2012 IL App (2d) 100797-U
No. 2-10-0797
Order filed March 26, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PABLO AGUILAR, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 06-CF-2553 Honorable Fred L. Foreman, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: (1) The trial court properly denied defendant's motion to suppress his confession, as although defendant was a juvenile the totality of the circumstances indicated that the confession was voluntary: the evidence did not show that an alleged promise of leniency influenced the decision to confess or was even necessarily false, defendant was not particularly vulnerable, there was no evidence that he asked to speak with a concerned adult or that anyone asked to speak with him, and the remaining circumstances weighed in favor of voluntariness; (2) as only one victim was killed, we vacated three of defendant's four convictions of murder.

¶ 1 Following a jury trial, defendant, Pablo Aguilar, was convicted of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2006)). The sentencing order shows that defendant was convicted of four

counts of murder and received four concurrent 50-year sentences. Defendant appeals, contending that the trial court erred by denying his motion to suppress his confession. He argues that his statement was involuntary because the officers who interviewed him falsely implied that the case might proceed in juvenile court. Alternatively, defendant argues that three of his sentences should be vacated, as he could be convicted of only one count of murder because only one person was killed. We affirm in part and vacate in part.

¶ 2 On June 22, 2006, William Guzman was shot and killed by a male firing from the bed of a pickup truck. Guzman's family and friends, some of whom witnessed the shooting, were unable to identify the killer. Eventually, defendant, age 16, became a suspect, but by then he had fled to California. On February 7, 2007, San Diego County sheriff's deputies arrested defendant. Waukegan police officer Andy Ulloa and detective Larry Holman flew to California to interview him. Ulloa was to be the primary interviewer and Holman was there to act as a juvenile advocate. Defendant confessed to being the shooter.

¶ 3 Before trial, he moved to suppress his confession. The trial court conducted a hearing at which the following evidence was adduced. After some brief introductions, the three moved to an interview room that contained recording equipment. Ulloa gave defendant a special juvenile version of the *Miranda* warnings. The form stated, "As a juvenile you must understand anything you say can and may be used against you in a subsequent criminal proceeding if the case is transferred from juvenile to an adult criminal proceeding after an appropriate hearing in juvenile court." When defendant seemed confused by this, Holman told him, "There is a lot of different factors that come into play in a case like that but there's always a chance it can go to adult court."

¶ 4 Approximately 10 minutes into the interview, defendant admitted involvement in the homicide and agreed to give a written statement. Ulloa showed defendant three photo arrays, each

containing a photo of one of the other suspects in the case. Defendant circled a photo of Bicente Lash, noting that he was the driver "and the person with the plan and the gun." On another array, defendant circled a photo of Louis Petrick, noting that "[t]his is the one who was approaching me to pull the trigger." Finally, he circled a photo of Juan Serrano on a third array with the notation, "He was besides [*sic*] me when I shoot."

¶ 5 Ulloa did not attempt to contact any of defendant's relatives. He did not know with whom defendant was living in California, although he thought it was an uncle (defendant later said that he was living with an aunt). Ulloa had previously had contact with defendant's mother in Waukegan, but he had lost track of her. He later learned that she had been in California when defendant was interviewed, but he did not know that at the time.

¶ 6 The trial court denied the motion to suppress in a lengthy written opinion. The court found that, under the totality of the circumstances, defendant's confession was voluntary. The court noted that defendant's primary contentions were that Holman did not specifically identify himself as a juvenile officer and that the officers made no attempt to contact a concerned adult. (The motion to suppress is not in the record on appeal.) The court noted that a juvenile advocate can take the place of a concerned adult and that Holman had appropriately performed his role as a juvenile advocate. The court further noted that there was no evidence that defendant requested to speak to a concerned adult or that the police frustrated the efforts of a relative to speak with defendant.

¶ 7 In considering the issue that defendant now argues, the trial court, citing *People v. Prude*, 66 Ill. 2d 470 (1977), noted that a juvenile suspect need not be advised that he may be prosecuted as an adult for a confession to be considered voluntary. The court found that defendant was not misled into believing that he would not be charged in adult criminal court and, if he did so believe, there was no evidence that Ulloa or Holman intentionally fostered such a belief.

¶ 8 Following a jury trial, defendant was convicted of first-degree murder and sentenced to four concurrent terms of 50 years in prison. Defendant timely appealed.

¶ 9 Defendant first contends that the trial court erred by denying his motion to suppress his confession. He argues that both the warning on the preprinted *Miranda* form and Holman's attempted clarification fostered the belief that defendant might be prosecuted as a juvenile. However, this belief was not true, because a 16-year-old charged with first-degree murder must be prosecuted in adult court. See 705 ILCS 405/5-130(1)(a) (West 2006).

¶ 10 The State responds with three arguments. The State contends that there was no evidence that any implicit promise of leniency actually influenced defendant's decision to confess. The State further contends that the implicit assertion that there was a chance the matter could be heard in juvenile court was literally true because there was a chance that the State's Attorney could decide to charge defendant with a lesser crime. Finally, the State argues that the voluntariness of a confession is based on the totality of the circumstances and that, while defendant's argument focuses almost solely on one factor, an alleged promise of leniency, the totality of the circumstances shows that the statement was voluntary.

¶ 11 In deciding whether a confession was voluntary, we consider the totality of the circumstances. *In re G.O.*, 191 Ill. 2d 37, 54 (2000); *People v. Gilliam*, 172 Ill. 2d 484, 500 (1996). Factors to consider include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the duration of the questioning; and any physical or mental abuse by police, including the existence of threats or promises. *G.O.*, 191 Ill. 2d at 54. No single factor is dispositive. *Gilliam*, 172 Ill. 2d at 500. The test of voluntariness is whether the defendant " 'made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the [defendant's] will was

overcome at the time he or she confessed.' " *G.O.,* 191 Ill. 2d at 54 (quoting *Gilliam,* 172 Ill. 2d at 500).

¶ 12 Courts recognize that taking a juvenile's confession is "a sensitive concern." *Prude,* 66 Ill. 2d at 476. Because of this, the " 'greatest care must be taken to assure that' " the confession was not coerced or suggested and " 'that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.' " *People v. Simmons,* 60 Ill. 2d 173, 180 (1975) (quoting *In re Gault,* 387 U.S. 1, 55 (1967)).

¶ 13 We agree with the State that the trial court properly found that defendant's confession was voluntary. Most important, there was no evidence that any alleged promise of leniency influenced defendant's decision to confess. A juvenile suspect need not be advised that he may be prosecuted as an adult for a confession to be considered voluntary. *Prude,* 66 Ill. 2d at 475-77. Here, no one testified that defendant asked about the possibility that the matter could be heard in juvenile court. Moreover, although defendant testified at the suppression hearing, he never said that he decided to confess because he believed that the matter would proceed in juvenile court. This serves to distinguish this case from *People v. Shaw,* 180 Ill. App. 3d 1091 (1989), on which defendant primarily relies. There, the defendant asked repeatedly about what would happen if he were convicted and the officer expressly stated that the defendant could " 'probably' " get psychiatric help through the courts. *Id.* at 1093-95.

¶ 14 Moreover, we disagree with defendant's premise that Holman's implicit promise that the matter could proceed in juvenile court was false. A 16-year-old who is charged with first-degree murder must be prosecuted in adult court. See 705 ILCS 405/5-130(1)(a) (West 2006). However, although defendant was arrested on a warrant charging him with murder, and he was ultimately tried for and convicted of murder, at the time of his confession it was by no means a foregone conclusion

that he would be charged with murder. A prosecutor has broad discretion in deciding what charges to bring. *People v. Perry*, 224 Ill. 2d 312, 339 (2007). Thus, the prosecutor could have decided to charge defendant with a lesser offense that could have been brought in juvenile court. It is worth noting that the only people to accuse defendant of being the shooter were the other occupants of the truck, at least two of whom were gang members. It also appears that the other witnesses' statements continued evolving up until the time of trial. Most important, when Holman made the alleged promise, the detectives had not heard defendant's statement. Depending on what defendant actually said, and how the other witnesses' stories evolved, it was possible that the prosecutor could have decided to charge defendant with some less serious offense. Even conceding that Holman may have shaded the facts somewhat to make it seem more likely that the matter would be heard in juvenile court, his statement that there were "a lot of different factors that come into play in a case like that but there's always a chance it can go to adult court" was literally true.

¶ 15 Finally, as the State points out, whether a confession is voluntary depends on the totality of the circumstances. *G.O.*, 191 Ill. 2d at 54. Defendant's argument focuses almost exclusively on one factor, an alleged promise that the matter might be heard in juvenile court. However, even an express promise of leniency, standing alone, will not necessarily support a finding that a confession was involuntary. See *People v. Robinson*, 286 Ill. App. 3d 903, 906 (1997); *People v. Johnson*, 285 Ill. App. 3d 802, 807-08 (1996). Here, even if Holman's statement was some sort of implicit promise that he would try to steer the case to juvenile court, most of the other factors favor a finding that defendant voluntarily confessed.

¶ 16 Defendant refers to only two other factors arguably supporting a conclusion that his confession was involuntary and even then does so only indirectly (in attempting to distinguish

Prude). Defendant notes that he was relatively inexperienced with the criminal justice system and that the detectives did not attempt to contact a concerned adult. However, we find that the trial court properly gave these factors relatively little weight.

¶ 17 Because of the sensitive nature of taking a juvenile's confession, courts recognize an additional factor in the totality-of-the-circumstances analysis when a juvenile's confession is at issue. " [T]he 'concerned adult' factor considers whether the juvenile, either before or during the interrogation, had an opportunity to consult with an adult interested in his welfare." *G.O.*, 191 Ill. 2d at 55. Specific facets of this factor include whether the police prevented the juvenile from conferring with a concerned adult and whether the police frustrated an adult's attempt to confer with the juvenile. *Id.* (citing *In re L.L.*, 295 Ill. App. 3d 594, 601 (1998); *In re J.J.C.*, 294 Ill. App. 3d 227, 235 (1998)).

¶ 18 Here, defendant was not some naive youth. Although only 16 years old, after the shooting he made his way to California and lived there essentially on his own for several months. Thus, the fact that he had not previously been arrested and interrogated is not particularly significant. There is no evidence that he seemed confused about how to proceed or asked the officers for advice.

¶ 19 Moreover, it appears that he was relatively self-sufficient, and there is no reason to think that he particularly needed the advice of a concerned adult. Moreover, the trial court specifically found that Holman fulfilled his role as a juvenile advocate, and there was no evidence that defendant ever asked to speak with anyone or that anyone was trying to see defendant. See *id.*

¶ 20 Defendant does not seriously question the trial court's finding that the remaining factors favor voluntariness. Defendant confessed only 11 minutes into an interview that took less than an hour in all. Other than the one arguable fact mentioned above, the police did not deceive him. They offered to provide for his physical needs. The court found defendant to be of average or above-

average intelligence despite some minor difficulties communicating in English, and nothing indicates that he was hungry, sleep-deprived, or under the influence of alcohol or narcotics. In short, the trial court properly found that the confession was voluntary.

¶ 21 Defendant further contends that the judgment must be corrected to show that he was convicted of only one murder. The State confesses error.

¶ 22 The existence of redundant verdicts presents an issue of law that we review *de novo*. *People v. Artis*, 232 Ill. 2d 156, 161 (2009). Here, defendant was sentenced on June 25, 2010. In orally pronouncing the sentence, the trial court referred to "a" 50-year sentence. However, the order entered on that date reflects concurrent 50-year sentences for four counts of murder. After the trial court denied defendant's motion to reconsider the sentence, it entered a new order, which again showed four concurrent sentences. However, it is undisputed that only one victim was killed. "Where there is only one victim, there can be only one conviction of murder." *People v. Burnett*, 267 Ill. App. 3d 11, 17 (1994). Thus, we vacate three of defendant's concurrent convictions and sentences.

¶ 23 The judgment of the circuit court of Lake County is affirmed in part and vacated in part.

¶ 24 Affirmed in part and vacated in part.