2011 IL App (5th) 100181-U

NO. 5-10-0181

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	No. 08-CF-140
	)	
ANTHONY T. JACKSON,	)	Honorable
	)	William J. Becker,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Spomer and Stewart concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court rightfully denied the defendant's motion to suppress statements.

¶ 2 A Clinton County jury found the defendant, Anthony T. Jackson, guilty of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2008)). On appeal from his conviction, the defendant argues that the trial court erred in denying his motion to suppress statements. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In September 2008, the defendant was charged with first-degree murder for the shooting death of Kevin Hamburg of Centralia. In September 2009, the cause proceeded to a jury trial where the State's evidence established the following.

¶ 5 Hamburg had a day job but sold marijuana "on the side" out of the apartment where he lived with his girlfriend, Amanda Hunt, and her two young daughters. Hamburg "only associated with three black guys," and the defendant, who was originally from Arkansas, was

one of them.

¶ 6 On the night of September 10, 2008, after telling Jared Michael Queen that he might rob Hamburg of his marijuana and "shoot him in his face" if necessary, the defendant went to Hamburg's home armed with a .25-caliber pistol. A struggle ensued, and while Hamburg and Hunt were trying to force the defendant "out the door," the defendant shot Hamburg in the head. Hamburg died as a result, and the defendant fled to Arkansas, where he convinced his ex-girlfriend, Pamela Hill, that they should relocate to Oklahoma and "start new there." Thereafter, the defendant and Hill moved to the Oklahoma City area, where he was apprehended by United States marshals on October 7, 2008.

¶ 7 Brittany Hohman testified that she drove the defendant to Hamburg's apartment on the night of September 10, 2008, believing that the defendant was going there to purchase a "bag of weed." The defendant's girlfriend, Erica, was along for the ride. A short time after dropping him off, Brittany received a call from the defendant advising that he needed to be picked up "[a]bout a block down the road." When he subsequently got into Brittany's vehicle, the defendant "looked kind of shook up" and stated that he had fired a gun. He further stated that he "didn't know if he [had] hit anybody." After the defendant left Centralia, Brittany gave Erica a ride "outside of town," where Erica "dumped" a pistol and some bullets off a bridge.

¶ 8 Following his arrest and extradition, the defendant waived his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)) and agreed to speak with investigators from the Centralia police department. Claiming that he left Centralia because his "life was threatened" by a drug dealer from Chicago, the defendant denied having any knowledge of the incident at Hamburg's apartment. Indicating that they already knew what happened and had spoken with numerous witnesses about it, the interviewing investigators repeatedly suggested that the defendant tell his "side of the story." Insisting that he was not a "killer," the defendant

maintained his innocence. At one point, the defendant stated, "I want a lawyer," but he immediately kept talking after saying so. When asked, the defendant denied speaking with Brittany on the day of Hamburg's murder. At the conclusion of the interview, the defendant declared that he would "fight" the false allegations against him. The defendant later filed a motion to suppress statements, which was denied following a hearing.

¶ 9 While awaiting trial, the defendant spent time in the Clinton County jail with inmates Louis Lawson and Charles Lewis. Lawson testified that the defendant had told him that while trying to rob a guy of his "weed," he had "tussled" with the guy and "ended up shooting him." Lewis testified that the defendant had told him that he had shot a man in the head during an event that was "like a drug deal that went bad."

¶ 10 Inmate Kristen Brazelton testified that while the defendant was awaiting trial, she heard him berate Erica because he thought that she was cooperating with the police. Deputy Donald Hohman of the Clinton County sheriff's department testified that he was working courthouse security during one of the defendant's pretrial appearances, and the defendant became upset when he saw his "D. Hohman" name tag. Deducing that Donald and Brittany were related, the defendant stated that "it was all Brittany's fault that he was even here in trouble" and that he "ought to just wipe out all of [the] Hohmans."

¶ 11 On September 25, 2009, a Clinton County jury returned a verdict finding the defendant guilty of first-degree murder. The trial court sentenced the defendant to serve a 40-year term of imprisonment, and the present appeal followed.

¶ 12 DISCUSSION

¶ 13 Noting that the investigators from the Centralia police department continued to question him after he clearly stated, "I want a lawyer," the defendant argues that the trial court erred in denying his motion to suppress statements. The State counters that because the defendant initiated further conversation with the police immediately after invoking the

right to counsel, the trial court rightfully denied the defendant's motion to suppress. The State further contends that even assuming otherwise, any resulting error was harmless. We agree with the State and, accordingly, affirm the trial court's judgment.

> "In reviewing a trial court's ruling on a motion to suppress evidence, we apply the two-part standard of review adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699, 134 L. Ed. 2d 911, 920, 116 S. Ct. 1657, 1663 (1996). Under this standard, a trial court's findings of historical fact should be reviewed only for clear error, and a reviewing court must give due weight to any inferences drawn from those facts by the fact finder. [Citation.] In other words, we give great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence. [Citation.] A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted. [Citation.] Accordingly, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted." *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006).

¶ 14 "In *Edwards v. Arizona*, 451 U.S. 477, 485, 68 L. Ed. 2d 378, 386, 101 S. Ct. 1880, 1885 (1981), the Supreme Court held that when an accused invokes his right to have counsel present during custodial interrogation, he may not be subject to further interrogation without the presence of counsel unless 'the accused himself initiates further communication, exchanges, or conversations with the police.' " *People v. Woolley*, 178 Ill. 2d 175, 197 (1997). "If the police subsequently initiate a conversation with the accused in the absence of counsel, the accused's statements are presumed involuntary and are not admissible as substantive evidence at trial." *Id.* at 198.

> "*Edwards* and its progeny direct that a two-part inquiry be conducted to

> determine if an accused's statements made in response to police interrogation which followed the accused's request for an attorney are admissible as substantive evidence at trial. [Citations.] The preliminary inquiry is whether the accused, rather than the police, initiated further discussion after invoking the right to counsel. [Citations.] In order for the accused to 'initiate' further conversation, for these purposes, the accused must make a statement that evinces a 'willingness and a desire for a generalized discussion about the investigation.' [Citations.]" *Id*.

In other words, "[i]f statements made during a conversation following a suspect's invocation of the right to counsel are to be admissible, 'the impetus' for the conversation 'must come from the accused, not from the officers.' [Citation.]" (Internal quotation marks omitted.) *People v. Miller*, 393 Ill. App. 3d 1060, 1065 (2009). "If the defendant did initiate a discussion with police, the court must move on to the second part of the inquiry and determine whether 'the totality of the circumstances, including the fact that the accused reopened dialogue with the police, shows that the accused knowingly and intelligently waived his right to the presence of counsel during questioning.' " *Id*. (quoting *Woolley*, 178 Ill. 2d at 199).

¶ 15 Here, the defendant's interview lasted approximately 30 minutes. Approximately 12 minutes in, after the investigators advised the defendant that they had "talked to the girl that drove [him to Hamburg's] that night" and were "convinced" that he was the shooter, the following exchange occurred:

> "[Detective Purcell]: How did it go down?
>
> [Defendant]: I want a lawyer 'cause ya'll got me messed up for real.
>
> [Detective Uhls]: Okay.
>
> [Defendant]: Now I'm not gonna sit up here and make myself look bad over–

for one, Brittany don't like me. I'm not gonna sit up here and compete where I want a lawyer. I didn't shoot nobody. I'm the one that's being in jeopardy. And just because I had to leave, I mean that really do look like I done something, but no, no, sir, no, sir. Me shoot him? No, sir. No, sir. No, sir. You know I don't appreciate that for real because of what Brittany said. Brittany triflin. Brittany got some dude drivin' my home boy car. You know. Brittany triflin period.

[Detective Uhls]: She ain't the only one.

[Defendant]: I mean.

[Detective Uhls]: No.

[Defendant]: She ain't the only one that said–I mean I don't care who said it really. It's my thing with Brittany, cause me and Brittany we always just feud for no reason, and now it's making me upset 'cause this is a serious matter, you know, and I can't just sit here and let ya'll make me look stupid and just say something that ain't true. You're trying to make it seem like I'm lying or something. I'm sorry. My life was in jeopardy, you know. These dudes been trying to get at me for like so long, you know, and no, I'm not gonna fixin' to just sit up here and just–

[Detective Uhls]: Like we said, we came to give you a chance [to tell your side of the story]. This is the chance we gave you.

[Defendant]: I appreciate it.

[Captain Densmore]: You got some attorney that you would like to call?"

¶ 16 When subsequently conversing about the defendant's request for counsel, the defendant stated that he had an uncle who was an attorney, but he did not know how to contact him. How the defendant might get ahold of his uncle was then discussed, and the defendant was again told that the investigators just wanted to hear his "side of the story." At

that point, the defendant reiterated that he left town because his "life was threatened," and that assertion was briefly addressed. The investigators then asked the defendant if he still wanted to call an attorney or if it was okay for them to "continue to talk." After indicating that he did not want an attorney, the defendant replied, "Go ahead," and the interview continued.

¶ 17 On appeal, the defendant maintains that immediately after he announced, "I want a lawyer," he should not have been interviewed further without an attorney present. As the trial court observed below, however, the defendant's request for counsel came "almost within the same breath" that he evinced a willingness to "keep talking." We thus agree with the State that the trial court correctly determined that the defendant initiated further conversation with the police after invoking the right to counsel. See *Woolley*, 178 Ill. 2d at 200-02 (holding that "[w]hether the defendant said 'I killed them' or 'I didn't do it,' " either statement constituted an initiation of further conversation for purposes of *Edwards* and noting that "[n]othing in *Edwards* or its progeny suggests that a suspect's initiation of further conversation cannot immediately follow his request for counsel").

¶ 18 We also find that after reinitiating further conversation with the police, the defendant knowingly and intelligently waived his right to have an attorney present during the remainder of the interview. When asked, the defendant indicated that he would "continue to talk" without an attorney present, and when asked, he specifically stated that the investigators could "[g]o ahead" with the interview. Given that the defendant kept talking after stating that he wanted a lawyer, the investigators were wise to ask these "clarifying questions" (*Davis v. United States*, 512 U.S. 452, 461 (1994)), and we find nothing ambiguous in the defendant's responses. Applying the two-part inquiry set forth in *Edwards* and its progeny, we therefore find that the statements the defendant made following his invocation of the right to counsel were admissible, and we reject the defendant's contention that the trial court erred

in denying his motion to suppress. See *Woolley*, 178 Ill. 2d at 202-03.

¶ 19 We lastly note that even assuming *arguendo* that the defendant's motion to suppress statements should have been granted, we would still deny his request for a new trial, because we would find that any resulting error was harmless. "Error will be deemed harmless and a new trial unnecessary when 'the competent evidence in the record establishes the defendant's guilt beyond a reasonable doubt and it can be concluded that retrial without the erroneous admission of the challenged evidence would produce no different result.' " *People v. McKown*, 236 Ill. 2d 278, 311 (2010) (quoting *People v. Arman*, 131 Ill. 2d 115, 124 (1989)). ¶ 20 Here, after the interview recommenced, the defendant continued to maintain his innocence and denied talking to Hohman on the day of Hamburg's murder. In contrast, Hohman testified that the defendant had called her repeatedly before and after the shooting, and the State introduced phone records indicating that such was the case. Other than demonstrating that the defendant lied about talking to Hohman on the day of Hamburg's murder, however, none of his statements to the investigators were inherently inculpatory, and we agree with the State's assessment that "[p]atently, there was overwhelming evidence of [the] defendant's guilt." Under the circumstances, it cannot reasonably be said that the outcome of the defendant's trial would have been different had his motion to suppress been granted.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the trial court's judgment is hereby affirmed.

¶ 23 Affirmed.