that Reynosa was "properly advised" of his constitutional rights, that Reynosa was capable of making a knowing, intelligent, and voluntary decision to waive those rights, and that Reynosa made a knowing, intelligent, and voluntary waiver of those rights and made a voluntary statement.

¶22 As noted above, questions of witness credibility are "peculiarly within the province of the trial court acting as the trier of fact," and this court will not "reassess the witnesses' credibility." ***Young***, 762 N.W.2d 736, ¶17. Moreover, the trial court is not required to "explicitly explain why it finds one witness more credible than another." ***Id.***, ¶18. This court cannot substitute its judgment for that of the trial court, and, therefore, we reject Reynosa's request that we "find the credibility of the police witnesses to be deficient as a matter of law." Consequently, we conclude that the trial court did not err in denying Reynosa's motion to suppress.

By the Court.—Judgment affirmed.

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