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DISTRICT II

February 22, 2023

To:

Hon. Mary Kay Wagner
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Brian Patrick Mullins
Electronic Notice

Daniel J. O'Brien
Electronic Notice

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

2021AP2127-CR State of Wisconsin v. Jarrod L. Williams (L.C. #2013CF558)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Jarrod L. Williams appeals from a judgment of conviction entered upon his plea of guilty to two counts of bank robbery and no contest to another bank robbery count, each in violation of WIS. STAT. § 943.87 (2021-22).[1] Williams challenges the circuit court's denial of his motion seeking to suppress evidence related to the location of his cellular phone at the time of the robberies, which he contends the State obtained in violation of ***Miranda v. Arizona***, 384 U.S. 436 (1966). 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. We affirm.

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[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Kenosha police arrested Williams on November 27, 2012, in connection with robberies of a bank and two credit unions earlier that month. According to the criminal complaint, the police focused on Williams as a suspect after the owner of a motel at which he was staying informed police that Williams resembled a picture of the suspect released in the media. Williams had a motel key when he was arrested and $1,945 in cash was found in his room. Police later obtained records indicating that Williams's cell phone had "pinged" off cell phone towers located near each bank around the time it was robbed.

After his arrest on November 27, Williams made statements to the police that were not preceded by ***Miranda*** warnings. Williams moved to suppress the statements, the State conceded the violation, and the court suppressed the statements. Williams later filed another suppression motion seeking to exclude the cell phone tower records. He argued that he gave the police the cell phone number used to obtain the records during the un-***Mirandized*** conversation, making the records tainted fruit of that conversation.

Evidence concerning when and how the police acquired the cell phone number, which has a 496 prefix, was presented to the circuit court across multiple hearings. At a preliminary hearing in June 2013, a detective who investigated the robberies testified initially that Williams provided two phone numbers on November 27, one of which was used to obtain the cell tower records. On cross-examination, however, the detective said he was not sure "without really looking back at my reports and stuff" whether he obtained the phone numbers during the un-***Mirandized*** conversation or in a separate conversation "a couple of days later." Ultimately, however, when Williams's counsel asked if the detective "maintain[ed he] got the cell phone number on the 27th," he said "I believe so, yes, I believe so."

A year later, in June 2014, the detective testified at a hearing on Williams's motion to suppress the records that he had not received any phone numbers from Williams during the un-***Mirandized*** conversation on November 27. The detective stated that after the conversation ended, he took Williams to a nearby holding cell and asked him "booking questions" for Williams's arrest sheet, in response to which Williams provided a phone number with an 880 prefix. The detective testified further that he learned of a second phone number associated with Williams, the 496 number, the following day (November 28, 2012) when he received a form for a car that Williams had rented. That same day, the detective spoke with Williams's then-girlfriend, who confirmed the 496 number belonged to him. The detective acknowledged his preliminary hearing testimony was in error and explained that he had only reviewed the criminal complaint before that hearing, which did not mention when the police had obtained the 496 number. On cross-examination, the detective also acknowledged that his written report of his conversation with Williams's ex-girlfriend on November 28 does not indicate that she confirmed the 496 number as belonging to Williams.

At a subsequent hearing two months later, Williams's ex-girlfriend testified that she did not have Williams's phone numbers memorized when the detective came to see her on November 28, 2012, and denied confirming that any of the numbers he "rattled off" belonged to Williams.[2]

[2] She also explained that she did not have Williams's phone numbers in her phone because she "had gotten a new phone number a couple of days before" the detective questioned her and "deleted [Williams's] numbers out of my phone so I wouldn't be tempted to call him."

The next hearing on Williams's motion occurred on April 6, 2015. At the hearing, Williams's probation agent testified that an anonymous caller, whom the agent suspected to be Williams's then-girlfriend, contacted the agent on November 19, 2012, suggested that he call Williams in for a drug test, and gave the agent the 496 number to reach Williams. The agent testified that he wrote the number in his notes that day and subsequently used it to contact Williams, who answered his call and agreed to come in for a drug screen that day. The agent gave the number to the detective on November 27, when the detective called him about Williams's possible involvement in the bank robberies and to request that the agent issue a probation warrant. The agent testified that it was standard practice to verify with the police the address and phone number of a suspect under his supervision. He gave the detective the address of Williams's then-girlfriend, which was Williams's last known address. On cross-examination, the agent testified he was not "100 percent certain" he gave the 496 number to the detective on November 27 because the agent did not document doing so.[3]

The State then recalled the detective who investigated the robberies. After reviewing his report, the detective confirmed that he called the probation agent on November 27—before Williams was arrested—and testified that the agent gave him the name and address of Williams's then-girlfriend and "likely would have provided me the [496] phone number." The detective said he did not "have a distinct memory" of receiving the 496 number from the probation agent,

[3] The agent testified that his office's practice when new contact information is received is to forward it to a receptionist to enter into a "case management program," but he did not know if the 496 number was entered into the program on November 19.

but that it "would be the standard practice." The detective also acknowledged that the 496 number did not appear in the portion of his report concerning the call with the agent.[4]

After briefing and argument from both sides, the circuit court denied Williams's motion. Among the possible ways in which the detective could have acquired the 496 number, the court found the probation agent to be the most "rational, realistic" source:

> THE COURT: Well, here's what I think happened. I mean, and I guess I'll speculate along with everybody else: [Williams's ex-girlfriend] called the agent, gave the phone number. The police are looking for Mr. Williams. They are going to first call his agent, among any other phone calls that they make other than to each other if they're out on the street. And they're going to say, how do I find this guy?
>
> Well, I just called him. Here's the number. That's the most rational, realistic way of obtaining the phone number based on all of the testimony, based on all of the experience we have with information that's passed regularly between the Department of Corrections and the police department.
>
> If the police department didn't have the Department of Corrections to give them all the addresses and the phone numbers they would never make any arrests.

The court explained that the detective would have wanted a phone number for Williams when he called Williams's probation agent

> because if they've got him in their view and he runs in the house, they're [going to] call that number and say, hey, come on out because we're here…. [T]hey want to be able to call him because they don't necessarily want a big shoot out at the O.K. Corral."

[4] On cross-examination, the detective testified that he would have written the number in "the notes [he] had going on at the time," which were no longer in existence.

The court stated further that it "[did not] hold [the detective] to his testimony at the prelim[inary hearing]. I think lots of things get said at the prelim that ultimately, it's, well, I was thinking about a different case, or I didn't think about that."

On appeal, Williams contends the circuit court erred in finding that the detective obtained the 496 number from the probation agent rather than during the un-***Mirandized*** interrogation. Whether evidence is obtained in violation of ***Miranda*** is "a question of constitutional fact, which presents a mixed question of law and fact." ***State v. Bartelt***, 2017 WI App 23, ¶28, 375 Wis. 2d 148, 895 N.W.2d 86, *aff'd*, 2018 WI 16, 379 Wis. 2d 588, 906 N.W.2d 684. We review the court's factual findings for clear error. ***State v. Casarez***, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385.

Under the clear error standard, we cannot set aside the circuit court's finding of fact unless "the great weight and clear preponderance of the evidence" shows that the detective obtained the 496 number during the un-***Mirandized*** conversation. *See* ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983) (citation omitted). It is not enough for Williams to show that *some* evidence in the record supports his position; the circuit court's finding "will be affirmed on appeal as long as the evidence would permit a reasonable person to make the same finding." ***Reusch v. Roob***, 2000 WI App 76, ¶8, 234 Wis. 2d 270, 610 N.W.2d 168. We are to search the record for evidence to support the court's finding, ***Royster-Clark, Inc. v. Olsen's Mill, Inc.***, 2006 WI 46, ¶12, 290 Wis. 2d 264, 714 N.W.2d 530, and if "more than one reasonable inference can be drawn from the credible evidence," we "must accept the inference drawn by the [circuit court]." ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

The clear error standard places a heavy burden on Williams and he has not met it. The record reveals at least four occasions on which the detective could have acquired the 496 number: (1) in the phone call with the probation agent on November 27, 2012, before the police arrested Williams; (2) during the un-***Mirandized*** conversation on November 27; (3) during the booking inquiries that followed the un-***Mirandized*** conversation; and (4) from the car rental form on November 28. There is evidence to support and undermine each possibility. The circuit court concluded that the pre-arrest phone call was the most credible explanation, and there is evidence from which a reasonable person could reach that conclusion. The probation agent testified that he received the 496 number during a phone call on November 19 and subsequently used it to contact Williams about a drug test. The agent's notes corroborate the November 19 call. Both the probation agent and the detective testified that they spoke on November 27, and while neither witness was certain that the agent gave the detective the 496 number during the call, both testified it would have been "standard practice" for that information to be shared. In addition, the circuit court reasonably inferred from the timing of the phone call that the agent gave the 496 number to the detective because the police were focusing on Williams as a suspect in the robberies and would want to be able to contact him if necessary to effect his arrest peacefully.

Williams argues that the detective's testimony at the preliminary hearing that he obtained the 496 number from Williams during the un-***Mirandized*** conversation is "more reliable" because the testimony was given nearer in time to the underlying events when they "were most recent in his memory." Williams also notes that the detective did not mention the phone call with the probation agent until his third time on the witness stand. Finally, he emphasizes that neither the detective's detailed investigative report nor the agent's notes indicate that the agent gave the 496 number to the detective during their phone call.

These arguments do not show that the circuit court clearly erred. While they do cast some doubt on the credibility of the detective's testimony and suggest that the detective's preliminary hearing testimony may be more plausible, that is not enough to meet Williams's burden. "When the [circuit] court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness's testimony." ***Lessor v. Wangelin***, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998). We cannot reweigh the credibility of the witnesses, but instead must accept the circuit court's determination unless it is "'inherently or patently incredible,' or 'in conflict with the uniform course of nature or with fully established or conceded facts.'" ***Nicholas C.L. v. Julie R.L.***, 2006 WI App 119, ¶23, 293 Wis. 2d 819, 719 N.W.2d 508 (quoting ***Chapman v. State***, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975)). None of the points Williams raises meets this high standard.

Because a reasonable person could find, based on the evidence in the record, that the detective obtained the 496 number from the probation agent before Williams was arrested, the circuit court's finding of fact on that point is not clearly erroneous.[5]

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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[5] In light of this conclusion, we need not examine the alternative grounds advanced by the State for affirming the circuit court's denial of Williams's suppression motion. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (when one issue is dispositive of an appeal, this court need not reach other issues).

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

Sheila T. Reiff
Clerk of Court of Appeals