

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
October 1, 2019 Session

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Appellate Courts

STATE OF TENNESSEE v. MARCUS STURGHILL III

**Appeal from the Circuit Court for Madison County
No. 17-80 Kyle C. Atkins, Judge**

No. W2018-01892-CCA-R3-CD

A jury convicted Defendant, Marcus Sturghill III, of two counts of aggravated robbery, and he received an eight-year sentence. Defendant was seventeen at the time he committed the crimes, and he gave a statement to law enforcement outside the presence of his parents, confirming that he had possession of a firearm on the date of the robbery. Defendant appeals the trial court's denial of his motion to suppress his statement to police. We conclude that the trial court did not err in admitting the statement, and we affirm the convictions.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ROBERT W. WEDEMEYER, JJ., joined.

David W. Camp (on appeal and at trial) and Alexander D. Camp (at trial), Jackson, Tennessee, for the appellant, Marcus Sturghill III.

Herbert H. Slatery III, Attorney General and Reporter; Robert W. Wilson, Assistant Attorney General; Jody Pickens, District Attorney General; and Aaron J. Chaplin, Bradley F. Champine, and Nina W. Seiler, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Motion to Suppress

On the night of October 1, 2016, Defendant approached Ms. Chardonnay Gray and Mr. Giovonnte Baker, who were in a parked vehicle outside an apartment complex, and took their money and cell phones at gunpoint. Defendant was charged with two counts of

aggravated robbery. Defendant was a juvenile at the time the crimes were committed, and his attorneys challenged the admissibility of his statements to law enforcement. The trial court held a suppression hearing addressing a statement given October 5, 2016, which was relevant to the two aggravated robberies at issue in this appeal and to other, separately charged offenses. The trial court also addressed at the hearing a statement given by Defendant on January 21, 2016, and a short statement given October 26, 2016, which were relevant only to other offenses.

Sergeant Alphonso Newbern testified that he took a statement from Defendant on January 21, 2016, regarding an aggravated burglary during which “[q]uite a number” of guns, as well as some household items, were taken. After learning about a juvenile selling guns on the internet, Sergeant Newbern went to Defendant’s address and spoke with Defendant in the presence of his parents. Defendant rode with his parents to the sheriff’s department, where he and his parents signed a waiver of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). Sergeant Newbern read part of the rights waiver document aloud to Defendant, asked Defendant to read the waiver section aloud, and asked Defendant regarding his grade level in school. Defendant gave a statement and was subsequently transferred from juvenile court to general sessions court with respect to the aggravated burglary offense. *See* T.C.A. § 37-1-134. Sergeant Newbern stated that he was not familiar with Defendant’s drug history but that Defendant did not appear intoxicated and spoke “eloquently.” He asked Defendant’s parents to come to the interview because Defendant was a juvenile.

Investigator Nicholas Donald assisted in conducting the interview at issue in this appeal. Defendant was arrested around 4:00 a.m. on October 5, 2016, and he was kept in confinement until his interview at 8:00 p.m. that evening. One of the investigators read Defendant his rights, and Defendant signed a waiver prior to giving a statement. Defendant told the investigators that he was in twelfth grade and in alternative school. Investigator Donald did not ask about Defendant’s performance in school. Defendant told Investigator Donald that he was not under the influence of drugs or alcohol, and Investigator Donald testified that Defendant did not appear to be under the influence of either. Investigator Donald acknowledged he was not familiar with Defendant’s history of drug abuse and that Defendant was in custody during the interview. Investigator Donald testified that Defendant’s parents were not present and had not been contacted. He explained that he did not attempt to contact Defendant’s parents because, although he knew Defendant was a juvenile, he was also aware that Defendant had previously been transferred out of the juvenile court system. Investigator Donald did not have a firearm during the interview, but the other investigator present in the room wore a firearm. The video reveals that Defendant recognized Investigator Donald and chatted with him casually when Investigator Donald first entered the room. Defendant told law enforcement that on the day of the robberies at issue in this appeal, he saw a pistol

through an open car door and grabbed it and that this was the firearm in his possession when he was arrested on October 5, 2016. He denied going to the apartment complex on October 1, 2016, and stated he had given the gun to a friend and was not in possession of it on the night of October 1st.

Ms. Pamela Sturghill, Defendant's mother, testified that although Defendant started out doing well in school, his grades dropped when he was in high school. Defendant made "straight" Fs, read "pretty poorly," and attended summer school twice. Ms. Sturghill correlated his dropping grades with drug use, and she testified he used marijuana. Ms. Sturghill had signed Defendant up for a rehabilitation program.

Ms. Sturghill testified she was present when Defendant waived his rights and gave a statement in January 2016. She did not know that he was interviewed by law enforcement in October, and she testified that she would have come to the interviews if she had been aware they were taking place. She stated that after reviewing the video recordings, she believed Defendant was high during the October 5, 2016, interview and that he needed her help and should not have been speaking to law enforcement. She stated she did not believe he understood legal proceedings but agreed he had been "through the legal proceedings . . . several times" and that she had been present when he was transferred out of juvenile court.

The trial court held that the statements were admissible and found that all three witnesses who testified at the hearing were credible. Regarding the circumstances surrounding the statements, the trial court found that the law enforcement officers were not threatening or intimidating, that the interviews did not last an excessive amount of time, and that Defendant demonstrated no fear or panic. The trial court found that Defendant appeared to understand the *Miranda* warnings, noting that he had executed a previous waiver with his parents present and that in the course of being transferred out of the juvenile court system, he had been determined to have the intelligence to assist his attorney and to understand the nature and consequences of his offense. The trial court found that Defendant's grades appeared to dip due to drug use and were not reflective of his cognitive ability, and it found that there was nothing to show Defendant could not read and write. Defendant was familiar with the *Miranda* warnings, having executed a prior waiver. The trial court noted there was no evidence that Defendant suffered from any mental diseases, disorders, or defects or that he was intoxicated. Defendant's parents were not present at the October interviews. The trial court found that Defendant's statements were voluntary, knowing, and intelligent, and it denied the motion to suppress.

Trial

At trial, Ms. Gray was the only victim to testify. On the night of October 1, 2016, the victim, a college student, picked up her brother, Mr. Baker, from work at 10:30 p.m. Mr. Baker asked her to stop by an apartment complex to pick up his friend prior to going home. The two sat in the victim's vehicle for about twenty-five to thirty-five minutes at the apartment complex, talking and listening to music and waiting for Mr. Baker's friend. Defendant appeared at the walkway of one apartment building with a book bag in his hand and came to the passenger's side of the vehicle. Defendant knocked on the window, and Mr. Baker began to chat with Defendant, giving the victim the impression that they knew each other. Defendant asked for a flashlight, and Mr. Baker held his telephone's flashlight outside the car window so that Defendant could rummage through his book bag. Defendant was "fidgeting around" and looked in the bag for approximately ten minutes.

The victim was looking at her telephone when she heard Defendant cocking a gun. Defendant held the gun, which was a black, 9-millimeter, semi-automatic handgun, so that it remained in contact with Mr. Baker's chest, and he said, "[W]hatever you got, I'm a need it." Defendant attempted to open the passenger's side door, and Mr. Baker unlocked it. Mr. Baker gave Defendant his wallet, and Defendant removed approximately \$120. Defendant then said, "You know, my man, since I mess with you, I'm not going to take your wallet." He returned the wallet to Mr. Baker but kept the money and took Mr. Baker's cell phone.

Defendant attempted to enter the back of the car, and Mr. Baker unlocked the back passenger's side door. Defendant threw the victim's school papers and other possessions around, then pressed the gun into her right shoulder, demanding a purse she did not have. He then demanded her cell phone, and she made him wait while she sent her mother a text that she was being robbed, then gave him the phone. She also gave him five dollars. Defendant got out of the back of the car on the driver's side and came to the victim's window, knocking with the gun and gesturing for her to roll down the window. The victim drove away and called police from a nearby hotel. Law enforcement dusted her car and recovered fingerprints.

The victim acknowledged she may have been mistaken regarding how long they were in the parking lot "because this is a whole year later." The victim acknowledged that she had informed law enforcement that she believed the robber was a student and cheerleader at her college. She stated that at the time, she felt 85 percent certain that the cheerleader was the perpetrator. She explained that the cheerleader and Defendant looked very much alike. She ultimately realized the cheerleader could not have been the robber because the robbery occurred during homecoming. Furthermore, she described

her assailant that night as having a tattoo on his forearm and chipped teeth; the cheerleader whom she suspected did not have a tattoo on his forearm or chipped teeth. She testified that the whole incident lasted approximately twenty-five to thirty minutes but that Defendant was only in the back seat of the vehicle for four to five minutes. During that time, the overhead light was on, and she was able to see Defendant.

Officer Paul Bozza of the Jackson Police Department responded to the victim's emergency call and collected two fingerprints, one from the rear passenger's side window and the other from the frame of the rear passenger's side door. Ms. Lashonda Perry collected Defendant's fingerprints at the Madison County jail when he was later arrested. Mr. William Roane, a forensic latent print examiner for the Jackson Police Department, compared a set of fingerprints for Marcus Sturghill III on file with the Federal Bureau of Investigation to the fingerprints collected from the victim's vehicle and to Defendant's booking prints. The vehicle prints matched the left thumb and second finger of the booking and FBI prints. He agreed that he could not determine when the fingerprints were left on the vehicle.

Officer Adam Pinion arrested the Defendant on October 5, 2016, at around 2:00 a.m. in an area close to the apartment complex where the crime occurred. Defendant was carrying a Glock 23 Generation 4, .40 caliber weapon. The victim testified that this weapon was similar to the weapon used in the crime, but she acknowledged that she had previously described the weapon used in the crime as a 9-millimeter handgun. She explained that she did not know anything about guns and described the weapon as a 9-millimeter gun based on a television show.

Investigator Donald testified that he spoke to Defendant after his arrest on October 5, 2016. Defendant acknowledged to Investigator Donald that he had a black, semi-automatic handgun on October 1, 2016. Investigator Donald agreed that Defendant was arrested in the early morning of October 5, 2016, and was not interviewed until 8:00 p.m. and that Defendant's parents were not notified or present for the interview.

The jury found Defendant guilty of two counts of aggravated robbery, and the trial court held a sentencing hearing and sentenced him to concurrent eight-year sentences. Defendant appeals the trial court's ruling admitting Defendant's statement to law enforcement into evidence.

Analysis

Defendant challenges only the trial court's determination that he knowingly and voluntarily waived his rights prior to giving a statement to law enforcement. Defendant argues that his waiver was not valid because it was not knowing and voluntary under the

totality of the circumstances, in particular considering the absence of his parents during the interrogation. We conclude that the absence of Defendant's parents is not dispositive and that the trial court did not err in holding that the waiver was valid.

When this court reviews a trial court's decisions regarding a motion to suppress evidence, "a trial court's findings of fact . . . will be upheld unless the evidence preponderates otherwise." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). The prevailing party is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *Id.* "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Id.* On the other hand, the trial court's application of law to the facts is reviewed purely de novo. *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001). We note that "in evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998).

The Fifth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution protect against compelled self-incrimination. *See* U.S. Const. amend. V; Tenn. Const. art. I, § 9. In *Miranda v. Arizona*, the United States Supreme Court established procedural safeguards to secure the Fifth Amendment privilege against self-incrimination. 384 U.S. 436, 444 (1966). To combat the compulsion inherent in a custodial interrogation, the accused must be informed prior to questioning regarding the right to remain silent, that anything he says can be used against him in a court of law, the right to an attorney, and that an attorney will be appointed at no cost prior to questioning upon request. *State v. Climer*, 400 S.W.3d 537, 557 (Tenn. 2013) (citing *Miranda*, 384 U.S. at 479). If the suspect invokes the right to remain silent or right to an attorney at any time, the interrogation must cease. *Id.* However, a defendant may waive these rights if such waiver is voluntary, knowing, and intelligent. *State v. Echols*, 382 S.W.3d 266, 280 (Tenn. 2012). The State bears the burden of establishing waiver by a preponderance of the evidence. *Climer*, 400 S.W.3d at 564.

When a juvenile waives the right against self-incrimination, this court analyzes the validity of the waiver under a totality of the circumstances test. *State v. Callahan*, 979 S.W.2d 577, 583 (Tenn. 1998). The factors to be considered are:

- (1) . . . all circumstances surrounding the interrogation including the juvenile's age, experience, education, and intelligence;
- (2) the juvenile's capacity to understand the *Miranda* warnings and the consequences of the waiver;

- (3) the juvenile's familiarity with *Miranda* warnings or the ability to read and write in the language used to give the warnings;
- (4) any intoxication;
- (5) any mental disease, disorder, or retardation; and
- (6) the presence of a parent, guardian, or interested adult.

Id. This court should “exercise special care” in analyzing a juvenile waiver, but “no single factor such as mental condition or education should by itself render a confession unconstitutional absent coercive police activity.” *Id.* Accordingly, “the admissibility of a juvenile’s confession is not dependent upon the presence of his parents at the interrogation.” *State v. Carroll*, 36 S.W.3d 854, 864 (Tenn. Crim. App. 1999).

Applying these factors, we conclude that the trial court did not err in concluding that the waiver was valid. Defendant was seventeen years old—close to the age of legal adulthood—and in twelfth grade at the time of the interview. He had prior experiences with the criminal justice system, and his mother agreed he had been through legal proceedings several times. Defendant had been transferred out of juvenile court for a prior offense. Defendant’s grades were poor, but the trial court found that this reflected a drug issue and not his cognitive ability. His mother stated that he “started out” doing well in school but that his grades fell due to drug use. The trial court found that the officers were not threatening or intimidating during the interview, that the interview did not last an excessive amount of time, and that Defendant demonstrated no fear or panic. Regarding Defendant’s capacity to understand the warnings and consequences of the waiver, Defendant had previously executed a *Miranda* waiver with the advice of his parents and subsequently been charged as an adult in that offense, and accordingly was aware that his statements could be used against him. Defendant had some familiarity with the warnings, and the trial court found that there was no evidence he had difficulty reading and writing. Although Defendant’s mother testified he was “high,” Defendant had been in custody several hours, and he told law enforcement he was not under the influence of intoxicants. The evidence, including the video of the interview, does not preponderate against the trial court’s finding that Defendant was not intoxicated. The trial court likewise found he was not suffering from any mental disease or defect. While Defendant did not have the advice of a parent, guardian, or interested adult, we nevertheless conclude that under the totality of the circumstances, the waiver was voluntary, knowing, and intelligent and that the statement was admissible. Defendant’s citation to *Haley v. Ohio*, a case where a fifteen-year-old was interrogated for five hours beginning at midnight by teams of police officers who did not inform him of his right to counsel, is inapposite. 332 U.S. 596, 599-601 (1948).

CONCLUSION

Based on the foregoing, we affirm the trial court's ruling on the motion to suppress and affirm the trial court's judgments.

THOMAS T. WOODALL, JUDGE