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DISTRICT I

December 22, 2020

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You are hereby notified that the Court has entered the following opinion and order:

2019AP1562-CR State of Wisconsin v. Terrence Q. Washington
(L.C. # 2015CF5426)

Before Brash, P.J., Dugan and Donald, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Terrence Q. Washington appeals a judgment of conviction, entered upon a guilty plea, to one count of armed carjacking as a party to a crime. Based upon our review of the briefs and

record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[1] The judgment is summarily affirmed.

On December 12, 2015, Washington was charged with one count of armed robbery, false imprisonment, and armed car jacking, all as a party to a crime. The charges all stemmed from the same incident in which Washington and three others held a delivery driver at gunpoint, stole his car, and forced the victim to drive with them to an ATM to withdraw money. The victim was unable to withdraw the funds and ultimately jumped out of the vehicle.

Following Washington's arrest, Milwaukee Police Detectives Vincent Lopez and David Lopez interviewed Washington, who was seventeen years old at the time. Detective David Lopez read Washington his ***Miranda***[2] rights, asked him if he understood his rights, and received Washington's permission to ask questions. Washington agreed to answer questions and then made inculpatory statements describing his role in the events leading to the charges. The detectives conducted subsequent interviews with Washington in which he again waived his ***Miranda*** rights and continued to answer questions.

As the case proceeded, the trial court ordered a competency evaluation. Following several evaluations, the trial court found that Washington was not competent to stand trial at that time, but that Washington was likely to regain competency within the statutory time frame. At a subsequent competency hearing a few months later, the trial court found that Washington had regained his competency.

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

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

Washington then filed a motion to suppress the statements he made to Milwaukee police detectives while in custody, arguing that his statements were not voluntary based on his "age, cognitive abilities, education, and the pressures used by the detectives."

At a hearing on the motion, Detective Vincent Lopez[3] testified that he interviewed Washington three times and audio recorded the interviews. The recordings were submitted to the trial court. Lopez stated that Washington was read his ***Miranda*** rights and indicated that he understood his rights. Lopez testified that Washington did not request the presence of a lawyer, appeared to understand the situation, gave appropriate responses to the questions asked, and wanted to speak with the detectives. Lopez described Washington as "competent," "respectful," and "calm." Lopez also testified that neither he, nor his partner, issued any promises or threats.

Lopez also told the trial court that Washington had contact with police prior to the incident at issue. Specifically, Lopez testified that Washington was arrested in 2012 for robbery. After police read Washington his rights, Washington refused to make a statement. In 2013, Washington was again arrested for robbery. Police read Washington his rights and Washington made a statement. In a separate incident that same year, Washington was again arrested and read his rights. Lopez stated that Washington initially declined to make a statement, but later chose to speak with police. Lopez stated that the police report for that incident indicated that Washington understood his rights.

[3] Because Detective Vincent Lopez was the only detective to testify at the hearing, we refer to him as "Lopez" throughout this order.

Dr. David Thompson, a clinical and forensic psychologist, testified at the hearing on Washington's behalf. Thompson stated that he conducted a competency interview with Washington, which included a series of tests to assess Washington's ability to understand ***Miranda*** rights. Thompson stated that Washington read at a second grade level, had a low level of intellectual functioning, and had an I.Q. of less than 69. Thompson also stated that an individual should be able to read at the tenth grade level to understand ***Miranda*** rights. Thompson opined that Washington "was not competent at the time to make a knowing and intelligent waiver" of his ***Miranda*** rights.

On cross-examination, however, Thompson stated that there were portions of the ***Miranda*** comprehension test in which Washington scored well. On another test Thompson administered, Thompson stated that Washington may not have been "putting forth his best effort," which he stated raised the possibility that Washington may have been malingering.

The trial court denied Washington's motion. The trial court acknowledged Thompson's report and testimony, but noted a stark contrast between Thompson's assessment and Washington's police interviews. Specifically, the trial court stated that Washington responded to the detectives' questions "like a pro," stating that "[i]t's hard to believe it's the same … Washington … described in [Thompson's] report." The trial court stated that "there was nothing in [Washington's] statement [to the detectives] that gave me any reason to believe that … Washington was having difficulty understanding."

The trial court also took into consideration Washington's previous interactions with police and noted that Washington had previously exercised his right to silence. The trial court stated that Washington's previous police contacts "tell[] me that he was better at understanding

than the doctor had indicated," and that Thompson "minimized" the previous interactions, which the trial court viewed as a "key issue." The trial court found that the State met its burden to demonstrate that Washington's waivers were valid.

Washington pled guilty to armed carjacking as a party to the crime. The remaining charges were dismissed and read in. The trial court sentenced Washington to eight years' initial confinement, followed by five years' extended supervision. This appeal follows.

Our review of a trial court's denial of a motion to suppress presents a mixed question of fact and law. *See* ***State v. Casarez***, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385. We uphold the trial court's findings of historical fact unless they are clearly erroneous, but the application of the law to those facts is a question of law that we review independently. *See* ***id.***

Washington argues that the trial court erred by finding that he validly waived his ***Miranda*** rights because he lacked the cognitive ability to do so. When the State seeks to admit into evidence an accused's custodial statement, both the United States and Wisconsin constitutional protections against compelled self-incrimination require the State to show that the accused was adequately informed of his or her ***Miranda*** rights and validly waived those rights. ***State v. Santiago***, 206 Wis. 2d 3, 18, 556 N.W.2d 687 (1996). "In order to be valid, a ***Miranda*** waiver must be knowing, voluntary, and intelligent." ***State v. Ward***, 2009 WI 60, ¶30, 318 Wis. 2d 301, 767 N.W.2d 236. A waiver is knowing, voluntary, and intelligent where it is the product of a free and deliberate choice and has been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. ***Id.***

The State carries the burden under ***Miranda*** to demonstrate by a preponderance of the evidence that the defendant was advised of and understood his or her constitutional rights and

that he or she intelligently waived those rights. ***State v. Beaver***, 181 Wis. 2d 959, 966-67, 512 N.W.2d 254 (Ct. App. 1994). The State establishes a prima facie case of proper waiver where the defendant has been advised of his or her ***Miranda*** rights and indicates he or she understands them and is willing to give a statement. ***Beaver***, 181 Wis. 2d at 967. If the State establishes a prima facie case, then, in the absence of countervailing evidence, the statement should be admitted. ***Id.***

Here, the trial court found that Washington validly waived his ***Miranda*** rights based primarily on its analysis of Washington's recorded interviews, Lopez's testimony, and Washington's prior police interactions. The trial court noted that Washington handled his police interaction "like a pro" and gave no indication that he was unaware of the rights he was waiving. Lopez described Washington as calm and competent and told the trial court that Washington had previously exercised his right to remain silent. The trial court described concerns with Thompson's analysis, including its finding that Thompson minimized the significance of Washington's prior police interactions. In essence, the trial court made a credibility determination and found Thompson's report and testimony less credible than the other evidence it considered. We afford great deference to a trial court's factual determinations, including those as to the credibility of witnesses and the weight to be afforded to the evidence. *See* ***Plesko v. Figgie Int'l***, 190 Wis. 2d 764, 775, 528 N.W.2d 446 (Ct. App. 1994) (stating that "[w]hen the trial court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to be given to their testimony"). Based on these findings, we conclude that the trial court properly ruled that Washington's ***Miranda*** waivers were valid.

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals