

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0366

STATE OF LOUISIANA

VERSUS

RODERICK DANGERFIELD

Judgment Rendered: SEP 13 2010

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Case Number 109619
Honorable Brenda Bedsole Ricks, Judge

* * * * *

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Roderick Dangerfield

* * * * *

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

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GUIDRY, J.

The defendant, Roderick Dangerfield, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant entered a plea of not guilty. The trial court denied the defendant's motion to suppress. Upon a trial by jury, the defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The defendant now appeals, assigning error to the trial court's ruling on his motion to suppress. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On or about February 23, 2004, officers of the Hammond City Police Department received information leading to the investigation of the death of Cordell McMorris, the victim. The victim's injuries included multiple stab wounds in the chest and abdomen, with perforations of the heart, left lung, and liver, and scalp lacerations consistent with blunt-force trauma. The defendant was present when the police arrived at the scene, 1210 Sun Lane in Hammond, Louisiana. The defendant ultimately confessed to having a physical altercation with and stabbing the victim.

DISCUSSION

In the sole assignment of error, the defendant contends that the trial court erred in denying his motion to suppress his March 8, 2004 confession. At the outset, we note that the defendant seems to equate the retaining or the appointment of counsel with an invocation of his right to counsel and uses these concepts interchangeably. The defendant contends the State did not offer any evidence that he had not retained counsel prior to the interrogation. The defendant notes that "triple hearsay" testimony presented at the motion to suppress hearing was the only evidence that he initiated the March 8, 2004 interview with the detectives. The

defendant also notes that a transcript, written statement, or the recording of the interviews was not placed into evidence during the hearing. According to the defendant, the record indicates he retained counsel prior to March 8, 2004. The defendant specifically quotes an undisputed statement by defense counsel that the discovery indicates the defendant gave his statement after he had been appointed counsel. The defendant also notes that the State did not refute his argument in his memorandum in support of his motion to suppress that he had been appointed counsel and could not have waived the right to counsel if the advising officer was not even aware that counsel had been appointed. The defendant concludes that the totality of the circumstances in this case indicates that his confession was not free and voluntary.

The State bears the burden of proving that an accused who makes an inculpatory statement or confession during custodial interrogation was first advised of his constitutional rights and made an intelligent waiver of those rights. State v. Davis, 94-2332, p. 8 (La. App. 1st Cir. 12/15/95), 666 So. 2d 400, 406, writ denied, 96-0127 (La. 4/19/96), 671 So. 2d 925. In Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court promulgated a set of safeguards to protect the therein delineated constitutional rights of persons subject to custodial police interrogation. The warnings must inform the person in custody that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. Miranda, 384 U.S. at 444, 86 S.Ct. at 1612. In addition to showing that the Miranda requirements were met, the State must affirmatively show that the statement or confession was free and voluntary, and not made under the influence of fear, duress, intimidation, menace, threats, inducements, or promises in order to introduce into evidence a defendant's statement or confession. La. R.S. 15:451.

Under the Sixth Amendment to the United States Constitution, a criminal defendant has the constitutional right, unless waived, to the assistance of counsel at every critical stage of the proceedings. See State v. Flowers, 598 So. 2d 1144, 1146 (La. App. 1st Cir. 1992). If a suspect in custody invokes his right to counsel at any stage in the process, expressing a desire to deal with the police only through counsel, all questioning must cease, and the accused may not be subject to further interrogation without counsel present, unless the accused initiates further communication with the police and validly waives his earlier request for counsel. See Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378 (1981); Miranda, 384 U.S. at 444-45, 86 S.Ct. at 1612. The request need not be formal or direct, or for a particular attorney, but is sufficiently conveyed by even an unsuccessful attempt to reach a lawyer. United States v. DeLeon, 412 F.Supp. 89, 99-100 (D.V.I. 1976); United States v. Porter, 764 F.2d 1, 5-7 (1st Cir. 1985). Miranda and Edwards are prophylactic rules designed to protect an accused against the inherently compelling pressures of custodial interrogation. The purpose of these rules is to protect the suspect's desire to deal with the police only through counsel. See McNeil v. Wisconsin, 501 U.S. 171, 178, 111 S.Ct. 2204, 2209, 115 L.Ed.2d 158 (1991).

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, *i.e.*, unless such ruling is not supported by the evidence. See State v. Green, 94-0887, p. 11 (La. 5/22/95), 655 So. 2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 09-1589, p. 6 (La. 12/1/09), 25 So. 3d 746, 751. In determining whether the ruling on the defendant's motion to suppress was correct, an appellate court is not limited to the evidence adduced at the hearing on the motion. Rather, an appellate

court may consider all pertinent evidence given at the trial of the case. State v. Chopin, 372 So. 2d 1222, 1223 n.2 (La. 1979).

The motion to suppress hearing began on June 1, 2005, resumed on July 5, 2005, and was concluded on August 10, 2005. On February 23, 2004, the date of the offense, Detective Steven Spring of the Hammond City Police Department was one of the officers to arrive at the scene. The defendant, who was among a crowd of individuals at the scene, approached Spring. The defendant was not a suspect at the time. It was raining at the time, so the defendant was wet, and he had blood on his neck and clothing. The defendant stated that he and the victim had been attacked by two other black males. Spring was instructed to take the defendant to the detectives' office to be interviewed, and the defendant agreed. Spring advised the defendant of his Miranda rights, and the defendant stated that he understood his rights. The defendant indicated that he wished to make a statement. The defendant was not forced, threatened, or coerced, and no promises were made in exchange for the statement. The interview was recorded. Advice and waiver of rights forms were executed at 11:05 a.m. and again at 2:47 p.m.

Lieutenant Paul Miller of the Hammond City Police Department also participated in the interviews of the defendant at the detectives' office. Miller testified that the defendant was advised of his rights before he was interviewed and again when the recording was started. The defendant stopped the recording when questions regarding drug use caused him to become upset, and the second form was executed when the defendant agreed to resume the interview and the recording. During the course of the interview, the defendant made inconsistent statements. The defendant initially indicated that the victim was attacked by two men after an argument regarding a monetary debt and that one of the individuals attacked the defendant as he attempted to walk away. As the officers collected evidence and statements regarding the incident from other sources, they adjusted

the focus of their questioning of the defendant. At some point, the defendant admitted that he had an altercation with the victim. The defendant was alert during questioning. Miller also testified that the defendant did not request an attorney in his presence.

Detective George Bergeron of the Hammond City Police Department was present during a portion of the interview on the date of the offense and at the interview that took place on March 8, 2004. Bergeron testified that the defendant was advised of his Miranda rights, including his right to counsel, and stated that he understood his rights. Bergeron further testified that the defendant was not forced, threatened, or coerced in his presence. Further, during cross-examination, Bergeron was asked if the defendant invoked his right to counsel after the break in the recording on February 23, and he testified that the defendant did not do so.

Bergeron testified that the March 8, 2004 interview was prompted by the defendant's mother's report to Assistant Chief Corkern that the defendant wanted to speak to Corkern and Bergeron. Another advice and waiver of rights form was executed on that date at 2:40 p.m. During that final interview in March, the defendant stated that he grabbed a knife and stabbed the victim several times during the course of an altercation. Bergeron stated that the defendant's composure was initially okay, but he began "bawling and crying like a baby" during his confession. Bergeron testified that the defendant did not seem to be impaired.

As noted by the defendant, the recordings of the interviews were not introduced at the suppression hearings and were not played before the jury, as they were determined to be of poor audio quality and unintelligible. Thus, the officers' testimony as to the content of the defendant's statements was relied upon. Spring's and Bergeron's pertinent trial testimony was consistent with their testimony at the hearing. Miller did not testify during the trial.

Nowhere in the motion to suppress hearing or trial transcripts does any witness say that the defendant requested an attorney. Indeed, the defendant does not claim on appeal that he requested an attorney or made any direct or indirect communication that could have been interpreted as an invocation of his right to counsel. To the contrary, the record indicates that the defendant was informed of his rights, including the right to an attorney, and waived those rights. Even when a defendant knows an attorney has been hired or appointed, he can still waive counsel's presence. State v. Carter, 00-145, p. 20 (La. App. 5th Cir. 7/25/00), 767 So. 2d 839, 848, writ denied, 02-0227 (La. 12/13/02), 831 So. 2d 978 (citing State v. Harper, 430 So. 2d 627, 634 (La. 1983)). Where defendant's right to counsel has attached, but he has not made an assertion or invocation of his right to counsel, a waiver in response to police-initiated interrogation is valid if the waiver is knowing, intelligent, and voluntary. State v. Carter, 94-2859, p. 21 (La. 11/27/95), 664 So. 2d 367, 383.

Moreover, according to testimony presented by Bergeron at the motion to suppress hearing without objection, the defendant initiated the March 8, 2004 interview with the police and was again informed of and waived his Miranda rights. It is well-settled that while statements responding to police-initiated custodial interrogation are inadmissible when the defendant has invoked his right to counsel, statements made by the defendant when he initiates further communication are admissible, even if he has previously invoked his right to counsel. Edwards, 451 U.S. at 484-85, 101 S.Ct. at 1885. Based on our review of the record, the trial court did not err in finding that the statements in question were freely and voluntarily made after advice and waiver of Miranda rights. Thus, we find that the trial court did not err in denying the motion to suppress the confession contested herein. The assignment of error lacks merit.

CONCLUSION

Accordingly, having found that the trial court did not err in denying the defendant's motion to suppress his confession, we affirm the defendant's second degree murder conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.