

NOTICE  
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2014 IL App (5th) 130456

NO. 5-13-0456

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	White County.
	)	
v.	)	No. 12-CF-98
	)	
DANNY K. COSTON,	)	Honorable
	)	Thomas J. Foster,
Defendant-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE WELCH delivered the judgment of the court.  
Justices Goldenhersh and Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* The order of the circuit court denying the defendant's motion to suppress incriminating statements made to the police in three separate interviews is affirmed where the defendant was advised of, and knowingly waived those rights, and his statements were otherwise voluntary.

¶ 2 Following a stipulated bench trial before the circuit court of White County, Danny Coston (the defendant) was found guilty of the first-degree murder of Jacob Wheeler, the second-degree murder of Jessica Evans, and the criminal sexual assault of Evans. He was sentenced to consecutive prison sentences of 45 years for the first-degree murder, 4 years for the second-degree murder, and 4 years for the criminal sexual assault.

¶ 3 During the course of the investigation into the victims' deaths, the defendant was

interviewed three times by the police. During the course of those interviews the defendant made a number of incriminating statements, essentially confessing to the crimes. He filed a generic motion to suppress his inculpatory statements in which he argued that the statements were not voluntary, that he had not been adequately apprised of, nor had he waived, his constitutional rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and that the statements were the result of an unlawful arrest. After an evidentiary hearing, this motion was denied by the circuit court on June 25, 2013. The defendant appeals from the denial of his motion to suppress his confession. For reasons which follow, we affirm.

¶ 4 The victims had been reported missing on August 26, 2012, after having gone camping in a rural area of White County. Evans' body was found at the edge of a wooded area on August 27, 2012; she had died of a gunshot wound to the head. Wheeler's body was not located until several days later. He had also died of a gunshot wound to the head.

¶ 5 On August 31, 2012, in the course of the police investigation into the victims' deaths, green fender flares from a pickup truck were found in the vicinity of the victims' camping site. Investigating officers identified the fender flares as having come from a green Toyota pickup truck, which they then linked to the defendant. The police went to the defendant's place of employment, where they observed the defendant's pickup truck. As the police were matching the fender flares to the truck, the defendant arrived in his employer's company truck.

¶ 6 The police asked the defendant to go to the sheriff's department to answer some questions; he agreed. The defendant was not allowed to drive his truck because the

police were waiting for a warrant to search the truck. The defendant rode in the front seat of the sheriff's unmarked car. He was not handcuffed. White County Sheriff Doug Maier, who was personally acquainted with the defendant, drove the vehicle and Illinois State Police Detective Rick White rode in the back seat behind the defendant.

¶ 7 The defendant was taken into Sheriff Maier's office to be interviewed at 3:50 p.m. He was seated in the sheriff's personal chair and was not handcuffed or otherwise restrained. The door was closed and Sheriff Maier sat behind his desk while Detective White sat in a chair near the defendant. The entire interview was video and audio recorded. The interview lasted 26 minutes.

¶ 8 At the beginning of the interview, Detective White asked the defendant if he had ever been read his *Miranda* warnings. The defendant responded that he had, but it had been a long time ago. Detective White advised the defendant that he was not under arrest but that, because he was at a "cop shop," the detective was going to read the defendant his rights. Detective White read the defendant his rights and gave the defendant the rights in written form, asking him to initial after each right if he understood it, and to sign the form at the bottom if he agreed to talk with the police. The defendant initialed the form as Detective White was reading the rights to him. He then signed at the bottom of the form. He did not indicate that he could not read or that he did not understand his rights. He appeared to read the rights before he initialed them.

¶ 9 As he was initialing the written form, the defendant stated, "I thought you just did this when you arrested people." The detective responded that because the defendant was "kind of" in custody, the right thing to do was to read him his rights. The detective stated

that the defendant was not under arrest, but that he was in custody for purposes of *Miranda* rights.

¶ 10 At the conclusion of the 26-minute interview, the defendant was allowed to wait in the lobby of the sheriff's department while his girlfriend was interviewed. At 6 p.m., the defendant was interviewed for a second time. It had been two hours since the defendant had heard and read his *Miranda* warnings in the first interview. The interview was conducted in the same room and manner as the first interview, but Sheriff Maier sat in the chair near the defendant and Illinois State Police Detective Bryan Harms sat behind the sheriff's desk. Detective White was not present. The defendant was reminded that the interview was being recorded and was offered food and drink, which he declined.

¶ 11 Sheriff Maier reminded the defendant that he had been read his *Miranda* rights previously and that the defendant did not have to say anything. He asked the defendant whether he understood all his rights and the defendant responded, "uh-huh," and nodded his head affirmatively. This interview lasted 64 minutes. Following this interview, the defendant was formally arrested, placed in an orange jumpsuit, and moved to a secure location in the jail.

¶ 12 At 12:40 a.m., September 1, 2012, the defendant was interviewed for a third time. This was approximately 8 hours and 50 minutes since the beginning of the first interview, and approximately 6 hours, 50 minutes since the beginning of the second interview. The defendant was seated in the same chair in the sheriff's office and was not handcuffed. Sheriff Maier sat behind his desk and Detective White, who had returned, sat in the chair near the defendant.

¶ 13 The defendant was reminded by Sheriff Maier that the interview was being recorded, and that the defendant has *Miranda* rights and did not have to talk to the police. Sheriff Maier asked the defendant if he remembered all his *Miranda* rights and the defendant nodded his head affirmatively. Sheriff Maier asked the defendant whether he wanted to talk with them, and the defendant nodded his head affirmatively. This interview lasted 1 hour, 21 minutes. During the interview, the defendant requested a drink of water, which he was promptly brought.

¶ 14 At the hearing on the defendant's motion to suppress his confession, Detective White testified that he had believed that, for the purposes of *Miranda*, the defendant was in custody during all the interviews, including the first one.

¶ 15 We note that the circuit court viewed the video/audio recordings of all three of the interviews. In its order, the circuit court held that the defendant had not been in custody for purposes of *Miranda* at the times of the first and second interviews, and that *Miranda* warnings had not been required before any statements were taken by police in these interviews. However, the court further held that, even though *Miranda* warnings were not required prior to the first and second interviews, they were properly given verbally and in writing to the defendant before the first interview, and the defendant was reminded of those *Miranda* rights before the second interview approximately 2 hours later, and again reminded of those rights before the third interview approximately 6 hours, 50 minutes after the beginning of the second interview. The court held that the defendant was clearly in custody and being subjected to a custodial interrogation at the time of the third interview; he had been placed under arrest prior to this interview.

¶ 16 The circuit court also found that the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights prior to all three interviews. The court acknowledged that the defendant had not been read his rights in their entirety prior to the second and third interviews but held that fresh warnings are not required for serial interrogations after the passage of several hours. The warnings given to the defendant prior to his first interview were not so remote or stale at the time of the second and third interviews that a substantial possibility existed that the defendant had forgotten those rights. The circuit court held that the defendant knowingly, intelligently, and voluntarily waived those rights prior to all three interviews.

¶ 17 Finally, the circuit court held that the defendant's statements to the police at all three interviews were not the result of an unlawful arrest and were voluntary. The court denied the defendant's motion to suppress those statements. The defendant appeals.

¶ 18 In reviewing a circuit court's ruling on a motion to suppress evidence, including statements, we apply the two-part standard of review adopted by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Under this standard, a circuit court's findings of historical fact should be reviewed only for clear error, and a reviewing court must give due weight to any inferences drawn from those facts by the fact finder. *Id.* We give great deference to the circuit court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence. *Id.* A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted. *Id.* Accordingly,

we review *de novo* the circuit court's ultimate legal ruling as to whether suppression is warranted. *Id.*

¶ 19 The defendant first argues that the circuit court erred in finding that he had *not* been in custody during the first and second interviews with police given the fact that he had been explicitly told by the questioning officer that, for purposes of *Miranda*, he was in custody. The defendant argues that, given this fact, any reasonable person would have felt he was not at liberty to terminate the interrogation and leave. See *People v. Slater*, 228 Ill. 2d 137, 150 (2008).

¶ 20 We find it unnecessary to address this issue other than to say any error in the circuit court's determination as to whether the defendant was in custody was harmless.<sup>1</sup> In either case, the circuit court found that the defendant was properly advised of his *Miranda* rights prior to the first interview, that he was reminded of those rights prior to the second interview, and that the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights prior to all three interviews.

¶ 21 The defendant further argues that the circuit court erred in finding that the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights prior to all three interviews. He argues that during the first interview he did not verbally acknowledge that he understood the warnings read to him, but merely initialed a form

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<sup>1</sup>We do not imply that the circuit court's finding as to custody was in error. We make no finding with respect to the question except that any error in the finding is harmless.

after being read those rights. During the second and third interviews, the *Miranda* warnings were not read to him, but were referred to in passing and acknowledged by the defendant with no more than an affirmative head nod.

¶ 22 In addition to the facts set forth above, the circuit court found as follows with respect to the first interview:

"After being orally read his Miranda rights by Detective White, the defendant signed and initialed People's Exhibit 1 [the Miranda warnings form] and agreed to talk to police. The defendant ask [*sic*] a question about the rights, which Detective White answered to defendant's satisfaction because defendant did not ask any other questions about his rights; he appeared to read People's Exhibit 1 before beginning to initial and sign it; he did not appear confused or puzzled in any way about the rights, the waiver of the rights or what he was doing when he initialed and signed People's Exhibit 1; he had been read the Miranda rights in the past; he had worked for Sheriff Maier in the past as a correctional officer at the jail so he had some experience with the criminal justice process; he appeared comfortable, confident and at ease in his decision to waive his rights and answer police questions; and he did not in any way indicate he did not wish to talk to police, that he wanted to leave, that he wanted to talk to a lawyer or have a lawyer present while answering questions, or in any other way exercise or invoke any of his rights. There was no evidence that the defendant was threatened, coerced, intimidated, tricked or deceived in any way prior to waiving his Miranda rights and signing People's Exhibit 1. There was no show of force or display of weapons

at anytime by police. The defendant was not denied food, drink or use of a bathroom. There was no mental or physical abuse of the defendant."

¶ 23 Our own viewing of the video/audio recording of the defendant's first interview leaves us with no doubt that the circuit court's findings of fact are not contrary to the manifest weight of the evidence. That viewing also leaves us with no doubt that the defendant fully understood his *Miranda* rights and that he knowingly, intelligently, and voluntarily waived those *Miranda* rights prior to his first interview with the police.

¶ 24 With respect to the second and third interviews, the circuit court acknowledged that the defendant was not advised of his *Miranda* rights in full and he did not sign another form acknowledging and waiving those rights. Nevertheless, the court found that,

"[e]ven though the defendant was not re-read his *Miranda* rights in their entirety, Sheriff Maier reminded defendant of his *Miranda* rights at the beginning of the 2nd and 3rd interviews, and the defendant agreed to continue to talk to the police. The defendant did not appear confused or puzzled when Sheriff Maier reminded him of his rights. The defendant did not ask any questions about his rights. The defendant knew he could ask questions about his rights and that those questions would be answered because he asked a question at the beginning of the 1st interview about why the *Miranda* rights were being read to him and it was answered by Detective White. Even though he nodded affirmatively that he knew he had and that he understood his *Miranda* rights, the defendant did not invoke or exercise any of his *Miranda* rights during the 2nd or 3rd interview. The defendant

was not mistreated, intimidated, coerced, deceived or tricked in any way during any of the interviews. He was given water and offered food. There were no weapons displayed and no show of force by police. There was no physical or mental abuse of the defendant."

¶ 25 Again, our own viewing of the video/audio recording of the defendant's second and third interviews leaves us with no doubt that the circuit court's findings of fact are not contrary to the manifest weight of the evidence. That viewing also leaves us with no doubt that the defendant fully understood his *Miranda* rights and that he knowingly, intelligently, and voluntarily waived those *Miranda* rights prior to his second and third interviews with the police.

¶ 26 Finally, the defendant argues that, although the warnings may have been read in their entirety prior to his first interview, they had become stale by the time of the second and third interviews and the "reminders" by the police were not sufficient to advise the defendant of his *Miranda* rights. The circuit court held that the *Miranda* warnings and waiver at the beginning of the first interview were not so stale and remote, and the defendant's circumstances were not so changed, that he was unaware of his constitutional rights at the times of the second and third interviews. We reach the same conclusion.

¶ 27 It is generally accepted that fresh *Miranda* warnings are not required for reinterrogation after the passage of several hours. *People v. Garcia*, 165 Ill. 2d 409, 425 (1995). New warnings are required only in those situations where a substantial probability exists that warnings given at a previous interrogation are so stale and remote that a substantial possibility exists that the defendant was unaware of his constitutional

rights at the time the subsequent reinterrogation occurs. *Id.* at 426. The totality of the circumstances should be looked to in determining whether a defendant understands his constitutional rights in subsequent interrogations. *Id.*

¶ 28 The circuit court found that there was approximately 8 hours and 50 minutes between the giving and waiving of *Miranda* rights at the beginning of the first interview and the beginning of the third interview. The defendant did not leave the sheriff's department during this entire time. All the interviews took place in the sheriff's personal office which contained a window, and the subject matter of each interview was the same. The defendant sat in the same chair for each interview and Sheriff Maier was present for each interview. Detective White was present for the first and the third interviews.

¶ 29 As the circuit court pointed out, courts have found the passage of 18 hours, 3 hours and even as much as 3 days from the time of administering and waiving the *Miranda* rights to the time of the defendant's non-*Mirandized* statements to be not so remote in time so as to make the *Miranda* warnings and waiver stale. See *People v. Degorski*, 382 Ill. App. 3d 135, 144-46 (2008); *People v. Edmondson*, 328 Ill. App. 3d 661, 668-69 (2002); *People v. Baltimore*, 292 Ill. App. 3d 159, 163-64 (1997).

¶ 30 The *Miranda* warnings and waiver at the beginning of the first interview were not so stale and remote, and the defendant's circumstances were not so changed between the first and third interviews, that he was unaware of his constitutional rights at the times of the second and third interviews. Accordingly, the defendant effectively waived his *Miranda* rights for purposes of the second and third interviews.

¶ 31 Like the circuit court, we find that the statements the defendant made to the police

in all three of his interviews were voluntary.

¶ 32 For the foregoing reasons the judgment of the circuit court of White County is hereby affirmed.

¶ 33 Affirmed.