

2014 IL App (2d) 120623-U
No. 2-12-0623
Order filed February 3, 2014

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
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-1678
)	
JUAN LOPEZ,)	Honorable
)	Christopher R. Stride,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err by denying defendant's motion to suppress his custodial statements; we affirm defendant's conviction but amend the mittimus to reflect three additional days of sentencing credit.
- ¶ 2 Following a jury trial, defendant, Juan Lopez, was found guilty of five counts of predatory criminal sexual assault and five counts of aggravated criminal sexual abuse, and he was sentenced to 58 years' imprisonment. On appeal, defendant contends that the trial court erred in denying his motion to suppress his custodial statements after finding that the warnings given to defendant substantially complied with *Miranda v. Arizona*, 384 U. S. 436 (1966).

Defendant also argues that he is entitled to three additional days of sentence credit. We affirm as amended.

¶ 3

I. BACKGROUND

¶ 4 On May 13, 2009, an indictment was filed charging defendant with 47 separate offenses. The indictment included nine counts of predatory criminal sexual assault, plus 18 counts of aggravated criminal sexual abuse. All of those offenses were alleged to have been committed against the same girl between August 1, 2008, and April 22, 2009. Defendant was 29 years old. When the offenses occurred, defendant was sharing a residence in North Chicago with the victim, her mother, and her maternal grandparents.

¶ 5 Defendant was interrogated by the police twice after he was taken into custody. Prior to the first interrogation, police officer Juan Laracuate used a printed form to advise defendant of his constitutional rights. After reading defendant his rights and explaining them to him, Laracuate had defendant fill out the top of the form to show the date and time. Defendant wrote his initials next to each right and next to a line stating that he understood his rights and was “willing to talk.” Defendant also signed the form. At the end of this interview, defendant wrote a statement in English.

¶ 6 Defendant remained in custody and Laracuate interviewed him a second time. Prior to the interrogation, Laracuate gave defendant *Miranda* warnings again. At the end of the second interview, defendant agreed to provide another written statement. Both of defendant’s written statements contained numerous admissions.

¶ 7 On March 31, 2011, defendant filed a motion to suppress any oral or written statements he had given while in police custody. The motion alleged that the police had not given defendant adequate *Miranda* warnings, in part because they had failed to advise him of his constitutional

rights “to consult with a lawyer prior to questioning” and “to have a lawyer present during the interrogation.” Following a hearing, the trial court denied the motion to suppress.

¶ 8 The jury found defendant guilty on five counts of predatory criminal sexual assault and five counts of aggravated criminal sexual abuse. The trial court denied defendant’s posttrial motion, and thereafter sentenced defendant. This timely appeal follows.

¶ 9

II. ANALYSIS

¶ 10

A. Motion to Suppress

¶ 11 Defendant first contends that the trial court erred in denying his motion to suppress his confession because the police violated his *Miranda* rights. When a defendant files a motion to suppress claiming that his *Miranda* rights have been violated, the trial court’s ruling on that motion is reviewed under a two-part test. The trial court’s factual findings must be upheld unless they are contrary to the manifest weight of the evidence. Whether the facts require that the evidence be suppressed is a legal question that is subject to *de novo* review. *People v. Hunt*, 2012 IL 111089, ¶ 22; *People v. Quevedo*, 403 Ill. App. 3d 282, 292 (2010).

¶ 12 Prior to custodial interrogation, the police must inform a defendant that “he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” *Walton*, 199 Ill. App. 3d at 343 (citing *Miranda*, 384 U.S. at 444). “[T]he need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.” *Miranda*, 384 U.S. at 470.

¶ 13 Here, defendant was taken into police custody on the evening of April 22, 2009. Laracuate advised defendant of his rights two times. Prior to the first interrogation, Laracuate

showed defendant a form that listed the rights, read defendant the rights listed on the form, and then explained those rights to defendant. Defendant then initialed and signed the form. Detective Black and Officer Mueller, who were also present at the first interview, confirmed that Laracuate had advised defendant of his rights by reading them from the form. The form, which was admitted into evidence at the suppression hearing and at the trial, states:

“Before any questions are asked of you, you should know:

1. You have the right to remain silent.
2. Anything you say may be used against you.
3. You have the right to a lawyer,
4. If you cannot afford a lawyer, one will be provided for you.”

¶ 14 At trial, Laracuate testified that he told defendant at the first interrogation that, if he could not afford an attorney, one would be provided to him “by the court of law free of charge.” Laracuate testified at the suppression hearing that prior to the second interrogation, he told defendant that he had the “right to a lawyer” and, if he could not afford an attorney, one would be provided for him “by the court of law.” At trial Laracuate testified that he told defendant that he had the right to an attorney and that, if he could not afford an attorney, one would be provided to him “in a court of law free of charge.”

¶ 15 In *Duckworth v. Egan*, 492 U.S. 195 (1989), the defendant received the standard *Miranda* warnings but was also told by the police that, “We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court.” *Id.* at 198. The defendant then confessed to a murder, but he later filed a motion to suppress his confession, arguing that the warnings he received did not comply with *Miranda* because of the “if and when you go to

court” language. *Id.* at 200. In finding that the language did not render the warning inadequate, the Supreme Court stated:

We have never insisted that *Miranda* warnings be given in the exact form described in that decision. *** In *California v. Prysock*, [citation], we stated that “the “rigidity” of *Miranda* [does not] exten[d] to the precise formulation of the warnings given a criminal defendant,” and that “no talismanic incantation [is] required to satisfy its strictures.” [Citation.]

*** The prophylactic *Miranda* warnings are “not themselves rights protected by the Constitution but [are] instead measures to insure that the right against compulsory self-incrimination [is] protected.” [Citation.] Reviewing courts therefore need not examine *Miranda* warnings as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably “conve[y] to [a suspect] his rights as required by *Miranda*.” ” *Id.* at 202-03.

¶ 16 Defendant acknowledges that the police need not give the pre-interrogation warnings in the “exact form” set forth in *Miranda*, (*Id.* at 202), and *Miranda* did not establish “a rigid rule” requiring the warnings to be “a virtual incantation of the precise language” used in that decision (*California v. Prysock*, 453 U.S. 355, 359 (1981)). Defendant correctly notes that the relevant question is whether the warnings given by the police reasonably conveyed the rights as required by *Miranda* to the defendant (see *Duckworth*, 492 U.S. at 203). He argues that, although Laracuate told him that he had a right to counsel, the warnings given to him were deficient because Laracuate did not “clearly” inform him, in compliance with *Miranda*’s requirements, that “he ha[d] the right to consult with a lawyer *and* to have the lawyer present with him during interrogation.” (Emphasis added.) We conclude that it was not error for the trial court to

conclude that the *Miranda* warnings given to defendant in this case reasonably conveyed his rights as required.

¶ 17 The *Miranda* warnings given in this case are almost identical to those given and found appropriate in *Walton*. In *Walton*, the police officer testified that he advised the defendant that he had a right to remain silent, anything he might say could be used against him in court, had a right to consult with a lawyer, and, if he is indigent or poor that he would be provided with a lawyer if he so desired. The officer was not sure whether he advised the defendant that he had a right to have a lawyer with him during the interrogation. *Walton*, 199 Ill. App. 3d at 342-43. At trial, the officer testified that he “probably” advised the defendant of his right to have an attorney present during the interrogation, but he could not be sure. The trial court found that the officer properly informed the defendant of his rights. Similar to the present case, the defendant argued on appeal that the police failed to sufficiently advise him of his right to have an attorney present both before and during. *Id.* at 343.

¶ 18 The *Walton* court relied on the standards enunciated in *Duckworth*, 492 U.S. at 203, that reviewing courts need not examine *Miranda* warnings as if construing a will or defining the terms of an easement, to find that the *Miranda* warnings given to the defendant, in their totality, were sufficient in that they “reasonably conveyed” to the defendant his rights as required by *Miranda*. *Walton*, 199 Ill. App. 3d at 344. In so holding, the court noted that the defendant was specifically informed that he “had a right to consult with a lawyer.” And, “[w]hile the better practice would be for the police to make explicit that defendant’s right to consult with a lawyer may be both before and during any police interrogation,” the court held that the language was sufficient to imply the right to counsel’s presence during questioning. *Id.* at 344. The court further noted that, as opposed to *Duckworth*, no restrictions were stated by the police in the

present case as to how, when, or where the defendant might exercise his right “to consult with a lawyer.” *Id.* at 344-45. See also *People v. Martinez*, 372 Ill. App. 3d 750, 754-55 (2007) (wherein the court rejected defendant’s argument that the warnings were fatally defective because the State did not inform him that he had the right to have counsel *present during questioning* and the right to *consult with counsel prior to questioning*).

¶ 19 In their totality, the *Miranda* warnings given to defendant in this case were sufficient to reasonably convey to defendant his rights as required. The form read to defendant stated that “[b]efore any questions are asked of you, you should know *** “[y]ou have the right to a lawyer.” This language was sufficient to imply the right to counsel’s presence before and during questioning. Like in *Walton*, no restrictions were stated by the police as to how, when, or where defendant might exercise his “right to a lawyer.” Furthermore, the trial court expressly disbelieved the testimony of defendant that he did not understand the warnings given to him by Laracunte. “[Q]uestions regarding the credibility of witnesses, the resolution of evidentiary conflicts, and the determination of the amount of weight to which evidence is entitled are primarily the responsibility of the trier of fact, and a court of review typically will not substitute its judgment on such matters.” *People v. Moorman*, 369 Ill. App. 3d 187, 190 (2006).

¶ 20 Defendant believes that telling him “only that he had a right to an attorney at some unspecified time and that if he could not afford an attorney he would be provided one at no cost either ‘by a court of law,’ or ‘in a court of law,’ ” implies “that the police themselves could not make arrangements for an [*sic*] public defender to be present during interrogation.” The trial court declined to make such an inference and we conclude that the trial court’s finding was not unreasonable. First, the language that, if defendant could not afford an attorney, he would be provided one at no cost either by a court of law or in a court of law, accurately portrays the

procedure for the appointment of counsel for an indigent defendant. Second, defendant was not advised that he had a right to an attorney at some unspecified time; rather, he was properly informed that he had the right to an attorney before and during questioning, and that an attorney would be appointed for him if he could not afford one.

¶ 21 We also reject defendant's reliance on *United States v. Wysinger*, 683 F. 3d 784 (2012), and *People v. Wheeler*, 281 Ill. App. 3d 447 (1996). In *Wysinger*, the court determined that a portion of the statement should have been suppressed because the federal agent had continued to interrogate the defendant after he unequivocally had invoked his right to have counsel present. *Wysinger*, 683 F.3d at 793-96. As to that part of the statement made before the defendant invoked his right to counsel, the court found that the federal agents engaged in a "pattern of diversion" regarding the defendant's *Miranda* rights and made a "potentially serious misstatement" of the warnings when one agent told the defendant that he had the "right to talk to a lawyer for advice before we ask any questions or have one—have an attorney with you during questioning." Taken literally, the court found that the agent told the defendant that he could talk to an attorney before questioning or during questioning, suggesting that the defendant had to choose between consulting with a lawyer prior to the interrogation and having a lawyer present during the interrogation. *Id.* at 798.

¶ 22 Defendant argues that, "taken as a whole, the warnings given by Laracuate in this case, just like the warnings given by the federal agent in *Wysinger* failed to 'reasonably convey' that the defendant had the right to counsel guaranteed by *Miranda*." We disagree. Here, Laracuate did not engage in a pattern of diversion regarding defendant's *Miranda* rights, and he did not suggest that defendant had to choose between consulting a lawyer present before *or* during the interrogation.

¶ 23 In *Wheeler*, 281 Ill. App. 3d at 458, we held that the defendant did not receive proper *Miranda* warnings because the polygraph examiner who advised the defendant of her rights was a “nonpolice officer” and the document advising her of her rights prior to the polygraph examination “specifically link[ed]” her rights to that examination. Defendant’s reliance on *Wheeler* is perplexing as the facts in the present case are not at all similar to those in *Wheeler*. Accordingly, we reject defendant’s argument and affirm the trial court’s judgment.

¶ 24 B. Credit

¶ 25 Additionally, defendant argues that he is entitled to three additional days of credit against his prison sentence to properly reflect the time he served in presentence custody. The State confesses the error, and we agree. Accordingly, we amend the mittimus to reflect the three-day credit against his sentence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, the judgment of the circuit court of Lake County is affirmed as amended.

¶ 28 Affirmed as amended.