

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KW 0828R

STATE OF LOUISIANA

VERSUS

HEIDI GILES

CEL
Qu
J.P.O.
DATE OF JUDGMENT: DEC 28 2006

ON APPEAL FROM THE JUDICIAL DISTRICT COURT
(NUMBER 03-04-0942), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

THE HONORABLE TODD W. HERNANDEZ, JUDGE

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BEFORE: KUHN, GUIDRY, AND PETTIGREW, JJ.

Disposition: WRIT DENIED.

KUHN, J.

In this counseled criminal writ application, relator, Heidi Giles, seeks review of the denial of her motion to suppress. Relator was charged by bill of information with four counts of carnal knowledge of a juvenile, violations of Louisiana Revised Statutes 14:80. Relator filed a motion to suppress her videotaped statement. On May 10, 2005, August 9, 2005, and February 21, 2006, the trial court conducted contradictory hearings on relator's motion to suppress. On April 7, 2006, the trial court denied relator's motion. On May 8, 2006, relator filed an application with this Court seeking review of the denial of the motion to suppress. On June 5, 2006, this Court denied relator's writ application. Relator sought review with the Louisiana Supreme Court. The Supreme Court stayed relator's pending trial, granted relator's writ application, and ordered the case remanded to this Court for briefing, argument, and full opinion. *See State v. Giles*, 2006-1733 (La. 7/24/06), 934 So.2d 703. Relator filed the instant application with this Court, urging four claims.

FACTS

According to information from relator's application, the videotaped statements, and the transcripts of the hearings on the motion to suppress, on January 22, 2004, while employed at an East Baton Rouge Parish Recreation and Park Commission (BREC) facility on Flannery Road, relator had a sexual encounter with four young males in the equipment room. After relator's supervisor walked in during the incident, relator claimed she was raped by the four males. Relator subsequently was transported to the hospital where she was examined and treated. Baton Rouge City Police Detectives Don Young and Schultz¹ investigated the case and, after interviewing relator, at least some of the suspects, and other witnesses in the case, determined that relator was not raped, but had consensual

¹ The record before this Court did not set forth Detective Schultz's first name.

sexual intercourse with the males. Because the males were under sixteen years old at the time of the incident, and relator was twenty-five years old, relator subsequently was charged with four counts of carnal knowledge of a juvenile.

The interview of relator by the detectives regarding this incident was videotaped. During the videotaped interview, relator admitted that she was not raped and that the sexual encounter with the males was consensual.

Relator subsequently filed a motion to suppress the videotaped interview. In denying the motion to suppress, the trial court found that relator voluntarily accompanied the police to the station for questioning concerning the events of January 22, 2004. According to the court, relator appeared competent and of sound mind. The trial court determined that the videotaped statement did not reveal any evidence of coercion, intimidation, threats, inducements, or promises that would have led the court to believe that relator's statement was not freely or voluntarily given. Further, the trial court noted that after relator was advised of her *Miranda* rights, she indicated that she understood those rights, and gave a statement to the police of her own free will. The trial court stated that the fact that the statement was videotaped without relator's consent did not invalidate the legality of the statement. Further, the court stated that while the police may have employed interview tactics which were "suspect" to relator, the court did not find the tactics used by the detectives to be such that they alone would invalidate the voluntariness of relator's statement. The court felt that the videotaped statement was given freely and voluntarily.

In her application with this Court, relator contends that the trial court erred in denying her motion to suppress. She urges four claims as to why the trial court erred in denying the motion.

CLAIM NUMBER ONE:

In her first claim, relator contends that the detectives used promises of immunity, inducements, and deception in order to obtain involuntary and inculpatory statements from her. She contends that the detectives repeatedly assured her that if she simply stated that the sexual encounter was consensual, then no one would get hurt, everything would be alright, the matter would conclude that day, and the case would be handled privately. Relator indicates that she thought the detectives meant that no one, including herself, would be arrested. Relator also argues that her confession was obtained through deceptive strategies used by the detectives as they lied to her and told her that all witnesses had passed polygraph tests and told her that consensual sex was “fine” or “cool.” Relator complains that the detectives used other deceptive strategies such as “good cop/bad cop,” the “cleansing” theme, and the “line in the sand” theme in order to obtain her confession. Relator argues that the use of these deceptive strategies made her inculpatory statements involuntary.

It is well settled that for a confession or inculpatory statement to be admissible into evidence, the state must affirmatively show that it was freely and voluntarily given without influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La. R.S. 15:451. It must also be established that an accused who makes a confession during custodial interrogation was first advised of their *Miranda* rights. *State v. Plain*, 99-1112, p. 5 (La. App. 1st Cir. 2/18/00), 752 So.2d 337, 342. The state must specifically rebut a defendant’s specific allegations of police misconduct in eliciting a confession. *State v. Thomas*, 461 So.2d 1253, 1256 (La. App. 1st Cir. 1984), *writ denied*, 464 So.2d 1375 (La. 1985).

The admissibility of a confession is, in the first instance, a question for the trial court; its conclusions on the credibility and weight of the testimony relating to the voluntary nature of the confession are accorded great weight and will not be

overturned unless they are not supported by the evidence. See *State v. Patterson*, 572 So.2d 1144, 1150 (La. App. 1st Cir. 1990), *writ denied*, 577 So.2d 11 (La. 1991); see also *State v. Sanford*, 569 So.2d 147, 150 (La. App. 1st Cir. 1990), *writ denied*, 623 So.2d 1299 (La. 1993). Whether a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. *State v. Benoit*, 440 So.2d 129, 131 (La. 1983). The trial court must consider the totality of the circumstances in deciding whether a confession is admissible. *State v. Hernandez*, 432 So.2d 350, 352 (La. App. 1st Cir. 1983). Testimony of the interviewing police officer alone may be sufficient to prove a defendant's statements were freely and voluntarily given. *State v. Maten*, 2004-1718, p. 12 (La. App. 1st Cir. 3/24/05), 899 So.2d 711, 721, *writ denied*, 2005-1570 (La. 1/27/06), 922 So.2d 544.

Additionally, statements by the police to a defendant that he would be better off if he cooperated are not promises or inducements designed to extract a confession. A confession is not rendered inadmissible by the fact law enforcement officers exhort or adjure an accused to tell the truth provided the exhortation is not accompanied by an inducement in the nature of a threat or one which implies a promise of reward. *State v. Robertson*, 97-0177, p. 28 (La. 3/4/98), 712 So.2d 8, 31, *cert. denied*, 525 U.S. 882, 119 S.Ct. 190, 142 L.Ed.2d 155 (1998).

Furthermore, this Court has determined that “trickery” does not by itself render a confession involuntary when considering the totality of the circumstances. This Court has concluded that a detective’s statement, which misled a defendant into believing that the victims had identified him as the perpetrator, while relevant, was insufficient to make an otherwise voluntary confession inadmissible. *State v. Lockhart*, 629 So.2d 1195, 1204-1205 (La. App. 1st Cir. 1993), *writ denied*, 94-0050 (La. 4/7/94), 635 So.2d 1132.

According to the videotaped statement, during the interview of relator, Detective Young talked to relator about the incident and asked her what happened. Young told relator that the detectives had talked to the alleged perpetrators and they had stated that there was not a rape, but that relator had engaged in consensual sexual intercourse with the males. At one point during the interview, Young indicated that if relator wanted to have sexual intercourse with multiple partners it was “cool” with him. The videotape reveals that Young made this comment in such a manner as to appear that he was not trying to judge relator. Young told relator that they wanted to give her the opportunity to talk and that what she told the detectives would not go any further. Relator told the detectives, “It was not consensual. I said no.” She indicated that she did not know any of the males who pushed her into the equipment room. Young stated that one of the problems that the detectives had with her story was that the alleged perpetrators played basketball at the gym every day and he found it odd that they would then rape someone who knew them and saw them there regularly. He asked relator if she found this odd; she indicated that she did. Young asked relator why and relator stated that she had no idea. Young then told relator that it was the “moment of truth” and that she needed to “come clean” with her story. Young then talked to relator about everything not adding up, that some of the alleged perpetrators had passed polygraph tests, that he knew relator’s mother made some problems for her, and that the detectives were not going to tell her husband.

Young indicated to relator that he thought she got caught having this sexual encounter at work and then lied about it, but only made the situation worse. Young told relator that his job was to figure out what happened. He then asked her if the rape occurred and relator shook her head no. Young told her that they were going to “clear it up.” She then gave him some information about what actually happened and indicated that the incident was consensual.

Throughout his testimony at the first hearing on the motion to suppress, Young denied misleading relator. Young told relator that he did not want to see her get into trouble, but denied telling her that she would not be arrested. Young testified that he was not trying to get relator to change her story, but instead was trying to clear up any doubts he and the other detective had about relator's complaint. Young stated that he communicated to relator that he had some doubts regarding the incident. Young admitted that he may have made a false statement, but again he claimed he was not trying to make her change her story. Young stated that he was not trying to mislead relator. Young stated that he wanted relator to tell them the truth not only so that relator or her family would not be hurt any further, but also so that no other young men would be hurt. Young denied telling relator that nothing was going to happen to her. Young further testified that he did not threaten relator or make a promise to her.

On redirect, Young denied making any promises to relator to get her to talk to him. He again denied promising her anything or threatening her in any manner. Young stated that he did not tell relator that she had to confess. At the continuation of the hearing on the motion to suppress on February 21, 2006, Young denied lying to relator.

Relator testified at the August 9, 2005, hearing. She stated that she was not intoxicated or on any type of drugs during the videotaped interview. Relator stated that she was "in shock." However, she admitted that her state of mind did not prevent her from understanding what was being said. Relator also admitted that her statement was given freely and willingly. When asked if she was coerced or threatened, relator responded, "No, but --."

On redirect, relator's attorney asked relator, "And towards the end of the prosecutor's questions he said other than what's on the videotape, you didn't

receive any promises or threats or what have you; correct?" Relator responded, "Correct."

The videotape does not reveal any promises of immunity made to relator in exchange for her statements, nor is there any indication that she was forced to confess. Relator was not made a promise that she would not be arrested if she changed her story. The tape does not reveal that either detective conveyed to relator that she would not be prosecuted if it were determined that she was not telling the truth. Detective Young's vague and noncommittal remark that he did not want to see anyone get hurt did not rise to the level of a promise or offer of immunity. There is nothing to support relator's claim that her confession was the product of a promise of immunity.

Additionally, the techniques used by the detectives did not appear to deceive relator. The detectives calmly posed their questions to relator and the questions did nothing further than present the current status of the case. There is nothing to support relator's claim that the detectives forced her to confess. Any deception used by the detectives was minimal, as the only misrepresentation was the number of polygraph tests administered by the police prior to their interview with relator.

According to the videotape, the atmosphere surrounding the police interview of relator appeared to be cordial and the detectives did not use aggressive tones in questioning relator. The interrogation was not long as it lasted approximately twenty minutes. The videotape did not reveal any fear or duress on the part of relator. Moreover, while testifying at the hearing on the motion to suppress, relator admitted that her statement was freely and voluntarily given. Considering the above, this claim lacks merit.

CLAIM NUMBER TWO:

In her second claim, relator contends that she was subjected to a custodial interrogation, which was surreptitiously videotaped, without first being advised of

her *Miranda* rights. Relator sets forth that the trial court concluded she voluntarily went with the detectives; however, she complains that the trial court did not address the detectives' failure to advise her of her rights prior to questioning her. Relator argues that her custodial interrogation triggered her right to be advised of her *Miranda* rights. Relator contends that the statements and actions of the detectives revealed that they intended to hold or restrain relator from the time she was picked up at her home through the course of the interrogation. Relator contends that the detectives refused to allow her any means of transportation other than the police car, and thus, she had to rely on the detectives for a ride home. Relator also claims that the detectives denied her contact with her husband or mother and that the detectives cornered her in the interrogation room. Thus, she argues that a reasonable person would not believe that she was free to leave prior to questioning or that she could have terminated the questioning. Moreover, relator argues that the focus of the investigation had turned to her and that she was a suspect from the time she was contacted at her home.

The state must show that an accused who makes a statement or confession during custodial interrogation was first advised of their *Miranda* rights. *State v. King*, 563 So.2d 449, 453 (La. App. 1st Cir.), *writ denied*, 567 So.2d 610 (La. 1990). The obligation to provide *Miranda* warnings attaches only when a person is questioned by law enforcement after they have been taken "into custody or otherwise deprived of their freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966); *State v. Payne*, 2001-3196, p. 7 (La. 12/4/02), 833 So.2d 927, 934.

In determining whether an individual is in custody for purposes of *Miranda*, courts must consider all of the circumstances surrounding the interrogation, and "the ultimate inquiry is simply whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Stansbury v.*

California, 511 U.S. 318, 322, 114 S.Ct. 1526, 1529, 128 L.Ed.2d 293 (1994) (per curiam). This determination “depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.” *Stansbury*, 511 U.S. at 323, 114 S.Ct. at 1529. That an individual is a suspect of the police conducting a criminal investigation therefore does not determine whether the interrogation occurs in a custodial context for purposes of *Miranda*, and “[e]ven a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest.” *Stansbury*, 511 U.S. at 325, 114 S.Ct. at 1530. Accordingly, “an officer's views concerning the nature of an interrogation, or beliefs concerning the potential culpability of the individual being questioned, may be one among many factors that bear upon the assessment whether that individual was in custody, but only if the officer's views or beliefs were somehow manifested to the individual under interrogation and would have affected how a reasonable person in that position would perceive his or her freedom to leave.” *Stansbury*, 511 U.S. at 325, 114 S.Ct. at 1530. *See State v. Saltzman*, 2003-1423, p. 2 (La. 4/8/04), 871 So.2d 1087, 1088 (per curiam).

According to the videotape, the detectives brought relator to a small room at the police station. All three persons sat at or next to a table in the room. Relator was in the corner of the room, but it did not appear there was anywhere else for her to sit. She did not appear to be frightened or scared of the detectives and talked to them in a normal tone. Young talked to relator about the incident and asked her what happened. Subsequently, Young told relator that they had talked to the suspects; who told the detectives that there was not a rape, but that relator had engaged in consensual sexual intercourse with them. It appeared that at this point the detectives were talking with her in general about the incident, her version of

events, and the claims made by the alleged perpetrators. During this questioning, Young let relator know that they were starting to question her story and wanted to see if she wanted to change her story.

Young told relator that they wanted to give her the opportunity to talk. Young then indicated that he thought relator got caught having this sexual encounter at work and then lied about it. Young told relator that his job was to figure out what happened. He then asked her if the rape occurred and relator shook her head no. Young told her that they were going to “clear it up.” She then gave him some information about what actually happened and indicated that the incident was consensual. Relator gave the detectives the names of some of the males involved in the incident. At this point, the detectives stated that they were going to take a break. Subsequently, the detectives reentered the interview room and advised relator of her *Miranda* rights, and questioned her further. Relator fully confessed to the sexual encounter being consensual and gave the detectives details regarding the incident.

At the first hearing on the motion to suppress, Detective Young testified that he began investigating the instant case after relator filed the initial complaint. On February 3, 2004, Young interviewed relator about her claims after he had talked to some of the alleged perpetrators of relator’s initial complaint. According to Young, he called relator and told her that he wanted to talk to her about the case. He then went by relator’s apartment and transported her to the police station. Young indicated that relator did not have any objections to going with Young to the station. Relator’s husband wanted to go with them, but Young and the other detective did not want him to go. According to Young, relator did not have a problem with that and told her husband to stay home.

Upon arriving at the police station, relator was taken to the interview room. As soon as they arrived at the station, the detectives decided to videotape their

conversation with relator. They told relator that they wanted to discuss the case with her because they had some concerns. Young indicated that relator was not advised of her rights before initially being interviewed because at that point they were talking to her "strictly to interview her." According to Young, as they began talking to her, relator revealed that her complaint regarding the rape was false. Young testified that at that point they stopped the interview and advised her of her rights.

On cross-examination, Young stated that he began to have some questions regarding relator's complaint after interviewing two alleged perpetrators and after one alleged perpetrator passed a polygraph test. According to Young, the reason why they wanted to talk to relator again was in order to verify if the suspects were telling the truth. Young denied thinking that at the time of relator's interview, he already believed that she had had consensual sex with the males involved. However, Young indicated he had concerns and needed to clear up some things with her.

According to Young, at the time of the interview of relator on February 3, 2004, the police were still pursuing the case as an aggravated rape. Relator was not under investigation for carnal knowledge at that time. According to Young, when relator went with him for questioning, he just wanted to talk to her. Young testified that he did not interview relator in her home, but he explained that he usually did not interview people at their home. Young also stated that he informed relator that they were going to videotape their conversation. Young admitted that prior to initially interviewing relator on February 3, 2004, he did not advise her of her rights or inform her that she was a suspect. However, he stated that at that time she was not under investigation.

Young testified that it was decided to advise relator of her rights after she indicated to the detectives that her complaint might be false. He felt that the

interview then turned into an interrogation. When asked if relator refused to talk any further would he have handcuffed her and locked her up, Young responded, “[p]robably not at that point.”

The general inquiry made to relator during the interview, and prior to her arrest, did not constitute a custodial interrogation. At the hearing on the motion to suppress, Young testified that at the point of the initial questioning, relator was not a suspect. As previously noted, Young called relator before arriving at her apartment and then picked her up. Young testified that relator did not have any objections about going to the police station and that relator did not have a problem with her husband not going to the station with them. Young also testified that he told relator that he wanted to discuss the case with her because he had some concerns. Young admitted that he did not advise relator of her rights at this point because he just wanted to talk to her about the case. According to Young, at that time, relator was not a suspect or under investigation for carnal knowledge.

At the hearing on the motion to suppress, relator did not testify that she felt that she had been placed in custody or under arrest at the time of the initial questioning. She did not complain about her husband or mother not being with her or state that she felt that she could not leave. In fact, she gave no testimony whatsoever regarding this claim. Relator only testified that she did not give her consent to tape the interview and that no one told her that they were going to record the interview.

Relator further admitted that she was advised of her *Miranda* rights before Young took her statement and that she understood those rights. She also admitted that her statement was free and willing. She indicated that she was not forced or threatened to give her statement. Relator did not indicate that she was deprived of her freedom of action in any significant way.

The state specifically rebutted relator's claims regarding being in custody when the detectives began talking to her. Detective Young testified that relator was not in custody when she was being questioned as part of the investigation of her allegations. He explained she was not under investigation for carnal knowledge at that time, and if she had refused to talk to them, he would not have handcuffed her or locked her up. Prior to advising relator of her rights, the detectives did not tell relator that she was a suspect, that she was under arrest, or that she was not free to leave. The detectives did not restrain her movement, and relator never asked to cease questioning and never made an attempt to leave. Thus, relator was not in custody at the time she gave the initial statement to the police. As such, the state carried its burden of showing that relator's statement was voluntary and knowing and not given in violation of *Miranda*.

Additionally, although relator suggests that the confession should be suppressed because it was videotaped without her knowledge or consent, there is no case law to support her claim. Furthermore, Young testified that he informed relator that her statement was going to be videotaped. Accordingly, this claim lacks merit.

CLAIM NUMBER THREE:

In her third claim, relator contends that after obtaining involuntary and inculpatory statements, the detectives improperly advised relator of her *Miranda* warnings by giving warnings that pertained to filing a false police complaint, instead of carnal knowledge of a juvenile, which was the charged offense. Relator argues that when the detectives did advise relator of her rights, they were invalid as the detectives specifically limited the *Miranda* rights to the crime of filing a false complaint, which was a misdemeanor.

According to the videotape and the hearing testimony, after relator admitted that the incident was consensual and the detectives realized the complaint was false, the

detectives took a break and then subsequently, reentered the interview room and advised relator of her *Miranda* rights. Young did inform relator that they were advising her of her rights because her complaint was false. They then thoroughly questioned relator regarding the incident, what happened, and who was involved.

Young indicated that at the time of the initial interview of relator on February 3, 2004, the police were still pursuing the case as an aggravated rape. Relator was not under investigation for carnal knowledge at that time.

In proving an intelligent waiver of the rights to silence, protection against self-incrimination, and counsel, the state need not show that a defendant was aware of the full evidentiary significance of his statements. *See State v. Mitchell*, 421 So.2d 851, 852 (La. 1982); *State v. Williams*, 521 So.2d 629, 631 (La. App. 1st Cir. 1988). Moreover, as the United States Supreme Court noted, a suspect's awareness of all the crimes about which he could be questioned is not relevant to waive the Fifth Amendment privilege against self-incrimination. *See Colorado v. Spring*, 479 U.S. 564, 577, 107 S.Ct. 851, 859, 93 L.Ed.2d 954 (1987); *State v. Warren*, 536 So.2d 529, 533 (La. App. 1st Cir. 1988).

Considering the above, it is noted that *Miranda* warnings are not offense specific. A suspect's awareness of all the crimes about which he could be questioned is not relevant to determining the waiver of the privilege against self-incrimination. This claim is without merit.

CLAIM NUMBER FOUR:

In her fourth claim, relator contends that the statements obtained by the detectives after improperly advising relator of her rights should be considered fruit of the poisonous tree and not admitted into evidence. Relator contends that if the subsequent *Miranda* warning was determined to be valid, the statements were derived directly from the pre-*Miranda* statements and thus, should be suppressed. According to relator, during the post-*Miranda* interrogation, the detectives and

relator used statements such as, “like I said” and “as we discussed earlier.” Thus, relator contends that these statements were only obtained due to police misconduct at the beginning of the interrogation.

As previously noted, the fact that the detectives did not advise relator of her rights before her initial interview did not violate *Miranda*. Thus, there is no merit to relator’s claim that her later confession after being advised of her rights was considered to be fruit of the poisonous tree and should not be allowed into evidence.

Moreover, it is noted that even if relator’s initial statements to the detectives prior to being advised of her rights were determined to be violative of the *Miranda* rule, it would not have tainted the investigatory process and the subsequent voluntary statements relator made to the detectives after being given *Miranda* warnings and waiving those warnings. *See State v. Ford*, 97-2019, pp. 9-10 (La. App. 1st Cir. 6/29/98), 713 So.2d 1214, 1219 (citing *Oregon v. Elstad*, 470 U.S. 298, 309, 105 S.Ct. 1285, 293, 84 L.Ed.2d 222 (1985)). Furthermore, it is noted that the instant case is not controlled by *Missouri v. Seibert*, 542 U.S. 600, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004), as there is no indication here that the detectives deliberately withheld the *Miranda* warnings prior to interviewing relator. Thus, this claim is without merit.

Considering the above, we find that the trial court did not err in denying relator’s motion to suppress. Accordingly, relator’s writ application is denied.

WRIT DENIED.