COURT OF APPEALS
DECISION
DATED AND FILED

September 8, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP2117-CR **Cir. Ct. No. 2004CF600**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOMINIC LAMAR ADDISON,

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. Dominic Lamar Addison pled guilty to first-degree reckless homicide, while using a dangerous weapon, party to a crime. The sole

issue on appeal is whether the circuit court erred when it denied Addison's motion to suppress his statement given to police on February 6, 2004.[1] We affirm.[2]

BACKGROUND

¶2 On June 12, 2003, several gunshots were fired at a car stopped at a traffic light. The occupant of the car, Marques Messling, died from wounds suffered in the shooting. Four bullets were removed from Messling's body—one .38/.357 caliber bullet and three .38/9mm caliber jacketed bullets. A witness to the shooting told police that he saw two men with guns run toward Messling's car and reach into the car. The witness then heard three to four gunshots. Messling drove off, and the men continued firing, as they fled the area.

¶3 Police identified Addison as a suspect in Messling's killing, and he was arrested shortly after the incident. Police questioned Addison, and he denied any involvement in the killing. Addison was eventually released from police custody.

¶4 On January 22, 2004, Addison was again questioned by police. At that time, Addison was being detained in the Milwaukee Secure Detention Facility on an unrelated matter. Although Addison continued to deny any involvement in Messling's murder, he implicated Earnest Knox, Michael Miller, and others in the crime.

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[1] The court's order denying the suppression motion may be reviewed on appeal notwithstanding the defendant's guilty plea. *See* WIS. STAT. § 971.31(10).

[2] The Honorable David Hansher denied Addison's suppression motion. The Honorable Jeffrey A. Wagner sentenced Addison and entered the judgment of conviction from which this appeal is taken.

¶5 On January 23, 2004, police interviewed Knox, who told them that Miller and Addison had fired the shots that killed Messling. According to Knox, a friend of Messling had shot at a friend of the gang to which Knox, Miller, and Addison belonged. When the three men learned of Messling's whereabouts, they decided to find him and try to find out who had shot at their friend. Knox said that when they found Messling, Miller and Addison got out of the car to talk with him. Knox told police that both men were armed, Miller with a .380 semi-automatic gun and Addison with a black revolver. Knox also got out of the car and followed Miller and Addison down an alley. When he got to the end of the alley, he heard gunshots, and he ran back to the car. Miller and Addison also ran back to the car, and they left the area. As they left, Miller described Messling's reaction to being shot.

¶6 On February 3, 2004, police interviewed Miller. Miller's statement was consistent with Knox's, and he confessed to shooting Messling. Miller told police that Addison was with him during the incident and that Addison had a gun when he returned to the car. Miller told police that after the shooting Addison said, "I got him good. He ain't going to make it."

¶7 On February 5, 2004, an arrest warrant and criminal complaint, charging Addison with first-degree intentional homicide, while armed, party to a crime, were filed. Because the Milwaukee Secure Detention Facility would not release Addison to police based on the warrant, police got an Order to Produce directing Addison's release for transport to court for an initial appearance. The Order to Produce was obtained on February 6, 2004, and Addison was released into the custody of a Milwaukee police officer at 9:30 a.m. Addison was taken to the central booking part of the jail, where he remained until approximately 1:00 p.m. At that time, Addison was questioned by Detectives Hernandez and Hein,

from 1:20 p.m. until 7:10 p.m. During that questioning, Addison confessed to shooting Messling. Addison was returned to the jail at 8:18 p.m., and returned to the Secure Detention Facility at approximately 11:14 p.m. Addison did not make his initial appearance on this charge until February 11, 2004.

¶8 Addison filed a motion to suppress his statement. After evidentiary hearings at which Addison and both detectives testified, the circuit court denied the motion. Addison then pled guilty.

DISCUSSION

¶9 On appeal, Addison argues that the circuit court should have suppressed his confession because police "circumvented a court order requiring them to bring him before a magistrate, and instead interrogated him for almost seven hours for the sole purpose of extracting a confession to 'sew up' the case against him." For the reasons stated below, we reject Addison's argument and affirm the judgment of conviction.[3]

¶10 A "sew-up" confession is a confession made during an unreasonably long detention following an arrest. *See* ***Briggs v. State***, 76 Wis. 2d 313, 323, 251 N.W.2d 12, 16 (1977). 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; *see also* ***Phillips v. State***, 29 Wis. 2d 521, 534–535, 139 N.W.2d 41, 47 (1966). A post-arrest detention is permissible, however, as long as there is a reasonable purpose and the period of detention is not

[3] We reject the State's threshold argument that Addison forfeited the argument that his confession was a sew-up confession because it was not raised in the circuit court. In his motion, Addison does expressly raise a "sew-up" argument. Addison preserved the issue.

unjustifiably long. *See* ***State v. Hunt***, 53 Wis. 2d 734, 742, 193 N.W.2d 858, 864 (1972). The determination of whether a detention was reasonable is made on a case-by-case basis. *See* ***State v. Estrada***, 63 Wis. 2d 476, 490, 217 N.W.2d 359, 367 (1974). This court will not upset the circuit court's factual findings on the reasonableness of a detention unless they are clearly erroneous. *See* ***State v. Carter***, 33 Wis. 2d 80, 90–91, 146 N.W.2d 466, 472 (1966).

¶11 Addison points to the fact that he had been questioned about Messling's killing several times over an eight-month period and that the State already had enough information upon which to base a criminal complaint. Addison contends, therefore, that the sole motive behind the February 6, 2004, interrogation was to obtain a "sew-up" confession. We disagree. "A confession does not become inadmissible as a 'sew-up' confession merely because the [S]tate, prior to the confession, had information sufficient to sustain a charge. The question revolves solely 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). Here, police questioned Addison from 1:20 p.m. until 7:10 p.m., a period of five hours and fifty minutes.[4] Addison does not cite to any case in which that period of time has been held to be an inordinate delay. In fact, the cases suggest quite the opposite. *See, e.g.*, ***Hunt***, 53 Wis. 2d at 743–744, 193 N.W.2d at 864–865 (fifteen hours is reasonable); ***Estrada***, 63 Wis. 2d at 490–491, 217 N.W.2d at 367 (fourteen hours is reasonable); ***Briggs***, 76 Wis. 2d at 324–325, 251 N.W.2d at 17 (fewer than twenty-four hours is reasonable).

[4] Throughout his appellate briefs, Addison asserts he was interrogated for seven hours. That assertion is not supported by the Record.

¶12 Further, Addison expressly "does not take issue with the trial court's ruling that his confession was voluntary." While a "sew-up" argument is distinct from the voluntariness of a confession and focuses on whether the defendant was held for an unreasonable length of time, *see* ***Hunt***, 53 Wis. 2d at 742, 193 N.W.2d at 864, Addison's concession is at odds with his suggestion that the overall impact of the interrogation was coercive.[5]

¶13 Moreover, there is no dispute that when he was interrogated on February 6, 2004, Addison was in custody on an unrelated matter.[6] Addison's detention was not attributable to this charge and, therefore, it cannot be considered unreasonable for purposes of a "sew-up" analysis. *See* ***McAdoo v. State***, 65 Wis. 2d 596, 609, 223 N.W.2d 521, 529 (1974); ***State v. Benoit***, 83 Wis. 2d 389, 405, 265 N.W.2d 298, 305–306 (1978). We agree with the circuit court that there was nothing improper in the detectives choosing to question Addison after he had been turned over to their custody by virtue of the Order to Produce. The police were required to process and book Addison for this charge. The detectives reasonably decided to question Addison while he was in their custody. Addison does not argue that the interrogation was improperly coercive solely because it took place at the Detective Bureau rather than at the Secure Detention Facility. In

[5] The circuit court found the detectives to be credible witnesses and that Addison was not credible. The circuit court found that Addison was in custody, that he was advised of his ***Miranda*** rights, and knowingly and intelligently waived those rights and agreed to talk with the detectives without an attorney. Addison does not challenge those findings on appeal.

[6] Addison does not argue that his custody was improper.

short, that the questioning took place after the issuance of an Order to Produce is inconsequential.[7]

¶14 Because Addison's confession was not a "sew-up" confession, the circuit court did not err when it denied Addison's motion to suppress the statement.

By the Court.—Judgment affirmed.

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

[7] Addison does not make any argument under ***County of Riverside v. McLaughlin***, 500 U.S. 44, 56 (1991), which requires that a probable cause determination be made within forty-eight hours of a warrantless arrest. *See also* WIS. STAT. § 970.01(1) ("Any person who is arrested shall be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed."). The forty-eight hour requirement of ***Riverside*** does not apply to a person already in custody for another reason. *See* ***State v. Harris***, 174 Wis. 2d 367, 377, 497 N.W.2d 742, 746 (Ct. App. 1993). Moreover, Addison's guilty plea forfeited the right to raise a violation of ***Riverside*** or of § 970.01(1). *See* ***State v. Aniton***, 183 Wis. 2d 125, 128–129, 515 N.W.2d 302, 303 (Ct. App. 1994).