

No. 1-10-1374

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 22377
)	
ROBERTO HERNANDEZ,)	Honorable
)	Jorge Luis Alonso,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err when it denied defendant's motion to suppress because the complained of statement was the answer to a preliminary booking question which fell outside the protection of *Miranda v. Arizona*, 384 U.S. 436 (1966).
- ¶ 2 After a jury trial, defendant Roberto Hernandez was convicted of first degree murder and sentenced to 25 years in prison. On appeal, he contends that the trial court erred when it denied his motion to suppress because he identified a photograph of himself prior to being advised of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). We affirm.

¶ 3 Defendant's 2007 arrest arose out of a December 19, 1979, incident during which the victim Bernardo Guillen was fatally shot while working as a bartender at La Capana bar.

¶ 4 At trial, Eusebio Lopez testified that when he arrived around 1 a.m., he and the victim were the only people in the bar. Approximately 20 minutes later, a group of four men arrived. Lopez recognized Erasmo Hernandez and a local accordion player, later identified as Juan Solis. Lopez watched as defendant, whom he did not know, spoke to the victim, then pulled out a gun and shot the victim. As Lopez tried to run away defendant moved toward him, pointed the gun at his head, and said that if he talked, defendant would kill him. Defendant put the gun down after Erasmo told defendant not to "hit" Lopez. Lopez then ran out of the bar.

¶ 5 Once outside, Lopez ran to the home of the bar owner's wife and flagged down a police car. He spoke to police at the scene and later that day identified Erasmo in a line-up. Several days later, Lopez identified photographs of Erasmo, Solis, and defendant.

¶ 6 In 2007, police officers came to Lopez's home and asked him whether he could identify the people who were in the bar the night the victim was killed. Lopez selected photographs of Erasmo, Solis and defendant from those shown to him by the police.

¶ 7 During cross-examination, Lopez first testified that he arrived at the bar sometime between 11 p.m. and 1 a.m., then that he arrived around 10:30 p.m. Lopez admitted that at the time of the incident he did not know Solis's name, he only recognized Solis as "the accordion player." He also clarified that he first flagged down a squad car to tell officers that four men with guns had gotten into a car and driven away, then he went to the bar owner's wife's home. Once back inside the bar, he told officers what had happened. Lopez later testified that he did, in fact, tell the officers in the car what had happened.

¶ 8 Juan Solis testified that in 1979 he played the accordion in the band Neuva Arkansas. On the night in question, he went with Erasmo, defendant, "Lavota," and Juan Hernandez to La

Capana. Once there, defendant spoke to the bartender, then pulled out a gun and said whoever did "that" to defendant was going to pay for it. Solis heard two shots. Then defendant told Lopez that if Lopez talked, defendant would kill Lopez. Solis was subsequently arrested and charged with first degree murder despite his assertion that he was not present when the victim was shot. Those charges were eventually dismissed. In 2007, he was again taken into custody and eventually told officers what had actually happened that night.

¶ 9 Before the next witness testified, the defense made an oral motion to suppress certain statements made by defendant before he was advised of his *Miranda* rights. The defense argued that after being arrested defendant was asked to identify certain photographs, including a photograph of himself that was placed in the police daily bulletin in 1979. Defendant identified the photographs of himself and his father, but indicated that he did not know Solis, the subject of the third photograph. The State responded that after so many years, the police had to verify that defendant was the same Roberto Hernandez involved in the 1979 incident and had used a contemporaneous photograph to do so. The State then highlighted that once defendant identified himself as the subject of the photograph, questioning stopped and defendant was advised of his *Miranda* rights. After hearing argument, the trial court denied the motion finding that the question about the photograph was a preliminary booking question outside the scope of *Miranda*.

¶ 10 Former detective Ernest Hernandez testified that after interviewing Lopez at the bar, Erasmo was taken into custody. Lopez then identified Erasmo. After former detective Hernandez learned that defendant was Erasmo's son he obtained a photograph of defendant. Lopez then identified defendant as the shooter after being shown 9 or 10 photographs. When his initial attempts to locate defendant were unsuccessful, former detective Hernandez obtained an arrest warrant for defendant and had defendant's photograph placed in the bulletin given to police officers on December 29, 1979.

¶ 11 After former detective Hernandez's testimony, the defense filed a written motion to suppress defendant's statement identifying the photograph. The trial court denied the motion.

¶ 12 Detective Robert Rodriguez testified that he was informed by the FBI in March 2007 that a person in California was using a social security number associated with a 1979 homicide warrant. After verifying that such a warrant existed, Rodriguez requested a copy of the case file from storage. After locating Lopez, one of the witnesses named in the file, Rodriguez interviewed him. During that interview, Lopez viewed a photographic array and identified defendant as the person who shot the victim.

¶ 13 Rodriguez then traveled to California and was present when FBI agents took defendant into custody. Later, at an FBI office, Rodriguez informed defendant that he was investigating a 1979 homicide. He then showed defendant a copy of the December 29, 1979 daily bulletin and asked whether defendant knew the person in the photograph. Defendant identified himself as the subject of the photograph.

¶ 14 Detective John Pellegrini was also present during this interview and testified consistently with Rodriguez regarding defendant's identification of himself as the subject of the photograph in the daily bulletin.

¶ 15 At the close of the State's case, the defense made a motion for a directed verdict arguing that no one had identified defendant in court as the person who shot the victim; rather, they had identified a 27-year old photograph. The trial court denied the motion. Defendant was subsequently convicted of first degree murder and sentenced to 25 years in prison.

¶ 16 On appeal defendant contends that the trial court erred when it denied his motion to suppress because his identification of himself as the subject of the photograph in the 1979 daily bulletin was made postarrest but before he was advised of his *Miranda* rights.

¶ 17 When reviewing a trial court's suppression ruling, this court applies a two-part standard of review. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). The trial court's factual findings and credibility determinations are entitled to great deference and will be reversed only if they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008). However, the trial court's ultimate legal ruling as to whether suppression was warranted is reviewed *de novo*. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008).

¶ 18 In *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966), the United States Supreme Court held that the fifth amendment privilege against self-incrimination prohibited admitting into evidence statements given by a suspect during custodial interrogation without a prior warning.

¶ 19 However, questions regarding a defendant's name, address, height, weight, date of birth, and current age fall within a "routine" booking question exception to *Miranda* which exempts those questions seeking data needed to complete booking or pretrial services. See *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990); see also *People v. Davis*, 103 Ill. App. 3d 792, 796 (1981) (preliminary questions regarding a defendant's name and address do not amount to an interrogation designed to elicit incriminating admissions). In *People v. Dalton*, 91 Ill. 2d 22, 26-27 (1982), our supreme court determined that *Miranda* did not prevent questions about a defendant's "basic identifying data," even though that data might be used to gather additional evidence against the defendant or was itself used as supporting evidence of the defendant's guilt. See *Dalton*, 91 Ill. 2d at 27 (officer's inquiry about the defendant's date of birth was not proscribed by *Miranda* and the defendant's response was properly admitted)

¶ 20 Here, defendant argues that the request that he identify the photograph in the daily bulletin was not a standard booking question; rather, it was designed to elicit incriminating evidence, *i.e.*, he was the subject of the photograph that had been identified as showing the person that shot the victim. We disagree.

¶ 21 In the case at bar, defendant was taken into custody almost 30 years after the victim's death. He only came to the attention of the police because the social security number associated with the 1979 warrant for "Roberto Hernandez" was being used in California. Once defendant was taken into custody, detectives showed him the photograph of the person who had been identified as the shooter in order to determine whether defendant was in fact the same person. Thus, Rodriguez's question regarding whether defendant was the person in the photograph was an attempt to determine whether the FBI had taken the correct "Roberto Hernandez" into custody and was not prohibited by *Miranda*. See *Dalton*, 91 Ill. 2d at 26-27. The record reveals that once defendant verified that he was the person in the photograph, he was advised of his *Miranda* rights and, upon his request for an attorney, the interview was terminated.

¶ 22 This court's decision in *People v. Abdelmassih*, 217 Ill. App. 3d 544 (1991), is instructive. In that case, the defendant contended that a police officer violated his fifth amendment rights by inquiring about his previous employment history which, according to the defendant, exceeded the scope of the booking process and was an effort to gather incriminating evidence. The court rejected the defendant's argument, relying on *Dalton* and *Muniz* to conclude that the routine booking exception removed from *Miranda*'s coverage those questions which were asked to obtain biographical data "reasonably related" to an officer's administrative concerns. *Abdelmassih*, 217 Ill. App. 3d at 549. The court further determined that because the question of employment was a standard one asked during the booking process and the matter was not raised in order to obtain incriminating evidence against the defendant, the question regarding where the defendant was employed fell outside *Miranda*. *Abdelmassih*, 217 Ill. App. 3d 549.

¶ 23 Similarly, here, the question of whether defendant was the same person in the photograph was reasonably related to the detective's administrative concern that the subject of the photograph actually be the person taken into custody and was not asked in order to obtain

1-10-1374

incriminating evidence against defendant. See *Abdelmassih*, 217 Ill. App. 3d at 549. As this question merely sought defendant's identifying data (*Dalton*, 91 Ill. 2d at 26), it fell within the routine booking exception to *Miranda* (*Muniz*, 496 U.S. at 601). Accordingly, the trial court did not err when it denied the motion to suppress evidence statements. *Cosby*, 231 Ill. 2d 271.

¶ 24 Affirmed.