

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 26, 2015

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2013AP1901-CR

Cir. Ct. No. 2012CF2053

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDUARDO IVANEZ,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Sherman, JJ.

¶1 SHERMAN, J. Eduardo Ivanez appeals judgments of conviction for first-degree intentional homicide and hiding a corpse. Ivanez contends that he was unlawfully arrested and that the circuit court erred in denying his motion to

suppress statements made by him to law enforcement officers after his arrest. For the reasons discussed below, we affirm.

BACKGROUND

¶2 On April 25, 2012, Ivanez was charged with first-degree intentional homicide and hiding a corpse, as a party to a crime. The charges stemmed from the death of fifteen-year-old Stephanie Romero, whose body was found inside an unoccupied house in Milwaukee.

¶3 Prior to trial, Ivanez moved the circuit court to suppress statements he made to police while in police custody following his detention and subsequent arrest on April 20, 2012. The parties appear to agree on appeal that the statements at issue were made by Ivanez on April 21 in response to police questions.¹ During the April 21 interview, Ivanez told detectives that he and Romero went to the unoccupied house to drink, that Romero wanted to have sex with him, that after he and Romero had sex a man who Romero seemed to know entered the house and robbed Ivanez at gunpoint. Ivanez further stated that after the robbery, Romero attempted to stab him with a knife, that Ivanez killed Romero in self-defense, and that after he killed Romero, the man hit him with the gun and left. During the interview, Ivanez changed his story regarding the robbery, and told the detectives to “[f]orget about the part I tell you about that guy,” but that he was not lying about Romero trying to stab him, and that he was not sure if Romero was dead after he first stabbed her, so he stabbed her again.

¹ Ivanez was interviewed on April 20, 2012, following his arrest. However, statements made during that interview are not at issue here. Consequently, our references to Ivanez’s out-of-court statements are to his statements made on April 21, 2012.

¶4 In his suppression motion, Ivanez argued that on April 20, he was arrested without a warrant and without probable cause, either when he was detained by police officers in the back of a squad car and later transported to a police station where he was not free to leave or when he was formally placed under arrest later that day. Ivanez further argued that because his arrest was unlawful, any evidence obtained after his arrest should be suppressed as fruit of the poisonous tree.

¶5 At the hearing on Ivanez's motion to suppress, Milwaukee Police Detective Carlos Negron testified that on April 20, 2012, he was informed by J.C., a student at a Milwaukee school, that on April 18, J.C. had observed a dead body later identified as Stephanie Romero in the attic of an unoccupied house located at 2512 West Rogers Street in Milwaukee. Detective Negron testified that J.C. had informed him that J.C. had been asked by two other students if he wanted to see the body and that J.C. was later informed that an individual nicknamed "Smokey" was responsible for Romero's death. Detective Negron testified that J.C. informed him that "Smokey" lived approximately two houses away from the unoccupied home where Romero's body was located. Detective Negron further testified that he was informed by the school that "Smokey" was on suspension from a Milwaukee high school and he had information that "Smokey" was Hispanic.

¶6 Detective Negron testified that he and other officers searched the unoccupied home and discovered Romero's body. Detective Negron testified that the fire department was contacted after Romero's body was discovered and that while the detective was waiting outside for the fire department to arrive, he observed a Hispanic male, later identified as Ivanez, standing on the porch of a house located two houses away from that where Romero's body was found. Detective Negron testified that he made contact with Ivanez, who matched the

information he had on “Smokey,” and that Ivanez was placed in the back of Milwaukee City Police Officer Bradley Blum’s squad car. Detective Negrón testified that shortly after Ivanez was placed in the back of the squad car, Ivanez verified to him that Ivanez was also known as “Smokey.”

¶7 Officer Blum testified at the suppression hearing that upon Detective Negrón’s request, he placed Ivanez in the back of his squad car. Officer Blum testified that after Ivanez was placed in the squad car, Ivanez indicated that he needed to use the restroom. Officer Blum testified that Ivanez was then placed in handcuffs and transported to a nearby police station to use the restroom there. Officer Blum testified that he pulled his squad car into the sally port area of the police station and that Ivanez was searched prior to using the restroom. Officer Blum testified that after Ivanez used the restroom, Ivanez was put back in the squad car. Officer Blum testified that Ivanez was subsequently placed under arrest and transported to a different facility.

¶8 The circuit court denied Ivanez’s motion to suppress. The court determined that officers had reasonable suspicion to initially detain Ivanez on April 20, 2012, and that when Ivanez was subsequently told that he was under arrest, the officers had probable cause to do so.

¶9 Following the denial of Ivanez’s motion to suppress, the case was tried before a jury. During trial, a recording of Ivanez’s April 21, 2012 interview was played for the jury, and the officers who interviewed Ivanez on that date testified regarding the interview. Ivanez also took the stand and his testimony included his account about how and why he killed Romero. Ivanez testified that Romero had attacked him, that he had felt his life was in danger, and that he had stabbed her. Ivanez testified that he told the police on April 21 that Romero’s

death resulted from an attempted robbery of him because he “didn’t think [anybody] would believe [him] that [he] had gotten into a fight with a female.” The jury found Ivanez guilty of first-degree intentional homicide and hiding a corpse, as a party to a crime, and separate judgments of conviction were entered against Ivanez for each crime.

¶10 Ivanez appeals his conviction, contending the circuit court erred in denying his motion to suppress statements made by him to officers and contending that admission of his statements was prejudicial because the admission impelled him to testify at trial that he killed Romero in self-defense, a defense that was unlikely to succeed. Additional facts will be discussed below as necessary.

DISCUSSION

¶11 Ivanez contends the circuit court erred in denying his motion to suppress statements made by him to law enforcement officers. Ivanez argues that his statements were inadmissible under the fruit of the poisonous tree doctrine² because they were tainted by his illegal arrest. Ivanez argues that he should be considered to have been in police custody when he was detained in the back of Officer Blum’s squad car, but that regardless of whether he was in custody at that time, or later when he was formally placed under arrest at the police station, there was insufficient probable cause for his arrest at either time. Ivanez argues that his

² The fruit of the poisonous tree doctrine seeks to prevent parties from benefiting from unlawfully obtained evidence. Under the doctrine, evidence that is obtained by the exploitation of the illegality must, in general, be suppressed. See *State v. Roberson*, 2006 WI 80, ¶32, 292 Wis. 2d 280, 717 N.W.2d 111.

statements were not sufficiently attenuated from his unlawful arrest³ and, therefore, should have been suppressed. Ivanez further contends that his testimony at trial was impelled⁴ by the erroneous admission at trial of his out-of-court statements, and that the errors from the admission of his statements and his impelled testimony was not harmless error.

¶12 The State argues that Ivanez’s statements were properly admitted at trial, that even if those statements were improperly admitted, Ivanez’s testimony at trial was not impelled by their admission, and that even if the statements were inadmissible and his testimony was impelled, those errors were harmless.

¶13 The circuit court concluded that Ivanez’s statements were admissible and, therefore, the court did not conduct an analysis to determine whether the admission of the April 21 statements at trial impelled Ivanez’s testimony.⁵ We remanded this case to the circuit court, after careful consideration of the parties’ briefs, to conduct a *Harrison/Anson* analysis, which is a “paper review during which the circuit court makes findings of historical fact based on the record” and “determine[s], as a matter of law, whether the State proved beyond a reasonable

³ Under the attenuation doctrine, statements tainted by illegal police activity must be suppressed unless the statements are sufficiently attenuated from (that is, they lack a sufficiently close relationship to) the illegal activity. *State v. Farias-Mendoza*, 2006 WI App 134, ¶¶14-15, 294 Wis. 2d 726, 720 N.W.2d 489.

⁴ In *Harrison v. United States*, 392 U.S. 219, 224-25 (1968), the United States Supreme Court concluded that when statements made by a defendant that are later determined to be inadmissible are used at trial and the defendant testifies at trial, a determination must be made as to whether the defendant’s testimony was impelled by the admission of the inadmissible statements. *State v. Lemoine*, 2013 WI 5, ¶36, 345 Wis. 2d 171, 827 N.W.2d 589.

⁵ In *State v. Anson*, 2005 WI 96, ¶¶13-14, 282 Wis. 2d 629, 698 N.W.2d 776, our supreme court explained the type of inquiry that must be conducted under *Harrison* to determine whether a defendant’s testimony was impelled by the erroneous admission of a defendant’s confession.

doubt that its prior constitutional violation did not impel the defendant to testify.” *State v. Anson*, 2005 WI 96, ¶¶13-14, 282 Wis. 2d 629, 698 N.W.2d 776. We did so in the interests of judicial efficiency based on our familiarity with the case to that point, because we believed that there might be the potential for this court to resolve this appeal based solely on the *Harrison/Anson* analysis, which is to be undertaken in the first instance by the circuit court.

¶14 On remand, the circuit court concluded: (1) the State proved, beyond reasonable doubt, that Ivanez’s testimony at trial was not impelled by admission of his out-of-court statements; (2) the State proved, beyond reasonable doubt that irrespective of the admission of Ivanez’s statements, Ivanez would have testified the same way at trial; and (3) any error in the admission of Ivanez’s statements at trial was harmless in light of the “strength and totality” of the evidence presented by the State at trial. The circuit court’s harmless error analysis assumed that Ivanez’s trial testimony was *not* impelled by the admission of his out-of-court statements and, therefore, the circuit court’s analysis focused solely on whether the admission of the statements had an effect on the outcome of the trial. In the paragraphs that follow, we will assume, without deciding, that Ivanez’s trial testimony was impelled by the erroneous admission of Ivanez’s out-of-court statements. That is, we will consider the harmful effect of both the statements and Ivanez’s trial testimony in determining whether the result of the trial would have been the same if the jury had not been exposed to Ivanez’s statements and Ivanez had not testified.

¶15 Assuming, without deciding, that Ivanez is correct that his statements should have been suppressed and that his testimony at trial was impelled by the erroneous admission of those statements, we conclude the erroneous admission of the April 21 statements and Ivanez’s impelled testimony at

trial would have been harmless given the totality of the State's evidence at trial. An error is harmless if there is no reasonable possibility that the error contributed to the outcome of the action. *See Schwigel v. Kohlmann*, 2005 WI App 44, ¶11, 280 Wis. 2d 193, 694 N.W.2d 467. We begin our harmless error review of the evidence by summarizing the evidence most damaging to Ivanez, apart from his out-of-court statements and his trial testimony, in the paragraphs that follow.

¶16 Augustin Santiago testified at trial that he was familiar with Ivanez who he had met once before, and that he, Santiago, was present at the unoccupied house on West Rogers Street where Romero was killed. Santiago testified that he, along with two other individuals, knocked on the door to the house and after they identified themselves, Ivanez stated he had to put on his pants and then let them into the house. Santiago said he saw Romero was lying face up on the ground and that Romero appeared to be dead. Santiago testified that Eduardo Garcia checked to see if Romero was breathing and stated that she still was. Santiago testified that Ivanez then walked over to Romero and stomped on her head with his foot, and then straddled Romero's body and strangled her by placing his thumbs around her neck and squeezing for at least one minute. Santiago testified that after Ivanez strangled Romero, Ivanez asked for help moving her body. Santiago testified that he helped Ivanez move Romero's body to a bathroom on the first floor of the house, where Ivanez stabbed Romero in the neck several times. On cross-examination, Santiago testified that his testimony would provide no benefit to him. Santiago's testimony was not significantly challenged and Santiago did not have any apparent motive to lie.

¶17 Jessica Hernandez testified that at the time of Romero's death, she was Ivanez's girlfriend, and still was, and that Ivanez's nickname was "Smokey." Hernandez testified that on the night of Romero's death, Ivanez appeared to be

upset and that he told her he had stabbed a woman in order to protect a child. Hernandez testified that the day after Romero's death, Ivanez told her that he had learned that there was a boy in trouble inside the house where Romero was killed, that he went inside the house where he saw a woman about to stab a boy, that he took the knife away from the woman, that the woman pulled a gun on him, that the woman beat him in the face with the gun, and that he then stabbed the woman. Hernandez testified that she did not observe any injuries to Ivanez's face or body and that Ivanez had not complained of any injuries. Hernandez did not have any apparent motive to lie and was not impeached on cross-examination.

¶18 Dr. Wieslawa Tlomak, a medical examiner, testified that Romero sustained several injuries, including bruises, abrasions and blunt force injuries to the face, stab wounds to the neck, face and eye, and evidence of manual strangulation to the neck. Dr. Tlomak testified that Romero's cause of death was manual strangulation, which requires actual, manual choking with significant pressure on the neck.

¶19 In addition, DNA evidence linked Ivanez to the crime. Ronald Witucki, a DNA expert employed by the State, testified that he had examined a DNA sample taken from the skin of Romero's right breast, and that he determined to a reasonable degree of scientific certainty that the DNA sample taken from Romero's body belonged to Ivanez.

¶20 The evidence of Ivanez's guilt, apart from Ivanez's statements and his trial testimony, which was the only evidence supporting his claim of self-defense and which benefitted him more than the State, was overwhelming. Given the strength of the evidence that Ivanez had stabbed and strangled Romero, and the lack of evidence, other than Ivanez's statements and testimony, as to why Romero

might have attacked Ivanez and caused him to kill Romero in self-defense, we conclude that a jury would have found Ivanez guilty absent any error from the admission of Ivanez's statements and his trial testimony.

¶21 Accordingly, we conclude that even if the April 21 statements had been excluded and even if Ivanez had not testified at trial, the jury would have convicted Ivanez of the charged counts. It follows that the circuit court's failure to grant Ivanez's motion to suppress constituted harmless error.

CONCLUSION

¶22 For the reasons discussed above, we affirm.

By the Court.—Judgments affirmed.

Not recommended for publication in the official reports.

