

NOTICE

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2016 IL App (5th) 130258-U

NO. 5-13-0258

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Williamson County.
)	
v.)	No. 10-CF-459
)	
TORVELLE STANLEY,)	Honorable
)	John Speroni,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's admission of a later interview by Williamson County police officers is affirmed considering that the later interview was by new officers who gave fresh *Miranda* warnings and involved a matter unrelated to the first interrogation.

¶ 2 **BACKGROUND**

¶ 3 On November 11, 2010, the defendant, Torvelle Stanley, participated in an armed robbery in Herrin, Illinois. During the course of that robbery, the defendant shot and killed Jamel E. Davis. Sometime prior to March 2, 2011, the defendant may have been present during a murder in East St. Louis.

¶ 4 On March 2, 2011, the defendant was arrested in East St. Louis and questioned by Detectives Ward and Foley of the East St. Louis police department and Sergeant McAleenan of the Illinois State Police. The interrogation began at 9:57 p.m. and ended at 11 p.m. At the start of the interview, the defendant read and initialed that he understood his right to remain silent and right to an attorney. During the interview, the defendant stated, "I am done answering questions." Ward responded by asking, "If I show you a video of somebody talking, what do you think about that?" The defendant then continued answering questions, but he eventually again stated, "I'm done talking to you all." Ward then stated, "If you are done talking, we won't be able to show you the tape, because that means we can't talk to you no more." The defendant answered, "Let me see the tape, and ask your questions."

¶ 5 Ward, McAleenan, and Foley questioned the defendant regarding the East St. Louis murder. During this interview, the defendant brought up the Herrin murder, claiming he was innocent and that the Williamson County police only wanted him for questioning. Foley asked why, if that was true, he had not turned himself in. McAleenan also told the defendant that a potential female witness had made statements to them that the defendant had told her about the East St. Louis murder. In reply, the defendant claimed he only told her about the murder "down the way," to which McAleenan stated she had told them about both. Ward and McAleenan referenced Herrin as "up north" in these discussions. Beyond those statements, nothing was said about the Herrin murder.

¶ 6 On March 3, 2011, Ward and McAleenan interviewed the defendant a second time. The interview began at 10:18 a.m. and ended at 12:56 p.m. The defendant again

read and initialed that he understood his rights. At this interview, in response to the defendant's request for a lie detector test, an officer administered a voice stress test to the defendant. Prior to this test, the defendant stated that he was "cool with it." After the test, the defendant stated, "I'm the one who asked for this." The defendant again claimed that the witness he had told about the Herrin murder did not know about the East St. Louis murder. However, McAleenan noted that the witness's statement regarding the Herrin murder "matched up exactly" with a Williamson County detective's version of events. McAleenan went on to suggest that, since the witness was correct about that murder, her testimony regarding the East St. Louis murder should be similarly trustworthy. McAleenan also asked the defendant, "You know you are kind of messed up over that deal *** in Williamson County?" At times in the interview, Ward and McAleenan referred to the Herrin murder as occurring in Carbondale. For instance, Ward stressed, "That we're not talking about Carbondale." Ward and McAleenan asked where the gun used in the Herrin murder was. Ward and McAleenan then asked whether that gun could have been used in the East St. Louis murder. Beyond these references to Herrin, the interview consisted only of the voice stress test and interrogation regarding the East St. Louis murder.

¶ 7 Shortly thereafter, the defendant was questioned by Detectives Bruce Graul and Scott Stefan from Williamson County. This interview began at 1:05 p.m. Before he was questioned, the defendant was once again read his rights and signed a document indicating that he understood his rights. Graul and Stefan did not ask about the East St. Louis murder. The defendant initially claimed that he had ridden along with others who

had committed the murder, but that he himself had never left the car. Graul and Stefan replied by telling the defendant that they had the other participants in custody and had already talked with them about the murder. Further, Graul and Stefan claimed that they could prove the defendant had committed the murder. In response, the defendant shook Stefan's hand, said "I'm going to be honest with you" and "I like you guys," and said "you are all treating me with respect." The defendant then proceeded to confess his involvement in the Herrin murder. At the end of the interview, Stefan told the defendant that he knew nothing about the East St. Louis murder. However, he noted that "projectiles" had been removed from both murder scenes, that "they could match those up," and that the defendant would best be served by honesty. The interview ended shortly thereafter.

¶ 8 On March 3, 2011, a fourth interview was conducted by Ward and McAleenan at 4:44 p.m. at the defendant's request. During this interview, the defendant was asked more questions regarding the gun's whereabouts and his involvement in the East St. Louis murder. The interview concluded at 4:51 p.m.

¶ 9 On August 29, 2012, the defendant filed a second amended motion to suppress statements. The defendant argued that he had unambiguously asserted his right to remain silent, but Ward, McAleenan, and Foley ignored him and failed to scrupulously honor his assertion. On August 31, 2012, at the hearing on the second amended motion to suppress statements, the defendant argued that Ward's, McAleenan's, and Foley's failure to scrupulously honor his rights necessitated the suppression of every interview. In response, the State agreed that the first interview with Ward, McAleenan, and Foley had

to be suppressed; however, the State did not concede that the second interview needed to be suppressed. Further, the State argued that the factors relevant to suppression favored allowing the interview with Graul and Stefan to be admitted.

¶ 10 On October 11, 2012, the court entered an order suppressing the three interviews by Ward, McAleenan, and Foley but denying the motion with regards to the interview by Graul and Stefan. In that order, the court applied the factors relevant to suppression and found that Graul and Stefan had scrupulously honored the defendant's right to remain silent.

¶ 11 On December 19, 2012, the defendant filed a written waiver of jury trial. On February 15, 2013, a stipulated bench trial was heard. At this trial, the defendant renewed his objection to the admission of the interview by Graul and Stefan. The court found the defendant guilty of first-degree murder. Also on February 15, 2013, the defendant filed a motion for a new trial, again arguing that the court should have suppressed the interview by Graul and Stefan. On April 12, 2013, the court denied the motion for a new trial and proceeded to sentencing. On May 23, 2013, the defendant filed notice of appeal.

¶ 12 ANALYSIS

¶ 13 On appeal, the defendant argues that the circuit court's decision not to suppress the interview with Graul and Stefan was erroneous. "In reviewing a trial court's ruling on a motion to suppress, this court applies a *de novo* standard of review." *People v. Flores*, 2014 IL App (1st) 121786, ¶ 35. However, this court "accord[s] great deference to the

trial court's factual findings" and will reverse them "only if they are against the manifest weight of the evidence." *Id.*

¶ 14 A defendant's statement during custodial interrogation is admissible at trial if, having been informed of his rights, including the right to remain silent, the defendant voluntarily waives his rights prior to making the statement. *Miranda v. Arizona*, 384 U.S. 436 (1966). If a defendant invokes his right to remain silent, but the interview continues and the defendant gives a later incriminating statement, "the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.' " *Michigan v. Mosley*, 423 U.S. 96, 104 (1975) (quoting *Miranda*, 384 U.S. at 479).

¶ 15 In considering whether the right to cut off questioning had been scrupulously honored, the United States Supreme Court considered factors such as whether the police immediately ceased the interrogation after the right had been asserted, whether questioning resumed after the passage of a significant period of time and fresh warnings had been given, and whether the second interrogation involved a crime that had not been a subject of the prior interrogation. *Id.* at 105-06. The Illinois Supreme Court has since held there are four nonexclusive factors that a court must consider when determining whether a defendant's right to cut off questioning was scrupulously honored: (1) whether a significant period of time had elapsed between interrogations; (2) whether the subsequent interrogation was by a different officer; (3) whether the subsequent interrogation was prefaced by fresh *Miranda* warnings; and (4) whether the subsequent interrogation involved a matter unrelated to the subject of the first interrogation. See

People v. R.C., 108 Ill. 2d 349, 353-54 (1985); *People v. Morrow*, 269 Ill. App. 3d 1045, 1051 (1995).

¶ 16 The record clearly indicates that the East St. Louis police did not immediately cease interrogation after the defendant asserted his right to cut off questioning. After the defendant said, "I'm done answering questions," Ward, McAleenan, and Foley continued asking the defendant questions and making statements to him. Thus, the circuit court properly excluded the interviews by Ward, McAleenan, and Foley. The defendant argues that the actions of Ward, McAleenan, and Foley similarly should have forced the circuit court to suppress the interview by Gaul and Stefan. We consider this argument in our review of the relevant factors.

¶ 17 The first factor, whether a significant period of time passed between the first interview and the interview by Gaul and Stefan, depends upon how we measure the time passed. The first interview began at 9:57 p.m. and ended at 11 p.m. on March 2, 2011. The second interview began at 10:18 a.m. and ended at 12:56 p.m. on March 3, 2011. The interview by Gaul and Stefan began at 1:05 p.m. on March 3, 2011. Thus, over 13 hours had passed between the first interview (in which Ward, McAleenan, and Foley ignored the defendant's clear invocation of his right to cut off questioning) and the interview admitted by the circuit court. This court has previously held that a mere 55 minutes constitutes a significant period of time. See *People v. Morrow*, 269 Ill. App. 3d 1045, 1051 (1995).

¶ 18 The defendant argues, however, that the relevant time period should be between the second interview and the interview admitted by the circuit court. As he notes, the

second interview occurred because the defendant asked to take a lie detector test after Ward, McAleenan, and Foley ignored his request to cut off the interview. Thus, he argues, the second interview is merely an extension of the first, improper interview. Because only nine minutes elapsed between the second interview and the admitted interview, the defendant argues that this factor should favor suppression.

¶ 19 We agree with the defendant. The second interview appears to have occurred only because the defendant requested a lie detector test. The defendant made that request after Ward, McAleenan, and Foley ignored his request to cut off questioning. Thus, the second interview was an extension of the first interview, and we must consider the time period between the second interview and the admitted interview. We find that nine minutes is not a significant period of time, and that therefore this factor favors suppression. However, no one factor is dispositive, and our determination of admissibility depends upon our weighing of all of the factors. See *United States v. Schwensow*, 151 F.3d 650, 659 (7th Cir. 1998) (noting that *Mosley* "neither elevates any one factor as predominant or dispositive nor suggests that the enumerated factors are exhaustive").

¶ 20 The second factor, whether the subsequent interview was by different officers, clearly favors admission. Graul and Stefan conducted the interview that was admitted. Ward, McAleenan, and Foley were not present for this interview. The defendant points to statements by Ward, McAleenan, and Foley referencing the Herrin murder as proof that this factor favors suppression. However, this factor asks only whether the admitted interview was conducted by officers other than those who were present for the initial

interrogation. See *People v. Morrow*, 269 Ill. App. 3d 1045, 1051 (1995) (finding this factor satisfied when a St. Louis officer who initially read a defendant his rights and a Fairview Heights detective who later interrogated the defendant were clearly different officers). Graul and Stefan were not present for the earlier interviews and thus are different officers.

¶ 21 Further, we find nothing in the references to the Herrin murder to affect this analysis. The defendant at times brought up the Herrin murder, claiming that he was innocent and that he was merely wanted for questioning. Foley merely asked him why, if that were true, he had not gone in for questioning. McAleenan noted that a witness had made accurate statements regarding the Herrin murder in order to suggest that the same witness had been accurate in statements about the East St. Louis murder. Ward told the defendant during the second interview that they would not be discussing the Herrin murder, but they did want to know where the gun used in the Herrin murder was. The defendant argues that Ward, McAleenan, and Foley suspected the same gun was used in both murders. Assuming this allegation is true, there still is no proof that Ward, McAleenan, and Foley were seeking this gun for any reason beyond their investigation of the East St. Louis murder. Thus, this factor favors admission of the interview by Graul and Stefan.

¶ 22 The third factor, whether the subsequent interrogation was prefaced by fresh *Miranda* warnings, also favors admission. The defendant was given fresh *Miranda* warnings at the start of the interview by Graul and Stefan, as he had been during every interview. The defendant argues that the admitted interview was the illegal product of

the first and second interview and that, therefore, there were no "fresh" warnings. However, during the admitted interview, the defendant, unprompted, shook Stefan's hand. The defendant stated that he "liked" Graul and Stefan and that they had "treat[ed him] with respect." Only then did the defendant confess. The defendant was a voluntary participant during the admitted interview and could appreciate that the admitted interview was separate from the other interviews. Moreover, Graul and Stefan were different officers who identified themselves as belonging to a different department. Thus, this factor favors admission.

¶ 23 The fourth factor, whether the subsequent interrogation involved a matter unrelated to the subject of the first interrogation, also favors admission. The interview by Graul and Stefan was the only interview at which the Herrin murder was the primary subject. While the East St. Louis murder was mentioned, Stefan merely advised the defendant that projectiles had been recovered from both scenes and that he should tell the truth. Stefan did not ask any questions about the East St. Louis murder. The defendant argues that the Herrin murder was a subject of the earlier interviews. However, the Herrin murder only came up in three instances: when Ward, McAleenan, and Foley asked questions about witnesses who had heard the defendant speak about both murders, when the defendant himself brought it up, and when Ward, McAleenan, and Foley asked where the gun used in the Herrin murder was and if it could have been used in the East St. Louis murder. Even then, Ward, McAleenan, and Foley misidentified the Herrin murder as occurring "up north" and in Carbondale, indicating that they had little to no knowledge of the Herrin murder. We can hardly say the Herrin murder was a subject of the interviews

by Ward, McAleenan, and Foley if the officers did not know where the murder occurred. At no point did Ward, McAleenan, and Foley ask the defendant about the Herrin murder. Ward even explicitly told the defendant that he would not be asking about the Herrin murder. Thus, this factor favors admission.

¶ 24 Based upon our review of the evidence, three of the four nonexclusive factors weigh in favor of admitting the interview by Gaul and Stefan. Even though a significant period of time had not passed between the interviews, we find that the factors favor admission of the interview by Gaul and Stefan. Because the circuit court properly admitted the interview by Gaul and Stefan, we affirm.

¶ 25 CONCLUSION

¶ 26 For the reasons stated, we affirm the decision of the circuit court of Williamson County.

¶ 27 Affirmed.