

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DAVID M. STILLION

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 2008CA00230

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Stark County, Ohio
Case No. 2008-CR-0272C

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 20, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

EUGENE O'BYRNE
101 Central Plaza, South
500 Chase Tower
Canton, Ohio 44702

By: RENEE M. WATSON
Assistant Prosecuting Attorney
110 Central Plaza, South – Suite 510
Canton, Ohio 44702-1413

Hoffman, J.

{¶1} Defendant-appellant David M. Stillion appeals the August 22, 2008 Judgment Entry of the Stark County Court of Common Pleas denying his motion to suppress evidence. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On February 4, 2008, the City of Alliance Police Department utilized a confidential informant to make a controlled buy of one, eighty milligram Oxycontin tablet from Appellant. The police then obtained a search warrant to search Appellant's residence.

{¶3} On February 8, 2008, the officers conducted surveillance, and observed Appellant visiting Easterday Pharmacy to fill a prescription for Oxycontin tablets. At 9:30 a.m., the officers executed a stop of Appellant's vehicle, and took Appellant into custody, affording him his Miranda rights. The Miranda warning was not captured on audio or video recording.

{¶4} A search of Appellant following his arrest produced twelve Oxycontin pills in his right front jacket pocket, and ten pills in his right jean watch pocket.

{¶5} Appellant was transported to the Alliance City Jail. Captain Scott Griffith testified he immediately advised Appellant of the Miranda warnings.

{¶6} Approximately an hour later, Appellant complained of chest pains, and Lieutenant James Hilles discussed with him the issue of going to the hospital. Lieutenant Hilles did not provide Appellant with Miranda warnings, but confirmed with Appellant he had been previously advised of his rights. Appellant then subsequently confessed to Lieutenant Hilles.

{¶17} The Stark County Grand Jury indicted Appellant on two counts of aggravated trafficking in drugs, and one count of deception to obtain a dangerous drug.

{¶18} Appellant filed a motion to suppress the statements he made to Lieutenant Hilles while incarcerated. The trial court overruled the motion, and Appellant subsequently entered a plea of no contest to the charges and was sentenced accordingly.

{¶19} Appellant now appeals, assigning as error:

{¶10} “I. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT’S MOTION TO SUPPRESS ALL STATEMENTS AND EVIDENCE OBTAINED FROM THE UNCONSTITUTIONAL AND ILLEGAL INTERROGATION OF APPELLANT.”

{¶11} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19, 437 N.E.2d 583; *State v. Klein* (1991), 73 Ohio App.3d 485; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 621 N.E.2d 726. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without

deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 93, 641 N.E.2d 1172; *State v. Claytor* (1993), 85 Ohio App.3d 623, 620 N.E.2d 906; *Guysinger*. As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 517 U.S. 690, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶12} Appellant maintains the Miranda warnings previously administered prior to his statements to Lieutenant Hilles were stale; therefore, the trial court erred in not suppressing his confessional statements.

{¶13} The Supreme Court set forth the factors to be considered in *State v. Roberts* (1985), 32 Ohio St.3d 225:

{¶14} "The standard by which we measure this argument is set forth in *State v. Burge* (1985), 195 Conn. 232, 487 A.2d 532, wherein the Supreme Court of Connecticut stated:

{¶15} " 'Early *Miranda* warnings may be constitutionally sufficient if they precede interrogation that directly produces information so immediately incriminating that the defendant's status within a relatively brief period of time becomes that of a suspect in custody. The test is whether the warnings given are, in light of the particular facts and the totality of the circumstances, sufficiently proximate in time and place to custodial status to serve as protection 'from the coercive pressures that can be brought to bear upon a suspect in the context of custodial interrogation.' *Berkemer v. McCarty*, supra [104 S.Ct. at], 3145; see *Jarrell v. Balkcom*, 735 F.2d 1242, 1253-54, reh. denied, 740 F.2d 979 (11th Cir.1984); *State v. Mitchell*, 104 Idaho 493, 496-97, 660 P.2d 1336, cert.

denied, 461 U.S. 934, 103 S.Ct. 2101, 77 L.Ed.2d 308 (1983); *Edwards v. State*, 274 Ind. 387, 391, 412 N.E.2d 223 (1980); *People v. O'Donnell*, 127 Mich.App. 749, 339 N.W.2d 540 (1983). We recognize that precustodial warnings may fail to provide the necessary protection if the overall situation becomes significantly more coercive as a result of a change to custodial status or if, because of a significant lapse in the process of interrogation, the warnings have become so stale as to dilute their effectiveness. Cf. *United States v. Paulton*, 540 F.2d 886, 890-91 ([8th Cir.] (1976); *Grimes v. State*, 454 N.E.2d 388 (Ind.1983); *State v. Gilbert*, 98 N.M. 530, 650 P.2d 814 (1982) * * *; *State v. McZorn*, 288 N.C. 417, 433-34, 219 S.E.2d 201 (1975), death sentence vacated, 428 U.S. 904, 96 S.Ct. 3210, 49 L.Ed.2d 1210 (1976); Ringel, *Searches, Seizures, Arrests and Confessions* (1984) § 26.3(c).' *Id.* at 248-249, 487 A.2d at 543.

{¶16} “The totality of the circumstances test is explained by the Supreme Court of North Carolina in *State v. McZorn* (1975), 288 N.C. 417, 219 S.E.2d 201. The following criteria are set forth:

{¶17} “ ‘ * * * (1) [T]he length of time between the giving of the first warnings and subsequent interrogation, * * * (2) whether the warnings and the subsequent interrogation were given in the same or different places, * * * (3) whether the warnings were given and the subsequent interrogation conducted by the same or different officers, * * * (4) the extent to which the subsequent statement differed from any previous statements; * * * [and] (5) the apparent intellectual and emotional state of the suspect. * * *’ (Citations omitted.) *Id.* at 434, 219 S.E.2d at 212. See, also, *State v. Myers* (Me.1975), 345 A.2d 500; *State v. Artis* (1981), 304 N.C. 378, 283 S.E.2d 522.

{¶18} “Applying these standards to the case *sub judice*, we note that Roberts was given warnings at the time of arrest (approximately two hours prior to talking to Fuqua), and that the record does not establish whether those warnings were given in the context of interrogation. Second, the prior warnings were given at Roberts' girlfriend's home while the subsequent interrogation took place at the county jail. Third, the warnings were given by police officers, whereas the interrogation was conducted by a probation officer (having a prior relationship with the defendant Roberts). Thus, the warnings given at the time of arrest fail on the criteria necessary to satisfy the totality-of-circumstances test.”

{¶19} Lieutenant Hilles testified at the suppression hearing:

{¶20} “Q. At the scene did Mr. Stillion, when he was taken under arrest, was he advised of his Miranda rights?”

{¶21} “A. By Officer Robert Reagan.

{¶22} “Q. And at that time where did Mr. Stillion go?”

{¶23} “A. He was transported to the Alliance City Jail.

{¶24} “Q. Where is the jail located?”

{¶25} “A. At 470 East Market Street, Alliance, Ohio, Stark County.

{¶26} “Q. Is that where the police department is also located?”

{¶27} “A. Yes, sir.

{¶28} “Q. And did there come a time when officers from your department tried to speak with Mr. Stillion regarding his involvement in distributing OxyContin?”

{¶29} “A. Yes, sir. We returned to the police station and Captain Scott Griffith, who had kind of a long standing rapport with Mr. Stillion, went downstairs into the jail

area to interview Mr. Stillion about his prescription drug sales. I think he was kind of our best interviewer, usually has a lot of success, and he anticipated having success that day with Mr. Stillion because he knew him from so far back.

{¶30} “Q. About what time was this, do you remember?”

{¶31} “A. Probably around noon.”

{¶32} “Q. What happened? Did you see Captain Griffith after he had returned from going down to the jail?”

{¶33} “A. Yes. He went downstairs. I was in my office working on the paper work. Captain Griffith came back upstairs after a very short time, maybe 10 minutes, and kind of laughed and said that he joked about losing his touch. He stated that he went downstairs, attempted to talk to Mr. Stillion about the case, and Mr. Stillion adamantly denied having done anything wrong, having sold any pills, and Captain Griffith said that he was unable to get any information from Mr. Stillion at that time.”

{¶34} “Q. Did there come a time when you were called down to the jail?”

{¶35} “A. Yes. The - -

{¶36} “Q. How soon after your conversation with Captain Griffith was that?”

{¶37} “A. Several minutes. It was almost right after.”

{¶38} “Q. And why were you called down?”

{¶39} “A. One of the jail’s booking officers, I believe it was Officer Reagan, called me on my desk phone and advised that Mr. Stillion wanted to go to the hospital, that he was having chest pain and that he was pacing around in his cell.”

{¶40} “I had paper work to take downstairs for the booking anyways. I went downstairs, ended up speaking to Mr. Stillion. I went over and talked to him briefly

about going to the hospital, and at that time I told him that we would have an ambulance come to the police station for him to check him out; however, that the bill was going to be forward [sic] to him, and is that for sure what he wanted to have done, and that he would be sure that this wasn't some kind of, you know ploy just to keep from going to county, and then asked me, Will you just come in here and talk to me, which I did.

{¶41} “Q. When he asked you to go in and talk to him, did you advise him of his rights again or how did you handle his rights?

{¶42} “A. I sat down with him. There is like a concrete bench in there. I sat down with him. He asked me what was going on and what was going to happen. And before we even got in the conversation, I just told him, I didn't go through and advise him of all his rights and give him the whole speech again. I just confirmed with him that, you know, you have been advised of your constitutional rights and he nodded yes, because I had already assumed that Officer Reagan had Mirandized him at the scene when he was arrested. And then I knew that the Captain had just spoken to him 10 minutes ago to conduct an interview, and I knew that obviously Captain Griffith would Mirandize him.

{¶43} “Q. When you told him that, did he acknowledge that he had been read his rights?

{¶44} “A. Yes, sir.

{¶45} “Q. And what did he tell you at that point?

{¶46} “A. I advised him. Then I started - - I went into why he was there. I advised him that we had bought prescription pills, his prescription OxyContin from him using a confidential informant, and he emphatically denied that that was possible.

{¶47} “And I told him, I said, Well, I said, You’re not off to a very good start because I can assure you that we did. I can assure you that it’s on video, and if you don’t believe me, you’re going to feel kind of silly when you watch the video of you selling the pills to our confidential informant.

{¶48} “And he kind of sat there and as we went on to talk about it, finally, he did admit that he had sold some of his pills. However, he didn’t see why it was wrong, because the only reason why he was selling the pills was so that he could purchase his prescription, which he needed due to this work injury in which he had been, I think the words that he used were cut in half by one of, a piece of machinery fell on him or ran over him.”

{¶49} Tr. at 8-13.

{¶50} Captain Griffith testified at the suppression hearing:

{¶51} “Q. When you speak with somebody - - when you spoke with Mr. Stillion, what was your first order of business?

{¶52} “A. To advise him of his Miranda warning rights.

{¶53} “Q. And do you usually record your conversations with people?

{¶54} “A. I have almost exclusively probably for the last year or so.

{¶55} “Q. And in this case did you record it?

{¶56} “A. Yes, I did.

{¶57} “Q. Now, Mr. Stillion indicated that he understood his rights?

{¶58} “A. Yes. In fact, I asked him did he understand those rights and would he waive those rights in speaking with me.

{¶59} “Q. And did he agree to waive the rights?

{¶60} "A. Yes.

{¶61} "Q. And when you spoke to him what was the nature of your conversation?

{¶62} "A. I asked him about my belief that he was selling his 80 milligrams OxyContin prescriptions.

{¶63} "Q. And what did he tell you?

{¶64} "A. Stated that he was not selling them.

{¶65} "Q. And how did you respond?

{¶66} "A. I asked him - - Michael is what most people call him, it's what I call him, I have dealt with Mr. Stillion for years. I asked him Michael, how do you pay for your prescriptions that's \$850 a month. He stated that he borrows the money from coworkers. And I said you borrow \$850 a month from your coworkers every month and he said yes.

{¶67} "Q. Did he tell you anything else at that time or what was your response to that?

{¶68} "A. I told him I didn't believe him. I said, you know, I have known him for years. There is nothing to do. You are caught. You might as well own up to it. Do yourself a favor, you know, let's get your side of it.

{¶69} "Q. Did he tell you anything else?

{¶70} "A. No.

{¶71} "Q. Now, did you leave it with him like that?

{¶72} “A. Yes, I did. I told him that he had his opportunity to talk to me and I didn’t believe what he had said and if he wasn’t going to be honest he was wasting my time and I left.

{¶73} “Q. Now, at some point after that did you speak with Lt. Hilles about that?

{¶74} “A. Yes.

{¶75} “Q. And were you aware of whether Lt. Hilles had a conversation with Mr. Stillion after you had your conversation with him?

{¶76} “A. Yes. Lt. Hilles did have a conversation with Mr. Stillion after mine.

{¶77} “Q. And how soon after your conversation did Lt. Hilles go to meet with Mr. Stillion?

{¶78} “A. I would say probably an hour or so.

{¶79} “Q. Thank you. Now, you mentioned that you taped the conversation. Do you have a copy of that tape?

{¶80} “A. No, sir. I did not place the tape into evidence and have since recorded over it due to the fact that I didn’t believe it had any evidentiary value.”

{¶81} Tr. at 16-19.

{¶82} Because the trier of fact is in a better position to observe the witnesses’ demeanor and weigh their credibility, the weight of the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, syllabus 1. Based upon the testimonial evidence set forth above, there is sufficient evidence supporting the trial court’s determination Appellant’s Miranda warning was not stale, and Appellant waived his constitutional rights in his statements made to Lieutenant Hilles. Captain Griffith testified he conveyed the Miranda warnings to

Appellant when he arrived at the jail. While in the same setting and after a short lapse of time, Appellant himself asked Lieutenant Hilles to speak with him, and acknowledged his constitutional rights had been afforded to him. Accordingly, the trial court did not err in overruling the motion to suppress Appellant's statements.

{¶83} The sole assignment of error is overruled, and the August 22, 2008 Judgment Entry of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ John W. Wise
HON. JOHN W. WISE

