[Cite as *State v. Clifton*, 2017-Ohio-9099.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BROWN COUNTY

STATE OF OHIO,	:	
		CASE NO. CA2017-02-002
Plaintiff-Appellee,	:	
		O P I N I O N
	:	12/18/2017
- vs -		
	:	
KENNETH CLIFTON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. CRI2016-2114

Zachary A. Corbin, Brown County Prosecuting Attorney, Mary McMullen, 510 East State Street, Suite 2, Georgetown, Ohio 45121, for plaintiff-appellee

Patrick T. Clark, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, for defendant-appellant

S. POWELL, J.

{¶ 1} Defendant-appellant, Kenneth Clifton, appeals from the decision of the Brown County Court of Common Pleas denying his motion to suppress in a case where a jury ultimately found him guilty of illegal assembly or possession of chemicals for the manufacture of methamphetamine, a third-degree felony. For the reasons outlined below, we affirm.

{¶ 2} On May 19, 2016, the Brown County Grand Jury returned an indictment

charging Clifton with two counts of illegal assembly or possession of chemicals for the manufacture of methamphetamine in violation of R.C. 2925.041(A), one a second-degree felony and the other a third-degree felony, as well as one count of endangering children in violation of 2919.22(B)(6), also a third-degree felony. The charges arose after Clifton was implicated in activities associated with the manufacture of methamphetamine on property located on U.S. Route 62 in Brown County, Ohio. Clifton was subsequently arraigned and counsel was appointed to represent Clifton before the trial court. Clifton was then transported to the Brown County Jail where he remained at all times relevant.

{¶ 3} On September 20, 2016, Clifton filed a motion to suppress the alleged inculpatory statements he made to Deputy Brandon Johnson on September 5, 2016 while still incarcerated at the Brown County Jail. In these statements, Clifton detailed his involvement in the manufacture of methamphetamine at the U.S. Route 62 property, boasting and bragging about his acumen in the production of methamphetamine. It is undisputed that Deputy Johnson was working as a corrections officer at the Brown County Jail when the statements were made. In support of his motion, Clifton alleged violations of his Fifth and Sixth Amendment rights to the United States Constitution as expressed by the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966).

{¶ 4} After holding a hearing on the matter, during which the trial court heard testimony from both Deputy Johnson and Clifton, the trial court denied Clifton's motion to suppress. In so holding, the trial court found Deputy Johnson's testimony credible, thereby finding Clifton's statements made to Deputy Johnson on September 5, 2016 while he was incarcerated at the Brown County Jail were voluntary and that "at no point in time was [Clifton] uncomfortable by the conversation or was [Clifton] being interrogated." The matter then proceeded to a jury trial, following which, as noted above, Clifton was found guilty of one count of illegal assembly or possession of chemicals for the manufacture of

methamphetamine, a third-degree felony.

{¶ 5} Clifton now appeals from the trial court's decision denying his motion to suppress, raising a single assignment of error for review.

{¶ 6} THE TRIAL COURT COMMITTED A PREJUDICIAL ERROR WHEN IT DENIED KENNETH CLIFTON'S MOTION TO SUPPRESS HIS SEPTEMBER 5, 2016 STATEMENTS.

{¶ 7} In his single assignment of error, Clifton argues the trial court erred by denying his motion to suppress. We disagree.

Standard of Review

{¶ 8} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Gray*, 12th Dist. Butler No. CA2011-09-176, 2012-Ohio-4769, ¶ 15, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to weigh the evidence in order to resolve factual questions and evaluate witness credibility. *State v. Vaughn*, 12th Dist. Fayette No. CA2014-05-012, 2015-Ohio-828, ¶ 8. In turn, this court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Dugan*, 12th Dist. Butler No. CA2012-04-081, 2013-Ohio-447, ¶ 10. "'Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.'" *State v. Runyon*, 12th Dist. Clermont No. CA2010-05-032, 2011-Ohio-263, ¶ 12, quoting *Burnside* at ¶ 8.

Sixth Amendment Right to Counsel

{¶ 9} Clifton argues the trial court erred by denying his motion to suppress the alleged inculpatory statements he made to Deputy Johnson on September 5, 2016 while he was incarcerated in the Brown County Jail based on a violation of his Sixth Amendment right

to counsel. We find no merit to Clifton's claim.

{¶ 10} "The Sixth Amendment right to counsel is triggered 'at or after the time that judicial proceedings have been initiated * * * whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.'" *Fellers v. United States*, 540 U.S. 519, 523, 124 S.Ct. 1019 (2004), quoting *Brewer v. Williams*, 430 U.S. 387, 398, 97 S.Ct. 1232 (1977). The United States Supreme Court has held that "an accused is denied 'the basic protections' of the Sixth Amendment 'when there [is] used against him at his trial evidence of his own incriminating words, which * * * agents * * * deliberately elicited from him after he had been indicted and in the absence of his counsel.'" *Fellers* at 523, quoting *Massiah v. United States*, 377 U.S. 201, 206, 84 S.Ct. 1199 (1964). The United States Supreme Court has also held that "if police initiate interrogation after a defendant's assertion, at an arraignment or similar proceeding, of his right to counsel, any waiver of the defendant's right to counsel for that police-initiated interrogation is invalid." *Michigan v. Jackson*, 475 U.S. 625, 636, 106 S.Ct. 1404 (1986).

{¶ 11} "[T]he Sixth Amendment right to counsel may be waived by a defendant, so long as relinquishment of the right is voluntary, knowing, and intelligent." *Montejo v. Louisiana*, 556 U.S. 778, 786, 129 S.Ct. 2079, 2085 (2009). A defendant may waive his Sixth Amendment right to counsel regardless of whether he is already represented by counsel, and the decision to waive "need not itself be counseled." *Id*. In turn, "[n]othing in the Sixth Amendment prevents a suspect charged with a crime and represented by counsel from voluntarily choosing, on his own, to speak with police in the absence of an attorney." *Michigan v. Harvey*, 494 U.S. 344, 352, 110 S.Ct. 1176 (1990). Therefore, "[a]lthough a defendant may sometimes later regret his decision to speak with police, the Sixth Amendment does not disable a criminal defendant from exercising his free will." *Id*. at 353.

Analysis

{¶ 12} After a thorough review of the record, and just as the trial court found, it is clear that Clifton initiated the conversation with Deputy Johnson, thus indicating Clifton's statements to Deputy Johnson were voluntary and admissible against him at trial. Clifton, however, argues his purported statements must be suppressed because he did not explicitly waive his Sixth Amendment right to counsel knowingly and intelligently before speaking to Deputy Johnson on the day in question. In support of this claim, Clifton argues that once he began speaking to Deputy Johnson, the deputy was obligated to obtain an express waiver of his Sixth Amendment right to counsel by advising him "I cannot talk about an open case unless you waive your right to a lawyer" as was done by law enforcement officers in substantially similar cases reviewed by this court. *See State v. Wyatt*, 12th Dist. Preble No. CA2013-06-005, 2014-Ohio-3009 and *State v. Geldrich*, 12th Dist. Butler No. CA2006-10-267, 2008-Ohio-2622.

{¶ 13} Clifton's argument presupposes that he was subject to an interrogation by Deputy Johnson while he was in police custody. Certainly, there is no dispute that Clifton was in custody at the time he spoke to Deputy Johnson on September 5, 2016 as he was then incarcerated at the Brown County Jail. However, just as the trial court found, there is no evidence in the record that Clifton was subject to an *interrogation* by Deputy Johnson, a requirement that would necessitate an additional finding that Clifton knowingly and intelligently waived his Sixth Amendment right to counsel. Rather, as previously noted, the record indicates Clifton initiated a wholly one-sided conversation with Deputy Johnson on his own volition without any prompting from Deputy Johnson or any other law enforcement officer then present at the Brown County Jail. Under such circumstances, nothing prevents Deputy Johnson from merely listening to Clifton's volunteered statements and then using those same statements against him at trial. *See Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880

(1981).

{¶ 14} Regardless, even if we were to find Clifton was in fact interrogated by Deputy Johnson, which we do not, it is still clear that Clifton knowingly and intelligently waived his Sixth Amendment right to counsel by initiating the conversation with Deputy Johnson. During this conversation Clifton detailed his involvement in the manufacture of methamphetamine at the U.S. Route 62 property, boasting and bragging about his acumen in the production of methamphetamine. As the record indicates, Clifton is a seasoned, life-long criminal with an extensive criminal history, thereby leaving little doubt that Clifton fully understood the potential consequences if he spoke to Deputy Johnson about his involvement in the manufacture of methamphetamine at the U.S. Route 62 property.

{¶ 15} A waiver of a defendant's Sixth Amendment right need not be explicit in order to be established. *North Carolina v. Butler*, 441 U.S. 369, 99 S.Ct. 1755 (1979). Instead, although mere silence is insufficient to constitute a waiver, a defendant's valid Sixth Amendment waiver may be inferred from the actions and the words of the defendant. *Id*. Such is clearly the case here. Therefore, after a thorough review of the record, and based on the facts and circumstances of this case, we find no error in the trial court's decision denying Clifton's motion to suppress the inculpatory statements he made to Deputy Johnson on September 5, 2016 while he was incarcerated in the Brown County Jail. Accordingly, finding no error in the trial court's decision to deny Clifton's motion to suppress, Clifton's single assignment of error lacks merit and is overruled.

{¶ 16} Judgment affirmed.

HENDRICKSON, P.J., and RINGLAND, J., concur.