2012 IL App (4th) 120273-U

NO. 4-12-0273

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 9, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Macon County
GREGORY K. LAGRONE,	)	No. 09CF1067
Defendant-Appellee.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Under the United States Supreme Court's most recent analytical framework for the waiver of *Miranda* rights, the State proved by a preponderance of the evidence defendant waived his *Miranda* rights before making the incriminating statements at issue, and thus the trial court erred by granting defendant's motion to suppress.

¶ 2 In January 2012, defendant, Gregory K. Lagrone, filed a motion to suppress his statements. After a March 29, 2012, hearing, the Macon County circuit court granted defendant's motion due to the State's insufficient evidence of defendant's knowing and voluntary waiver of rights and suppressed all statements made by defendant after his arrest at the searched residence and later at the McLean County Law Enforcement Center (Center). The State filed a certificate of impairment and a notice of appeal.

¶ 3 On appeal, the State argues (1) defendant forfeited any argument his waiver of his *Miranda* rights was not knowing and voluntary by failing to include it in his motion to suppress

and (2) the State's evidence was sufficient to prove a valid waiver of rights. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 On July 9, 2009, while under surveillance, the police observed defendant meet with Bridgette Clay in a mall parking lot. The police later stopped Clay's car and found a large amount of cash in the trunk of her car. At around 10:30 p.m. that same day, the Decatur police department executed a search warrant for the residence at 955 West Center, Decatur, Illinois, which was where defendant's grandmother lived. When the officer first arrived at the residence, defendant was outside, and the police took him into custody before conducting the search. Once the residence was secured, defendant was taken inside the home. According to the testimony of police officer David Dailey, Officer Dailey verbally advised defendant of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), while defendant was sitting in the living room of his grandmother's residence. Thereafter, defendant made statements to the police as they searched the residence and later at the Center.

¶ 6 On July 13, 2009, the State charged defendant by information with one count of unlawful possession of a controlled substance (15 grams or more but less than 100 grams of a substance containing cocaine) with the intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)) and one count of unlawful possession of a controlled substance (15 grams or more but less than 100 grams of a substance containing cocaine) (720 ILCS 570/402(a)(2)(A) (West 2008)). On January 26, 2010, the State charged defendant with an additional count of unlawful possession of a controlled substance (100 grams or more but less than 400 grams of a substance containing cocaine) with the intent to deliver (720 ILCS 570/401(a)(2)(B) (West 2008)) and one

count of unlawful possession of a controlled substance (100 grams or more but less than 400 grams of a substance containing cocaine) (720 ILCS 570/402(a)(2)(B) (West 2008)).

¶ 7 On January 23, 2012, defendant filed a motion to suppress all of his statements made about the time of and subsequent to his being taken into custody because he was never advised of his *Miranda* rights. Along with the suppression motion, defendant filed a motion *in limine*, which is not at issue in this appeal.

¶ 8 On March 5, 2012, the trial court held a joint hearing on defendant's motion to suppress. The State presented the testimony of Detective David Dailey, and defendant testified on his own behalf. After the State learned defendant was also challenging whether he made a valid waiver of his *Miranda* rights, the State asked to recall Detective Dailey to address the issue. The court granted the State leave to recall Detective Dailey even though Detective Dailey was present in the courtroom during defendant's testimony. The court also admitted Detective Dailey's police report but only for the purpose of the allegation in defendant's suppression motion that Detective Dailey did not advise defendant of his *Miranda* rights. The relevant testimony is set forth as necessary in the analysis section. After hearing the parties' arguments, the court granted defendant's motion to suppress. In explaining his ruling, the court stated, *inter alia*, the following:

> "At that point, detective did tell him his rights, and the question for the Court and the core question here is whether there is sufficient evidence showing an acknowledgment or understanding of the rights, and then a waiver of the rights before further custodial interrogation took place. And just so it's clear, that is required, not

> just giving the rights to someone, not just verbally advising them or advising them in writing of their *Miranda* rights, but in some way, shape or form eliciting some acknowledgment of an understanding of the rights and then an agreement to talk or a waiver of the rights."

The court further noted "[t]here was no testimony whatsoever that defendant in some way acknowledged his rights and then agreed to talk or waived his rights, none at all." Moreover, it stated, "when I first heard the direct examination of the detective, it struck me that there was no information forthcoming of a [*sic*] acknowledgment or waiver at all, and that is extremely troubling to the Court." The court then granted the motion because "there was insufficient information relating to a knowing and voluntary waiver."

¶ 9 On March 22, 2012, the State filed a timely notice of appeal from the trial court's grant of the suppression motion and a certificate of impairment. Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 604(a)(1) (eff. July 1, 2006).

¶ 10 II. ANALYSIS

¶ 11 A. Legal Framework and Standard of Review

¶ 12 Here, the State appeals from the trial court's grant of defendant's motion to suppress. In his motion to suppress, defendant argued the police failed to advise him of his *Miranda* rights. The trial court found the police had advised defendant of his rights and defendant's statements were not the product of coercion. However, it found the State had failed to show defendant acknowledged his rights and waived them. Thus, the court suppressed defendant's statements after his arrest because the State had failed to show defendant knowingly

and voluntarily waived his *Miranda* rights.

¶ 13 For a defendant's custodial statements to be admissible, not only does the State have to show the defendant was advised of his or her *Miranda* rights but also that the defendant " 'in fact knowingly and voluntarily waived [*Miranda*] rights' when making the statement." *Berghuis v. Thompkins*, 560 U.S. ___, ___, 130 S. Ct. 2250, 2260 (2010) (quoting *North Carolina v. Butler*, 441 U.S. 369, 373 (1979)). The State must demonstrate defendant's waiver by a preponderance of the evidence. *People v. Brown*, 2012 IL App (1st) 091940, ¶ 24, 967 N.E.2d 1004, 1011. If the State establishes a *prima facie* case, the burden shifts to the defendant to show he or she did not knowingly, intelligently, or voluntarily waive his or her *Miranda* rights. *Brown*, 2012 IL App (1st) 091940, ¶ 24, 967 N.E.2d at 1011.

¶ 14 This court reviews a trial court's ruling on a motion to suppress evidence under the two-part test adopted by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Hunt*, 2012 IL 111089, ¶ 22, 969 N.E.2d 819, 822. Under the *Ornelas* standard, reviewing courts uphold the trial court's factual findings unless they are against the manifest weight of the evidence. *Hunt*, 2012 IL 111089, ¶ 22, 969 N.E.2d at 823. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008). "The reviewing court then assesses the established facts in relation to the issues presented and may reach its own conclusions as to what relief, if any, should be allowed." *Hunt*, 2012 IL 111089, ¶ 22, 969 N.E.2d at 823. Thus, we review *de novo* the ultimate legal question of whether suppression is warranted. *Hunt*, 2012 IL 111089, ¶ 22, 969 N.E.2d at 823.

¶ 15 B. Forfeiture

¶ 16 The State argues the trial court could not have based its grant of the motion to suppress based on insufficient evidence of waiver because defendant forfeited any challenge to his waiver of *Miranda* rights by not raising it in his motion to suppress. However, at the hearing on the motion to suppress, the State noted defendant's argument that he did not waive his *Miranda* rights was not included in his motion to suppress but did not raise an objection to the argument. Instead, the State requested to reopen its case to address the issue, and the trial court allowed it to do so. Since our supreme court has instructed us to begin our review of a case by determining whether any issues have been forfeited (see *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008)), we first address whether the State can raise on appeal its challenge to the trial court's ruling on the waiver issue that was not included in defendant's motion to suppress.

¶ 17 Under Illinois law, it is well-established "a party cannot complain of error which that party induced the court to make or to which that party consented." *In re Detention of Swope*, 213 Ill. 2d 210, 217, 821 N.E.2d 283, 287 (2004). Despite recognizing the fact defendant was raising an issue not included in his motion to suppress, the State did not object in the trial court to defendant's raising the lack-of-waiver issue. Instead, the State requested to present additional evidence to address the issue and then did so. The State also argued the issue to the trial court. Thus, the State's position on appeal that the trial court erred by finding in defendant's favor on the waiver issue because defendant forfeited it is inconsistent with the State's position in the trial court. Moreover, by addressing the issue without objection, the State consented to any alleged error that may have resulted by defendant's failure to raise the issue in his motion to suppress.

Accordingly, we find the State cannot challenge on appeal defendant's failure to include the waiver issue in his motion to suppress.

¶ 18 C. Waiver of *Miranda* Rights

¶ 19 The State asserts the trial court erred by finding it provided insufficient evidence to show defendant knowingly and voluntarily waived his *Miranda* rights. Defendant disagrees, asserting the totality of the circumstances indicates defendant did not understand his rights.

¶ 20 Unlike the waiver of constitutional rights in a courtroom setting, a formal procedure for waiving *Miranda* rights does not exist. *Berghuis*, 560 U.S. at ____, 130 S. Ct. at 2262. Moreover, the State does not have to show an express waiver of *Miranda* rights. *Berghuis*, 560 U.S. at ___, 130 S. Ct. at 2261. "[A] waiver of *Miranda* rights may be implied through 'the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver.' " *Berghuis*, 560 U.S. at ____, 130 S. Ct. at 2261 (quoting *Butler*, 441 U.S. at 373). The giving of a *Miranda* warning and the accused's uncoerced statement alone are insufficient to establish waiver. *Berghuis*, 560 U.S. at ___, 130 S. Ct. at 2261. The State must show the accused understood the *Miranda* rights. *Berghuis*, 560 U.S. at ___, 130 S. Ct. at 2261. Courts determine waiver based on " 'the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.' " *Butler*, 441 U.S. at 374-75 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

¶ 21 In *Berghuis*, 560 U.S. at ____, 130 S. Ct. at 2262, the United States Supreme Court addressed whether the defendant had implicitly waived his right to remain silent. As to whether the defendant understood his rights, the Court stated the following:

"First, there is no contention that [defendant] did not understand

> his rights; and from this it follows that he knew what he gave up when he spoke. [Citation.] There was more than enough evidence in the record to conclude that [defendant] understood his *Miranda* rights. [Defendant] received a written copy of the *Miranda* warnings; Detective Helgert determined that [defendant] could read and understand English; and [Defendant] was given time to read the warnings. [Defendant], furthermore, read aloud the fifth warning, which stated that 'you have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned.' [Citation.] He was thus aware that his right to remain silent would not dissipate after a certain amount of time and that police would have to honor his right to be silent and his right to counsel during the whole course of interrogation. Those rights, the warning made clear, could be asserted at any time. Helgert, moreover, read the warnings aloud." *Berghuis*, 560 U.S. at ___, 130 S. Ct. at 2262.

As to a course of conduct indicating waiver, the Supreme Court found the defendant's answer to the detective's question about whether the defendant prayed to God for forgiveness for shooting the victim was conduct indicating the waiver of the right to remain silent. *Berghuis*, 560 U.S. at ___, 130 S. Ct. at 2263. The Court explained that, if the defendant wanted to remain silent, he could have said nothing in response to the detective's questions or unambiguously invoked his *Miranda* rights and ended the interrogation. *Berghuis*, 560 U.S. at ___, 130 S. Ct. at 2263.

¶ 22 *Berghuis* is the most recent United State Supreme Court case addressing and explaining how *Miranda* rights may be waived. In its statements at the suppression hearing, the trial court noted several times the State failed to present any evidence defendant acknowledged his *Miranda* rights and then waived those rights. However, as stated, no formal waiver procedure exists for *Miranda* rights and a waiver can be implied from the circumstances surrounding the case. *Berghuis*, 560 U.S. at ____, 130 S. Ct. at 2262; *Butler*, 441 U.S. at 374-75 (quoting *Johnson*, 304 U.S. at 464). An express statement by the defendant that he understands his *Miranda* rights and waives them is not required. See *Berghuis*, 560 U.S. at ____, 130 S. Ct. at 2261-62. Moreover, while the court found defendant had been read his *Miranda* rights and his statements were uncoerced, it did not appear to examine the totality of the circumstances to determine if defendant understood his *Miranda* rights and whether defendant exhibited a course of conduct consistent with waiver. Thus, we find the trial court did not analyze whether defendant made a valid waiver of his *Miranda* rights under the most recent case law relating to the subject. Accordingly, under our *de novo* review, this court will apply the proper analysis to the evidence presented at the suppression hearing.

¶ 23 As to defendant's understanding of his *Miranda* rights, Detective Dailey testified defendant appeared to understand the *Miranda* warnings and never gave any indication he did not understand them. He also stated defendant never requested to see the *Miranda* warnings in written form. Moreover, defendant had admitted he had two prior felony convictions and knew his *Miranda* rights when they had been given to him. In fact, defendant testified he knew he had the right to remain silent and the right to ask for an attorney under *Miranda*. Defendant's testimony further revealed defendant understood the English language and what was going on in

the proceedings. The aforementioned facts are ample evidence demonstrating defendant understood his *Miranda* rights, and thus the prosecutor's failure to ask Detective Dailey how defendant responded to the detective's question about whether he understood his *Miranda* rights does not render the State's evidence on this matter insufficient.

¶ 24 Regarding defendant's course of conduct after the warnings, Detective Dailey testified that, during the search of the residence, he asked defendant questions about the items discovered and defendant made incriminating statements. Thus, as in *Berghuis*, defendant's answering the detective's questions is a course of conduct showing waiver.

¶ 25 Accordingly, we find the State proved beyond a preponderance of the evidence defendant waived his *Miranda* rights before he made the incriminating statements that he sought to suppress.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we reverse the Macon County circuit court's judgment and remand for further proceedings.

¶ 28 Reversed and remanded.