COURT OF APPEALS
DECISION
DATED AND FILED

December 28, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-3197-CR **Cir. Ct. No. 01CF005400**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH L. COMPTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Affirmed*.

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

¶1 CURLEY, J. Joseph L. Compton appeals the judgment, entered following a jury trial, convicting him of one count of attempted first-degree intentional homicide, as a party to the crime, and one count of possession of a firearm by a felon, contrary to WIS. STAT. §§ 940.01(1)(a), 939.05, 939.32 and

941.29(2) (2001-02).[1] He argues that the trial court erred in denying his motion to suppress his statement given to police because he invoked his right to counsel in an earlier police interrogation. He submits that when the evidence regarding his inculpatory statement is stripped from the record, there remains insufficient evidence to convict him of the crimes. Thus, he seeks reversal of the judgment of conviction. Although we agree that the trial court erred in admitting Compton's statement at trial because the trial court failed to make any finding regarding Compton's claim that he had exercised his right to request counsel during an earlier interrogation, we are satisfied that such error was harmless. Thus, we affirm.

I. BACKGROUND.

¶2 According to the criminal complaint and the testimony given at trial, April Perkins got into a physical altercation with Charles Perry after she stopped her car in front of the car in which Charles Perry was riding. Jason Perry, Donald, a friend of Charles Perry, and Latrice Linder were also in the car, along with Linder's three-month-old child. As a result of the altercation, Charles Perry was arrested and placed in the back seat of a squad car. While Charles Perry was in the back seat of the squad car, Brandon Bennett came up to the squad car and threatened him. Shortly thereafter, Jason Perry, Donald, Linder and her baby drove away. When they reached Linder's home, she and Donald exited, leaving Jason Perry and her baby in the car. As Linder entered the home, she heard gunshots. When she came back outside, she saw that Jason Perry had been shot in

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

the head. She also saw Perkins driving away at a high rate of speed. Compton was identified as the shooter by several witnesses and was arrested.

¶3 Compton claims that shortly after his arrest, he was interrogated by a detective concerning a homicide involving his cousin. After he requested an attorney, the interrogation was terminated. Some time later, he was interviewed regarding the Perry shooting and gave a statement in which he admitted being the shooter.

¶4 Compton filed a motion to suppress his statement. A hearing was held before trial. At it, Detective Douglas Williams testified that he advised Compton of his ***Miranda*** rights,[2] which Compton claimed he understood. The detective stated that during the interrogation, he was not carrying a weapon and Compton was not handcuffed. He testified that he conducted the interview alone, and that there was no physical contact or physical coercion during the interview. Detective Williams related that Compton, who appeared "normally alert," freely gave a statement to him that Detective Williams subsequently wrote out, and Compton later signed. The detective claimed that Compton never requested an attorney.

¶5 Detective Williams' testimony was in sharp contrast to Compton's account. Compton claimed that during the evening prior to his arrest, he had been drinking excessive amounts of alcohol, taken an ecstasy pill, and smoked marijuana. He testified that before being interrogated by Detective Williams, he was interrogated by an unknown detective concerning a homicide involving his

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

cousin and he had expressed his desire to speak to an attorney. Compton claimed that Detective Williams never read his constitutional rights to him and that he was handcuffed during the interrogation. He claimed that due to the lack of sleep and the ingestion of alcohol and drugs, he was quite sleepy, and each time Detective Williams left the room, he would fall asleep. He also claimed that he requested an attorney several times, but his requests went unanswered. He explained that he signed a statement written by the detective but he never read it or dictated its contents. After Compton's testimony, Detective Williams was recalled and he stated he was unaware of any prior interrogation; that Compton never asked for an attorney; and when he asked Compton if he was still under the effects of alcohol or drugs, he claimed he was not. The trial court, in a brief oral decision, denied Compton's motion to suppress his statement, finding the police officer more credible than Compton. The trial court made no findings concerning Compton's allegation that he had been interviewed earlier by another detective on an unrelated matter and, during that interview, had asked for an attorney.

¶6 An eyewitness, Paquita Brown, told police that she saw Compton exit the passenger seat of a car after the black female driver screamed something at him. She said that she then saw Compton shoot a gun four or five times at the vehicle in which Jason Perry was sitting, hitting the door and the back of the vehicle. After that, she saw Compton walk away. However, in her trial testimony, Brown, who was visibly upset while identifying Compton as the shooter, stated that she could not recall how many times he shot at the car or whether Compton had a handgun or a BB gun. She also complained that the police had forced her to testify.

¶7 During the investigation, another witness, Genecy Joyner, identified Compton as the shooter after picking out his picture in a photo array. At trial,

Joyner changed his story. He testified that he witnessed a shooting, but could not identify the shooter, the person driving the getaway car, or the detective who allegedly took his statement. He also denied picking Compton out of a photo array. Joyner did admit that he was a friend of Compton's and had known him from around the neighborhood for ten years. Joyner also stated, in response to a question from Compton's attorney, that he thought the shots were fired from more than one gun. The detective who took Joyner's statement was then called to testify and impeached Joyner with his earlier statement, in which he stated that Compton shot at the car, and the fact that Joyner identified Compton as the shooter from a photo array.

¶8 The State introduced Compton's confession through the testimony of Detective Williams. Detective Williams related that Compton first stated that he was using a handgun when he shot at the car containing Jason Perry, and that he shot at it with the intent to "scare the car off." Compton claimed he just wanted to scare the occupants of the vehicle off the street, and afterwards, he disposed of the gun, although he could not recall where he dropped it. Detective Williams testified that towards the end of Compton's statement, he changed his story and claimed that someone else must have been shooting at the car because he was not standing where the witnesses placed the shooter and he only had a BB gun.

¶9 Compton also testified at his trial. He claimed that he only had a BB gun on the evening in question and never shot it, only pointed it, at the car carrying Jason Perry. He claimed that someone behind him was shooting at the car, and, when he heard the shots, he ran and never saw who was doing the shooting. With regard to the statement he gave to the police, Compton testified that he was sleepy and under the influence of drugs and alcohol when he gave his statement. He stated the detective never advised him of his constitutional rights,

and that he told the detective several times that he wanted an attorney. He also insisted that he was handcuffed to the wall and only signed the statement without reading it because the detective woke him up and told him to sign it.

¶10 The jury convicted Compton of both counts and he was sentenced to fifteen years of confinement and ten years extended supervision on the first count, and three years of confinement and two years of extended supervision on the second count, with the sentences to run concurrently.

II. ANALYSIS.

¶11 Compton argued in his brief and at oral argument that this court must reverse his conviction because the trial court failed to suppress his confession, despite Compton's allegation that he asked for an attorney during an earlier police interrogation. He relies on two Supreme Court cases, ***Edwards v. Arizona***, 451 U.S. 477 (1981), and ***Arizona v. Roberson***, 486 U.S. 675 (1988), as well as a Wisconsin case, ***State v. Harris***, 199 Wis. 2d 227, 544 N.W.2d 545 (1996), for support.

¶12 The appropriate standard of review for determining whether or not a motion to suppress a confession should have been granted is set forth in ***State v. Clappes***, 136 Wis. 2d 222, 235, 401 N.W.2d 759 (1987). To the extent that the trial court's decision involves findings of evidentiary or historical facts, those findings will not be overturned unless they are clearly erroneous. ***Id.*** Application of constitutional principles to the facts found by the trial court, however, presents a matter for our independent review. *See* ***id.***

¶13 In the well-known ***Miranda*** case, the United States Supreme Court determined that the privilege against compelled self-incrimination requires that

custodial interrogations be preceded by several warnings to the individual in custody. 384 U.S. at 478-79. One such requirement is that police must advise a person under arrest that he or she has the right to the presence of an attorney. ***Id.*** at 479. When a person so warned requests a lawyer, the holding in ***Edwards*** obligates the police to stop the interrogation, and at that point, the person "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." 451 U.S. at 484-85. In a later case, with facts similar to those alleged here, the Supreme Court determined that the bright-line rule established in ***Edwards*** also applies to cases in which a second interrogation occurred concerning a different crime. *See generally* ***Roberson***, 486 U.S. 675.

¶14 Roberson was arrested at the scene of a just-completed burglary. After he was advised of his constitutional rights, he invoked his right to have an attorney present, which resulted in the termination of the interrogation. ***Id.*** at 678. Three days later, while still in custody, a different officer, unaware of the fact that Roberson had previously requested the assistance of counsel, interrogated him about a different, earlier burglary. ***Id.*** During this interview, Roberson gave an incriminating statement concerning the earlier burglary. ***Id.***

¶15 In determining that the statement was inadmissible, the Supreme Court reiterated that a bright-line rule was beneficial to everyone:

> The *Edwards* rule thus serves the purpose of providing "clear and unequivocal" guidelines to the law enforcement profession. Surely there is nothing ambiguous about the requirement that after a person in custody has expressed his desire to deal with the police only through counsel, he "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused

> himself initiates further communication, exchanges, or conversations with the police."

Roberson, 486 U.S. at 682 (citation omitted). Addressing the particular circumstance that is similar to what is alleged here—the interrogation was for a different crime—the Court advised:

> Finally, we attach no significance to the fact that the officer who conducted the second interrogation did not know that respondent had made a request for counsel. In addition to the fact that ***Edwards*** focuses on the state of mind of the suspect and not of the police, custodial interrogation must be conducted pursuant to established procedures, and those procedures in turn must enable an officer who proposes to initiate an interrogation to determine whether the suspect has previously requested counsel.

Roberson, 486 U.S. at 687.

¶16 In ***Harris***, our supreme court applied the rulings set forth in ***Edwards*** and ***Roberson*** and concluded that the trial court erred in admitting physical evidence proximately derived from a confession made by Harris during a police-initiated "conversation" that occurred after Harris had requested a lawyer but also subsequently "waived" his right to an attorney. ***Harris***, 199 Wis. 2d at 237-52. The court observed:

> That waiver is presumed to be the product of the inherently compelling atmosphere of custodial interrogation and is, therefore, invalid. Today we follow the teaching of the Court in ***Edwards*** when it concluded that "the fruits of the interrogation initiated by the police … could not be used against Edwards." Both the statement and its fruits were inadmissible in the State's prosecution of Harris.

Harris, 199 Wis. 2d at 252 (citation and footnote omitted).

¶17 In light of these holdings, Compton challenges the trial court's decision to admit his statement when he testified at the motion hearing that he had

been interrogated earlier and requested an attorney. The trial court's findings were very brief. Following the testimony of Detective Williams and Compton, the trial court said:

> THE COURT: I think it is a credibility issue. It's – the officer testified quite clearly and believably, credibly, that he advised the defendant of all of his constitutional rights pursuant to the ***Miranda*** formula, that no promises or coercion or threats or any undue influence was applied to the defendant. And the defendant waived his rights and indicated he was willing to make a statement, and he did make a statement, and signed it in two different places. What the defendant's condition was subjectively was not due to any action by the police. That might go to the trustworthiness of the statement before the jury, but it doesn't affect its admission into evidence.
>
> I'm satisfied that based on the testimony of the witnesses and on the credibility of the witnesses, that Detective Williams' testimony is credible, believable, and I do believe it.
>
> And therefore the motion to suppress the statement is denied.

At oral argument, the State urged us to conclude that the hearing judge implicitly found that Compton lied when he claimed he was subjected to an earlier interrogation and allegedly requested a lawyer. We are unwilling to stretch the trial court's findings to the length the State requests. Because Detective Williams did not know whether an earlier interrogation took place, the trial court's statement that the detective's account was more creditable than Compton's does not resolve the issue. No testimony—save Compton's—addressed the earlier interrogation. Thus, the trial court erroneously admitted the statement when it did not make a factual finding concerning the earlier interrogation. Although the admission of Compton's statement was in error, we conclude that it was harmless error and that Compton's conviction should stand.

¶18 In ***State v. Dyess***, 124 Wis. 2d 525, 543, 370 N.W.2d 222 (1985), the following test for harmless error was promulgated: "[W]hether of omission or commission, whether of constitutional proportions or not, the test should be whether there is a reasonable possibility that the error contributed to the conviction." ***Id.*** (footnote omitted). In ***Harris***, the supreme court authorized a harmless error analysis for evidence obtained in violation of ***Edwards***: "Today we take the opportunity to clarify that the ***Dyess*** harmless error test is applicable to the erroneous admission of evidence obtained in violation of ***Edwards***." ***Harris***, 199 Wis. 2d at 256.

¶19 We have examined the erroneously admitted confession and the remainder of the evidence presented at trial and, after applying the ***Dyess*** test, we have determined that there is no reasonable possibility that the error contributed to the conviction.

¶20 Although Genecy Joyner dramatically changed his account of the incident at trial, his earlier statement in which he implicated Compton as the shooter was read to the jury by the officer who took his statement. In that statement, Joyner said that only one person had a gun and that person was Compton. Joyner also picked Compton's picture out of a photo array, and identified him as the person who was doing the shooting. At trial, Joyner admitted that he had known Compton casually for many years. Joyner even went so far as to deny that he ever identified anyone from photos shown to him and to deny talking with the officer, suggesting that the police had invented both his statement and his identification of Compton. His recantation of everything that had occurred was unbelievable. Moreover, the other eyewitness, Paquita Brown, although a reluctant witness, testified that she saw Compton, who she knew by another name, pull out a gun and shoot at the car numerous times. Indeed, Compton's own

testimony favored the State in several respects. He acknowledged being on the street where the shooting occurred and standing in a position consistent with the direction from which the bullets were fired. He claimed that at the exact time that he was pointing, but not shooting, a BB gun at the car, some unknown and unseen person or persons behind him shot at the car. A review of the record reveals that the jury also heard that four bullet holes were observed in the car in which Jason Perry was a passenger, and that the angle of the bullets' entry suggested that the shots came from behind the car. Further, the police observed no holes that would have been made by a BB gun. Given the testimony of the eyewitnesses, coupled with the quite unlikely version of the events related by Compton, we conclude that the State's case was strong and there was ample evidence to find Compton guilty behind a reasonable doubt without his statement to the police. Thus, we conclude that no reasonable possibility existed that the erroneously admitted statement contributed to Compton's conviction. Accordingly, we affirm.

By the Court.—Judgment affirmed.

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