2019 IL App (5th) 160457-U

NO. 5-16-0457

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 15-CF-240
	)	
DARRAN McCLOUD,	)	Honorable
	)	John Baricevic,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's order suppressing statements made by the defendant after he unequivocally and unambiguously invoked his right to remain silent during a police interrogation when he told the detectives that he did not "want to say nothin'."

¶ 2 The defendant, Darran McCloud, was charged with one count of murder (intent to kill). Prior to the trial, the defendant filed a motion to suppress statements he made during an interrogation conducted by the police. The trial court granted the motion in part, finding that at a certain point a few hours into the interview, the defendant had invoked his right to remain silent, and the police did not cease questioning him. Thus, the court suppressed everything the defendant said after that point in the interview. On

appeal, the State argues that the trial court misheard the defendant's statement, and alternatively, the defendant's statement was not an unequivocal and unambiguous assertion of his right to remain silent. For the reasons that follow, we affirm the order of the circuit court.

¶ 3 The State's theory of the case was as follows. On February 20, 2015, Frederick Purnell was a passenger in a vehicle driven by Lent Montgomery. Daishawn Stacker (D-Thing) entered the car to buy drugs from Lent and to assist in a plan to rob him. The defendant and Sean Johnson were supposed to approach the vehicle from the rear to help complete the robbery. When the defendant approached the back of the vehicle, Lent drove off. As the vehicle drove away, the defendant, who had a gun, fired toward its bumper. As a result of the shooting, Purnell was killed and D-Thing was injured.

¶ 4 As part of the investigation into the shooting, police interviewed the defendant on February 24, 2015, at 10:21 a.m., and the entire interview was approximately eight hours. The interview was primarily conducted by Special Agent Dennis Janis. Detective Ronald McClellan, Detective Sergeant John Parisi, and Sergeant Elbert Jennings all assisted at various times during the interview. The defendant was given his *Miranda* rights before the interview began. He stated that he could read and understand the English language and that he understood his rights.

¶ 5 The video of the interview was part of the record on appeal. For much of the interview, the defendant denied knowledge of the shooting. He said that he was inside the apartment at the time of the shooting, did not know about a plan to rob anyone, denied hearing shots, and denied having any knowledge of who was involved in the

shooting. Eventually, he admitted that he knew D-Thing had wanted to rob Lent and that he had heard the shots. At that point, Janis urged the defendant to tell him who really committed the crime, but the defendant would not implicate anyone other than to say that D-Thing called Lent because "they" were going to rob Lent. He would not say who D-Thing went outside with, saying that he did not need to say anything because the neighbors had surveillance cameras and more stuff would be coming out. Janis then told the defendant that others had implicated him and further urged him to tell them what happened. The defendant responded, "that ain't me to tell who did it."

¶ 6 Shortly after noon, the defendant agreed to take a voice stress analysis, which was conducted by Parisi. After the test, the defendant was told that he had failed, and Parisi encouraged him to explain his involvement in the shooting. The defendant admitted he knew who did the shooting but said that he was not "gonna come in here and do no talking." Parisi left the interview room. Janis then returned with Jennings and urged the defendant to tell them who had the gun and who else was outside with D-Thing. One of them told the defendant that there was a big difference between shooting at a person intentionally and shooting at the back of a vehicle. The defendant then admitted that he knew who had the gun but would "take it to the grave" because that was the way he was raised. He said that the words "ain't gonna come out of my mouth." Jennings urged the defendant to stop covering for people, to make a "big boy" decision, and to tell the truth. He told the defendant that there was a difference between mistakes and intentional conduct. The defendant responded that there were consequences for both.

¶ 7 After further urging to tell the truth, the defendant asked whether they had any video of what had happened. Janis asked what difference that would make, and the defendant responded, "cause I don't want to say nothin'."[1] The defendant then told them to watch the video because they would not see him on it. Janis told the defendant that the video might not be working and encouraged the defendant to think about his family, noting that he would not want to be visiting his mother behind a window for the next 10 years. The defendant eventually admitted that he was the shooter but explained that he was just trying to scare Lent and was aiming at the vehicle's bumper. He said that Sean and D-Thing planned the robbery; that D-Thing got inside the vehicle to buy drugs from Lent; that D-Thing signaled to the defendant from inside the vehicle; that, when the defendant got close to the vehicle, Lent sped off; and that the defendant shot at the vehicle five times but thought that the bullets had gone into the trunk.

¶ 8 On June 15, 2016, the defendant filed a motion to suppress his statements made during the police interview, alleging that the interrogating officers used deceptive interrogation tactics to get him to confess to the shooting. Specifically, the defendant noted that the officers repeatedly suggested that confessing to an accidental shooting would be beneficial to him in that there was a big difference between an accidental shooting and an intentional killing. As for the defendant's invocation of his right to remain silent, he argued that, at several points during the interview, he voiced his intention to remain silent in response to inquiries about certain people involved in the

[1]The State argues that at this point, the defendant said "cause I don't want to name names" not "cause I don't want to say nothin'."

robbery and shooting. For example, the motion identified the following statements made by the defendant: "I'm taking that to the grave" and "I don't want to talk about that."[2] The motion noted that the interviewing officers did not clarify whether the defendant was attempting to assert his right to remain silent by making these statements and instead indicated that the defendant's silence equated to guilt. Thus, the defendant argued that his statements, *i.e.*, that he shot at the bumper of the vehicle five times, which resulted in Purnell's death, should be suppressed. In response, the State argued that the defendant's choice to refuse to answer certain questions by either remaining silent or making the above statements did not constitute a clear invocation of his right to remain silent.

¶ 9 On October 18, 2016, the trial court held a hearing on the motion to suppress the defendant's statements. At the hearing, Janis, a special agent with the Illinois State Police's violent crime unit, testified that he was the case agent for this homicide investigation and was involved in the defendant's interview. He was present for the entire interview except for the portion where the voice stress analysis test was conducted. At the beginning of the interview, he read the defendant his *Miranda* rights. Janis testified that the defendant appeared to understand his rights and also signed a form acknowledging those rights. Janis knew that the defendant was involved in the homicide because a witness had reported that the defendant had shot at the vehicle. However, he was not sure if the defendant was the shooter and was not certain if the shooting was based on a felony (the robbery). Therefore, his goal for the interview was to find out if

[2]The motion did not specifically identify the defendant's statement "cause I don't want to say nothin'." That statement was brought up by the trial court at the hearing on the motion to suppress.

the information he had was true and to also find out the reason for the robbery. The defendant told Janis that he knew who had committed the homicide but would not say who because he was raised to not tell on people. In regard to the comment that the defendant would not want to see his mother from behind glass for 10 years, Janis testified that he was referring to the defendant going to prison for not snitching; he was not telling the defendant that 10 years was a possible sentence or offering him a favor. He repeatedly told the defendant that he was not the one making the charging decisions. At the conclusion of the interview, the defendant asked Janis how much time he was getting, and Janis replied that it was not up to him. He continually urged the defendant to tell the truth, but he never suggested that the defendant would receive any benefit for admitting to being involved in the shooting.

¶ 10 On cross-examination, Janis conceded that a person who accidentally shot someone during the commission of a felony, like a robbery, could still be guilty of murder. He also conceded that the defendant was told that it was not murder if he was shooting at the back of the vehicle and the bullets went awry. He agreed that they brought up mistake and self-defense to get to the truth of what had happened.

¶ 11 Janis further testified that the interview room was approximately 10 feet by 10 feet with no windows. The defendant was there for several hours and was not free to leave unless he said that he did not want to talk anymore or requested a lawyer. Janis explained that Jennings, a sergeant with the Illinois State Police, became involved in the later part of the interview because McClellan, who had initially assisted Janis, was unavailable. Jennings knew the defendant through the Illinois State Police at-risk youth camp. The

defendant made incriminating statements after Jennings became involved. The total time frame of the interview was eight hours, the defendant was in the interview room for 5½ hours, and he was questioned for approximately four hours.

¶ 12 Ronald McClellan, a detective with the East St. Louis police department, testified that he was present for the first portion of the defendant's interview. During the interview, McClellan did not talk with the defendant about possible sentences, did not talk about the various theories under which the defendant could be charged with murder, and, although he encouraged the defendant to tell the truth, he did not suggest that the defendant would receive any benefit for telling the truth. On cross-examination, he conceded that he used a common investigative technique where he presented two scenarios, *i.e.*, where the defendant committed the homicide on purpose or he mistakenly shot the victim while aiming at the vehicle's tires, one of which was less harsh (even though legally the defendant would be guilty of murder under both) to the defendant. He also conceded that, in both scenarios, the defendant was the shooter.

¶ 13 John Vito Parisi, a detective sergeant with the Village of Sauget, testified that he administered the computer voice stress analysis to the defendant. He testified that the voice stress analysis is similar to a polygraph in that it is meant to detect truth or deception. Although the test results are not admissible in court, it is an acceptable investigatory technique. Parisi told the defendant that he was ranked 22nd out of about 1800 examiners who administer the test, but that was not a true statement. He makes that claim so the individual trusts the test results. Parisi read the defendant his *Miranda* rights before conducting the test. Parisi detected deception in the defendant's statements and

told the defendant that he was not telling the truth. He did not know the underlying theory of the case, but he knew that shots were fired into a vehicle, and he might have known this was a drug robbery. After administering the test, he interviewed the defendant for approximately 30 minutes, urging him to tell the truth. Although he told the defendant that if the bullet went awry, it would be accidental, not murder, he conceded that this was not necessarily true. He did not tell the defendant that an accidental shooting could be considered a murder. He acknowledged that he told the defendant that he had to talk about this, but he was not suggesting that the defendant was required to talk, only that he needed to get it off his chest. The defendant never made any incriminating statements to Parisi.

¶ 14 Elbert Jennings, a sergeant with the Illinois State Police, testified that he also participated in the defendant's interview. He first met the defendant approximately five or six years ago at a youth camp for at-risk teenagers. He saw him on two other occasions because his cousin was dating the defendant's father. Prior to the interview, Jennings had not seen the defendant for at least one year. He acknowledged that he made several comments to the defendant during the interview that there was a difference between shooting someone accidentally and shooting someone on purpose but explained that he meant that there was a moral difference rather than a legal difference. He never implied what the consequences would be for any statements made by the defendant. His comment about the defendant facing "big boy" consequences was meant to indicate that the defendant should accept the consequences for his actions.

¶ 15 Daniel Cuneo, a clinical psychologist, testified that he became involved in the case when the defendant's attorney asked him to evaluate the defendant as to his ability to knowingly, intelligently, and voluntarily waive his *Miranda* rights on February 24, 2015, the date of the interview. Dr. Cuneo believed that the defendant understood his *Miranda* rights, and his right to waive those rights was not substantially impaired. He believed that the defendant had attention deficit hyperactivity disorder (ADHD) and difficulty with impulse control and hyperactivity. He noted that the defendant had been off of his ADHD medication for three or four years and had been self-medicating with cannabis. Dr. Cuneo stated that someone with ADHD would have trouble paying attention and/or focusing. He opined that the defendant suffering from ADHD, not taking his medication, his long-term drug abuse issues, and the length of the interrogation negatively impacted his ability to willingly and voluntarily waive his *Miranda* rights.

¶ 16 The defendant told Dr. Cuneo that he did not ask for any attorney during the interview because he was inexperienced with the legal system. The defendant expressed that he felt pressured to confess to the shooting and that Jennings, whom he trusted, told him to confess, so he did.

¶ 17 During arguments, the State argued that the defendant's statements that "I'm taking that to the grave" and "I don't want to talk about that" were not a clear invocation of his right to remain silent. The State argued that the defendant was not voicing an intent to remain silent that was ignored; he was just saying that he did not want to answer those particular questions. The court then questioned the State as to what else the defendant could mean by his later statement "cause I don't want to say nothin' " other than he did

not want to talk. The State responded that the comment was in response to why he wanted the officers to watch the video; he did not want to tell them what happened and wanted them to instead watch the video. The State further explained that it did not think that the defendant was trying to stop the interview with that statement. Instead, he was trying to deflect any potential consequences by not incriminating himself. The court took the motion under advisement.

¶ 18 On October 24, 2016, the trial court partially granted the defendant's motion to suppress. The court found that the *Miranda* warnings were constitutionally adequate and properly waived. The court further found that all of the defendant's statements up until the time that he made the statement "cause I don't want to say nothin' " were voluntary. However, the court found that this statement was a clear and unequivocal invocation of his right to remain silent. In making this decision, the court noted that an officer is not required to inquire about a demand for silence once one is made but thought that it might be the constitutional thing to do as it might protect the integrity of the interview. However, since no inquiry was made, the court had to look at the plain meaning of the statement "cause I don't want to say nothin'." In looking at the plain meaning of the statement, the court stated as follows:

> " 'I don't want to say nothin' ' seems plain on its face. He didn't limit that statement in any way. He didn't say I don't want to talk about the effect on Mom, he didn't say I don't want to talk about surveillance cameras, he didn't say I'll talk about other things, he said 'I don't want to talk about nothin'.' What more can one say[?] Doesn't 'nothin' ' mean nothing? No more is to say no more."

The court then noted that the defendant was a high school junior who was unfamiliar with the complexity of constitutional discourse. The court questioned how he was going to

say something that would have satisfied the educated, well-trained officers. The court then concluded that to require more strips the defendant of his fifth amendment constitutional protections and that his statement should be taken literally.

¶ 19 The trial court further stated:

> "It seems to me that police and prosecutors believe they have an open door to ignore a demand for silence. If they interpret the demand as equivocal it allows police to pursue their goals. While I appreciate government agents doing all they can to protect us and solve crime, they also have an obligation to enforce the Constitution. In striving to get statements admitted[,] pushing the envelope may be acceptable for police, it is not for judges.
>
> I believe the defendant made an unequivocal demand to remain silent. The questioning must stop at that point. Everything after that statement is suppressed. As indicated above, I believe all of the defendant's responses to that point were voluntary and so should the defendant choose to testify the statement could be used to impeach should the defendant testify contrary to what he had previously said."

Therefore, the court suppressed all of the defendant's statements after he made the statement "cause I don't want to say nothin'," which included his confession about committing the shooting.

¶ 20 Thereafter, the State filed a notice of appeal under Illinois Supreme Court Rule 604(a)(1) (eff. Dec. 3, 2015) and a certification of substantial impairment of its ability to prosecute.

¶ 21 The State first contends that the trial court erred in granting the defendant's motion to suppress because the court misheard the defendant's statement on the video, arguing that the defendant did not say "cause I don't want to say nothin'." The State instead believes that the defendant said "cause I don't want to name names." Although there were some instances in the video where it was hard to understand the defendant, this was

not one of them. The defendant very audibly with a raised voice said, "cause I don't want to say nothin'." Even a creative interpretation of the defendant's words would not lead to the conclusion that he said "cause I don't want to name names." Thus, we now must determine whether that statement was sufficient to clearly and unequivocally invoke his right to remain silent.

¶ 22 In reviewing a circuit court's ruling on a motion to suppress evidence, including statements, we apply a two-part standard of review. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). We review *de novo* the circuit court's ultimate legal ruling as to whether the suppression is warranted. *Id.* A circuit court's findings of fact and credibility determinations are accorded great deference and will be reversed only if they are against the manifest weight of the evidence. *Id.* The reason is because the circuit court is in a better position to determine and weigh the credibility of the witnesses, observe their demeanor, and resolve conflicts in the testimony. *Id.* A judgment is against the manifest weight of the evidence where the opposite conclusion is apparent or when the findings are unreasonable, arbitrary, or not based on evidence. *People v. Lopez*, 2013 IL App (1st) 111819, ¶ 17.

¶ 23 The United States and Illinois Constitutions provide that no person should be compelled in any criminal case to be a witness against himself. U.S. Const., amend. V; Ill. Const. 1970, art. 1, § 10. To protect this right, interrogation of an individual must cease once the individual indicates in any manner and at any time prior to or during a custodial interrogation that he wishes to remain silent. *People v. Hernandez*, 362 Ill. App. 3d 779, 785 (2005). Any statement taken after the individual invokes the right to

remain silent cannot be other than the product of compulsion, subtle or otherwise. *Id.* However, an invocation of the right to remain silent must be unambiguous, unequivocal, and clear. *People v. Kronenberger*, 2014 IL App (1st) 110231, ¶ 33. This right may be invoked either verbally or through conduct that clearly indicates a desire to cease all questioning. *Hernandez*, 362 Ill. App. 3d at 785. If verbal, the demand must be specific. *Kronenberger*, 2014 IL App (1st) 110231, ¶ 33.

¶ 24 The State argues that the defendant's statement "cause I don't want to say nothin' " was not an unequivocal and unambiguous assertion of his right to silence. Instead, the State argues that, looking at the context of the entire interview, the defendant's statement amounted to a refusal to say anything about his participation in the attempted robbery; the defendant was merely resisting answering questions about particular details of the offense. The State contends that this was evidenced by the defendant's repeated refusal to say who was outside with D-Thing, his insistence that he would not tell on anyone, and his statement that he would take the information to his "grave." In support, the State cites a California Supreme Court case, *People v. Williams*, 233 P.3d 1000 (Cal. 2010), which is not binding authority on this court. There, a police officer repeatedly questioned defendant as to how he knew the victim of the crime, and defendant responded, "I don't want to talk about it." *Id.* at 1023. The California Supreme Court concluded that defendant's statement was an expression of his frustration with the detective's failure to accept his repeated insistence that he was not acquainted with the victim as proof that he had not encountered her on the night of the crime rather than an unambiguous invocation of his right to remain silent. *Id.* In making this decision, the court found that a

reasonable officer could interpret defendant's statement as comprising part of his denial of any knowledge concerning the crime or the victim rather than an effort to terminate the interrogation. *Id.*

¶ 25 An Illinois case that the State cites in support of its position is *Kronenberger*, 2014 IL App (1st) 110231. In that case, during the interrogation, defendant supplied some information about the crime, including his denial that he was the shooter. *Id.* ¶ 36. The detective then left the interrogation room and returned about 10 minutes later. *Id.* When he returned to the room, the detective asked defendant whether he was done talking to them, and defendant responded "[y]eah." *Id.* In determining whether defendant's answer was an unequivocal invocation of his right to remain silent, the appellate court looked at the context of the entire interrogation. *Id.* ¶ 37. The court noted that an earlier conversation with defendant centered on getting him to tell the truth about what occurred and that he had supplied some information about the crime. *Id.* The court found that the detective reentered the interview room to verify whether defendant had more to add regarding the crime and that defendant's response did not indicate an unambiguous and unequivocal desire to end all questioning. *Id.* Instead, the court found that it was unclear from defendant's response whether he wished to invoke his right to remain silent or whether he, after speaking with the detective earlier, had nothing else to tell the detectives. *Id.* Thus, the court found that the trial court's determination that defendant did not invoke his right to silence was not against the manifest weight of the evidence. *Id.*

¶ 26 In contrast, the appellate court in *Hernandez* found that defendant had clearly and unambiguously invoked his right to remain silent when he answered "No, not no more" after being given his *Miranda* rights and being asked whether, understanding these rights, he wished to talk now. *Hernandez*, 362 Ill. App. 3d at 786. The court noted that, although defendant had been previously willing to talk and had made several incriminating statements already, once he was asked whether he wanted to talk, and he responded "No, not no more," he had clearly and unequivocally invoked his right to remain silent. *Id.*

¶ 27 Here, the defendant responded "cause I don't want to say nothin' " after the officers asked him why they would review any surveillance tape rather than question him. Although the State argues that, like *Williams*, the defendant's statement was merely an expression of his reluctance to implicate his friends and his frustration with the officers' failure to accept his repeated insistence that he did not know or want to tell who went outside with D-Thing, the trial court disagreed. After considering the totality of the circumstances surrounding the defendant's statement, the trial court concluded that the defendant had unequivocally and unambiguously invoked his right to remain silent, finding that the statement was plain on its face. We find that the evidence supported the trial court's finding. The defendant's statement here was not connected to any conditional language; the defendant clearly stated that he did not want to say anything, with no qualification or limitation. The defendant's statement was not just a refusal to talk about how he knew the victim or a denial of any knowledge of the crime. The defendant said that he did not want to say "nothin'." This case is analogous to *Hernandez*. In both cases,

the defendants each made requests to stop talking, as opposed to directing their request at a limited line of questioning. Thus, we conclude that the evidence supported the trial court's finding that the defendant invoked his right to remain silent, and the court properly granted the defendant's motion to suppress the defendant's statements following the invocation of his right to silence as the interrogation should have ended at that point.

¶ 28 For the foregoing reasons the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 29 Affirmed.