

THIRD DIVISION
April 16, 2014

No. 1-09-1680

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 8404
)	
ELIAS LEON,)	Honorable
)	John J. Scotillo,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Neville and Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* The indictment was sufficient where (1) it stated the date the abuse began, (2) it is unreasonable to expect an 11-year-old to remember specific dates, and (3) defendant did not seek a bill of particulars. The trial court did not err in denying the motion to suppress where the record does not support defendant's claim that he did not understand the *Miranda* warnings or that he requested a lawyer.
- ¶ 2 A jury convicted defendant, Elias Leon, of three counts of predatory criminal sexual assault. He was sentenced to serve consecutive terms of six years in the Illinois Department of Corrections on each count.

¶ 3 On appeal, Leon raises two issues. First, he contends that the indictment charging the offenses was impermissibly vague because it charged him with conduct occurring on unspecified dates over a 30-month period. Leon argues that the lack of specificity in the indictment prevented him from adequately preparing a defense and denied him due process of law. Second, Leon claims that his motion to suppress statements he made to police should have been granted because his lack of fluency in the English language and his third-grade level of education precluded a finding that he knowingly and intelligently waived his *Miranda* rights. For the reasons that follow, we affirm.

¶ 4 BACKGROUND

¶ 5 The evidence at Leon's trial demonstrated that between April 11, 2004, and September 30, 2006, Leon assaulted the victim, T.R., at his home. The details of the assaults are not material to the issues raised by Leon on appeal and we will not repeat them here.

¶ 6 T.R. was the daughter of a female friend of Leon's and she, her mother and her siblings would visit Leon at his home almost every Saturday. T.R. was 11 years old at the time the assaults began; Leon was 48. T.R. believed that Leon was her father, although she did not live with him. Leon also believes he is T.R.'s father.

¶ 7 April 11, 2004, the date of the first assault, was Easter Sunday. T.R. recalled the date because her mother and siblings went to Easter mass and left her with Leon. After the first assault, T.R. could not keep track of the number of times she was assaulted by Leon over the next 30 months. By 2006, T.R. was "tired of holding it in" and was worried about her younger sister. The assaults stopped in September 2006 after T.R. told her mother.

¶ 8 The police became involved in March 2007 after T.R. told a teacher about the assaults. The teacher, in turn, brought T.R. to the school's liaison officer from the Palatine police

department. T.R. was later brought to the Hoffman Estates Police Department where she was joined by her mother. T.R. and her mother spoke to Detective Joseph Golbeck.

¶ 9 Golbeck obtained Leon's address and he and another detective drove to Leon's residence. As they arrived, Leon was about to enter his car in the parking lot of the apartment complex. The officers approached Leon, identified themselves, confirmed Leon's identity and asked that he accompany them to the Hoffman Estates Police Station. Leon agreed and made the 5- to 10-minute trip to the station in the police vehicle. During the trip, Leon was not handcuffed and the officers did not speak to him.

¶ 10 When they arrived at the station, the officers brought Leon to an interview room and left him alone for a few minutes. He was not handcuffed and the room was not locked. Golbeck and Detective Gad joined Leon a short time later. Golbeck advised Leon of his *Miranda* rights by reading off a preprinted form in English. As Golbeck read each right, he asked Leon if he understood. After Leon indicated his understanding of each right orally, he placed his initials next to each right on the form. Leon also signed the form. After he had initialed and signed the form, Golbeck asked Leon if he understood his rights and was willing to talk to him, to which Leon responded, "Yes." Leon did not request an interpreter or indicate that he did not understand English.

¶ 11 For the next 20-25 minutes, the detectives asked Leon about his alleged assaults of T.R. Although Leon initially denied T.R.'s allegations, when asked specifically about Easter 2004, he admitted assaulting T.R. on that date and provided details of the assault. Leon also admitted assaulting T.R. on several other occasions between April 2004 and September 2006, but he could not recall the dates. After the interview, the detectives informed Leon that they were going to call an assistant State's Attorney.

¶ 12 Assistant State's Attorney Ruthe Howes later arrived at the station and, after speaking to Golbeck and T.R., went to the interview room. She introduced herself to Leon, informed him that she was a lawyer, but not his lawyer and again read Leon his *Miranda* rights from a preprinted form. Leon indicated he understood his rights and Howes then asked him to sign the form if he wished to waive his rights and speak with her. After Leon signed the form, Howes began to ask him questions. Howes' questions and Leon's answers were in English. Leon again detailed his various assaults on T.R. consistent with the account he gave Golbeck.

¶ 13 At the conclusion of her interview, Howes, with Leon's permission, wrote a summary of his statement. After she wrote out the statement with Leon's assistance, Howes again read Leon his *Miranda* rights, which were preprinted at the top of his statement. Leon orally acknowledged that he understood his rights and signed below the preprinted text. Howes then read Leon's statement to him and he was allowed to make any changes or corrections, which he declined to do. Leon, Howse and Gelbeck signed each page of the statement. The statement detailed Leon's assaults on T.R., but other than the assault that occurred on Easter 2004, made no reference to any other dates.

¶ 14 On April 12, 2007, Leon was indicted on 27 counts of predatory criminal sexual assault, criminal sexual assault, and aggravated criminal sexual abuse. On June 5, 2007, Leon moved to dismiss the indictment claiming that it lacked specificity as to the dates, times and place of the alleged assaults so that it was "virtually impossible" for him to prepare a defense. The trial court denied Leon's motion without prejudice finding that dismissal of the indictment would be a drastic remedy. The court invited Leon to instead demand a bill of particulars if he required further detail. The record does not contain a demand for a bill of particulars.

¶ 15 Leon also filed a motion to suppress the statements he made at the police station. In his motion, Leon claimed that the detectives promised him if he admitted to the charges against him, he would not be charged and that if he did not, he could receive a long prison sentence. Leon also claimed that he requested to speak to an attorney several times, but his requests were ignored. Finally, Leon contended that he had "limited familiarity" with the English language and no attempt was made to conduct the interviews in Spanish. Therefore, Leon claimed the questions asked and responses given were "misinterpreted."

¶ 16 Golbeck testified at the hearing on the motion. He described the procedure for advising Leon of his *Miranda* rights recounted above and Leon's conduct in initialing and signing the preprinted form. He denied that Leon ever requested to speak to an attorney during the interviews. Golbeck denied making any promises to Leon or coercing his statement in any manner. During his interviews of Leon first with Gad and later with Howes, Golbeck never had any difficulty understanding Leon and Leon never appeared to have any difficulty understanding the questions asked of him. Leon never requested the services of an interpreter.

¶ 17 Howes testified at the hearing to being called to the Hoffman Estates police department on March 20, 2007, and arriving about 7:30 p.m. She also recounted reading Leon his *Miranda* rights and having him initial and sign the preprinted form. After she wrote out Leon's statement, Howes read each page of it to him and Leon signed each page. Leon agreed that the statement was accurately summarized by Howes. As part of his statement, Leon advised Howes that he was able to read English and could write it at a medium level. His comprehension of English did not appear to Howes to be limited. Howes also denied making any promises to Leon or coercing his statement in any manner.

¶ 18 Leon also testified at the hearing. Leon emigrated to the United States from Mexico in 1978 at age 22. He did not require the services of an interpreter during the hearing. He was asked questions in English and responded in English.

¶ 19 When he arrived at the police station, Leon testified he asked to speak to an attorney and to call his family. After being assured that he would get a chance to call somebody, the detectives began interviewing him. Several times during the interview, he asked to call an attorney. When asked what exact words he used, Leon testified he told the detectives, "I need to make a phone call." The detectives ignored his requests. Leon understood "some" of the words on the preprinted *Miranda* form, but never asked the detectives what the words meant. He felt he had to sign the form. He claimed that several times over the course of multiple interviews spanning several hours, he told the detectives that the allegations against him were not true. Leon was offered food and drink over the course of the interviews, but refused.

¶ 20 After at least four sessions, each lasting an hour-and-a-half, the detectives left Leon alone for two hours and later returned with Howes. Howes began writing his statement and only talked to Leon about the statement after she was finished. Leon denied giving Howes the information contained in the written statement and claimed that he told Howes several times that the information she was writing down was not true. Howes would not allow him to change the statement and he felt he had no choice but to sign it. After Howes finished writing the statement, she then gave Leon the *Miranda* form to sign.

¶ 21 At the conclusion of the hearing, the trial court denied the motion to suppress. The court found that Leon demonstrated a "workable command of the English language" and credited the testimony of Gelbeck and Howes over that of Leon regarding whether he asked for an attorney and whether he understood his *Miranda* rights. The court further found no evidence of any

promises made to Leon or that he was coerced into making his statements. Finally, the court commented that Leon could contest at trial the accuracy of his statement as summarized by Howes.

¶ 22 Prior to trial, the State *nolle prossed* all but three counts of the indictment. Remaining were three counts of predatory criminal sexual assault charging Leon with committing acts of sexual penetration on the victim with his penis, finger and mouth. 720 ILCS 5/12-14.1(a)(1) (West 2004). As Leon does not challenge on appeal the sufficiency of the evidence to sustain the convictions or raise any trial errors, we will not summarize the trial testimony.

¶ 23 The jury convicted Leon on all three counts. Leon filed a motion for a new trial in which he again challenged both the sufficiency of the indictment to apprise him of the offenses charged as well as the denial of his motion to suppress. Following denial of the motion, the trial court imposed six-year sentences on each count, to be served consecutively. Leon timely appealed.

¶ 24 ANALYSIS

¶ 25 A. Sufficiency of the Indictment

¶ 26 Under section 111-3 of the Illinois Code of Criminal Procedure, a charging instrument must allege the commission of an offense by stating "the date and county of the offense *as definitely as can be done*." (Emphasis added.) 725 ILCS 5/111-3(a)(1)-(5) (West 2004). We review *de novo* the sufficiency of the charging instrument. *People v. Guerrero*, 356 Ill. App. 3d 22, 26 (2005).

¶ 27 Leon concedes that in cases involving sexual crimes against children, the date of the offense is not essential to a valid indictment. *Id.* at 27; see also *People v. Burton*, 201 Ill. App. 3d 116, 123 (1990). "As long as the crime charged allegedly occurred within the applicable statute of limitations period, the State should be required to do no more than provide the

defendant with the best information it has regarding when the offense took place." *Burton*, 201 Ill. App. 3d at 123 (upholding indictment that charged defendant with various sexual assaults on two young girls on unspecified dates over the course of a 33-month period). In *Guerrero*, this court found that an indictment indicating that the abuse of two children--who were six years old when the abuse began--occurred over a three-year period was "as definite as possible." 356 Ill. App. 3d at 28.

¶ 28 Particularly where the perpetrator of the abuse is the victim's parent, some flexibility in specifying the dates of the alleged abuse is necessary since the person most likely to be able to give particulars is the abuser himself. "Ordinarily, when a child is the victim of crime, a parent or guardian will be ready to confirm details such as the date and place of the incident. In the instant case, however, the victim's one parent was the alleged aggressor and the other parent, although informed of the sexual activity by the victim, refused to believe the victim's allegations. If illicit acts which are repeatedly committed in the supposed security of the home by a parent against a child are to be effectively punished and deterred in accordance with our criminal laws, a degree of flexibility must be given to section 111-3(a)(4)'s requirement that the defendant be charged with having committed the offense on a certain date." *People v. Long*, 55 Ill. App. 3d 764, 772 (1977).

¶ 29 The trial court encouraged Leon to seek a bill of particulars if he required more details in order to prepare his defense. Although the record does not contain a demand for a bill of particulars, there is no indication in the record that the State failed to provide Leon in discovery with the details of the statements that the victim gave to police. Under these circumstances, the State provided as much detail as possible. The indictment stated the precise date when the abuse began and it is simply unreasonable to assume that an 11- or 12-year-old victim would be able to

keep track of the numerous dates thereafter on which Leon assaulted her in his home. Indeed, crediting Leon's incriminating statements, he was unable to do so either. Therefore, the indictment's lack of specificity regarding the dates of the alleged abuse provides no basis for reversal.

¶ 30

B. Denial of the Motion to Suppress

¶ 31 Leon repeats on appeal his arguments regarding the admissibility of his oral and written statements. Citing his lack of comprehension of the English language, his third-grade education and his requests for an attorney, Leon claims the trial court erred in denying his motion to suppress those statements.

¶ 32 This issue presents mixed questions of law and fact. "Findings of historical fact made by the circuit court will be upheld on review unless such findings are against the manifest weight of the evidence. This deferential standard is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony." *People v. McDonough*, 239 Ill. 2d 260, 266 (2010). However, the court's conclusion regarding the voluntariness of a confession is reviewed *de novo*. *Id.*; see also *People v. Murdock*, 2012 IL 112362, ¶ 29.

¶ 33 When a defendant seeks to suppress a confession, the State must demonstrate by a preponderance of the evidence that the confession was voluntary. 725 ILCS 5/114-11(d) (West 2008) ("The burden of going forward with the evidence and the burden of proving that a confession was voluntary shall be on the State."); *People v. R.D.*, 155 Ill. 2d 122, 134 (1993). Factors relevant in determining the voluntariness of a confession include the defendant's age, intelligence, education and experience, his physical condition at the time of the interrogation, the duration of the interrogation, the presence of *Miranda* warnings and the presence of any physical

or mental abuse. *People v. Harris*, 2012 IL App (1st) 100678 ¶ 63. A court may also consider any threats or promises made to the defendant (*People v. Richardson*, 234 Ill. 2d 233, 253-54 (2009)) as well as defendant's fluency in the English language. *People v. Teran-Cruz*, 272 Ill. App. 3d 573, 579 (1995). No one factor is controlling and a court looks to the totality of the circumstances in determining whether defendant's confession was voluntary. *People v. Willis*, 215 Ill. 2d 517, 536 (2010).

¶ 34 Here, the trial court rejected Leon's contention that he requested a lawyer at the commencement of the interview and repeatedly thereafter. Both Gelbeck and Howes denied that Leon ever requested a lawyer and, as the trial court found, Leon's own testimony was equivocal on this point. It is undisputed that Leon received *Miranda* warnings three times: before he gave his oral statement to Gelbeck, before he spoke to Howes and before his written statement was memorialized by Howes. As we discuss below, there is no basis to conclude that Leon did not understand that he had a right to have a lawyer present. On this record, the trial court's determination that Leon did not invoke his right to a lawyer is supported by the manifest weight of the evidence.

¶ 35 Although Leon again urges his inability to comprehend English as a basis for suppression of his statements, the fact that he never required the services of an interpreter at the suppression hearing, during any of the pretrial hearings he attended or during trial flatly refutes his argument. The trial court noted that Leon had a "workable command of the English language," an observation that is reinforced by our examination of the transcript of the suppression hearing and the trial, which reveals that Leon responded appropriately and articulately to all questions asked of him on direct and cross-examination. Further, both Gelbeck and Howes testified in detail regarding their interaction with Leon during the interviews and that he did not appear to have

difficulty or express to them that he was having difficulty understanding or responding to their questions. Thus, this factor does not weigh in favor of a finding that Leon's confession was not voluntary.

¶ 36 Finally, no other relevant factor weighs in favor of a finding of involuntariness. Despite his third-grade education, Leon had lived and worked in this country for nearly 30 years prior to his arrest. He became a U.S. Citizen in 1985 or 1986. He owned the condominium in which he was living at the time of his arrest. He owned and drove a car. The trial court was also entitled to credit Gelbeck's and Howes' testimony that no promises or threats were made to Leon in connection with his confession.

¶ 37 Quite simply, there is nothing to indicate that Leon did not understand his *Miranda* rights or that his agreement to waive those rights was anything other than voluntary. Thus, the trial court properly denied his motion to suppress.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 40 Affirmed.