COURT OF APPEALS
DECISION
DATED AND FILED

March 1, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2883-CR **Cir. Ct. No. 2009CF2927**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOEVONE MARTELL JORDAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brash, JJ.

¶1 PER CURIAM. Joevone Martell Jordan appeals the judgment entered after a jury found him guilty of first-degree intentional homicide and

attempted armed robbery with use of force. *See* WIS. STAT. §§ 940.01(1)(a), 943.32(2), & 939.32 (2009-10).[1] Jordan argues the circuit court erred when it denied his motion to exclude evidence at trial related to a fake gun he had in his waistband at the time of his arrest and a jailhouse telephone conversation he had with his mother. We affirm.

I. BACKGROUND

¶2 Jordan was charged with first-degree intentional homicide and attempted armed robbery with use of force for shooting and killing the owner of the candy store he tried to rob. In addition to making formal statements to the police, Jordan also talked about his involvement in the crimes with a friend and family members.

¶3 After news of the shooting aired on television, Jordan's mother asked one of his cousins to speak to Jordan about his involvement. During that conversation, Jordan admitted that he shot the candy store owner. Jordan's cousin told his wife and the police about this conversation.

¶4 In addition, just before his arrest, Jordan was at the home of Sherita Carter, and he told her about the shooting. He told Carter that he still had a gun and that if the police tried to arrest him, "he wasn't going to jail. He was going to have a shootout with them." Carter called the police. When they arrived, she told them that two people were inside her home and one of them was armed. When

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

they went in, the officers found Jordan hiding inside the apartment with a fake Glock gun tucked in his waistband.

¶5 During their investigation, the police went to Jordan's mother's apartment. In Jordan's bedroom, they recovered a shotgun and a camouflage jacket that matched the description of the one worn by the shooter. The two cartridges in the gun matched the empty casings found at the scene of the murder. Jordan's fingerprint was on one of the cartridges inside the shotgun and his DNA was on the shotgun itself.

¶6 While Jordan was in jail awaiting his trial, he made several telephone calls. Some of the calls were recorded and certain portions of the conversations were transcribed. In Call Number 6, Jordan talked about the crime with his mother:

> [Mother:] did you even tell them where the gun came from
>
> [Jordan:] uh hum
>
> [Mother:] why
>
> [Jordan:] I told them it was stolen but no I didn't tell them who it came from
>
> [Mother:] why
>
> [Jordan:] there wasn't no need to
>
> [Mother:] ok, and they ask you questions about what
>
> [Jordan:] about where it happened, I mean what happened and all that stuff, then they got me like, then they got my voice like, they ain't got me on camera, like they was saying they did, they got my voice on the surveillance, of me, what was going on in the store but they didn't know who it was.
>
> [Mother:] ok, and what was you saying

> [Jordan:] that's what's in the statement, that's what's all the stuff that I was saying it was all in the statement. _____ police
>
> [Mother:] and what was it
>
> [Jordan:] it said that the guy in the store supposedly said put the money in the bag, the guy got up saying, he, he wasn't going to[,] he didn't have to and then the gun clicked, they said it like the trigger was pulled but the gun didn't go off, the gun was cocked again and it was shot.
>
> [Mother:] ok, so still I don't know what that means
>
> [Jordan:] that means that it was intentional like they trying to say
>
> [Mother:] that's what they saying

¶7 Months after Call Number 6 took place, Jordan moved to suppress the statements he made to police based on a ***Miranda*** violation.[2] The circuit court granted the motion.

¶8 Later, Jordan filed motions *in limine* to exclude Call Number 6 from the evidence to be presented at his trial because the conversation included a reference to Jordan's formal statements to the police, which were ordered suppressed. Additionally, Jordan sought to exclude evidence of the fake Glock that the police found in his waistband at the time of his arrest, arguing that it was irrelevant to the charges against him.[3]

¶9 The circuit court denied these motions, and the case was tried to a jury with evidence of the fake Glock and Call Number 6 being admitted. The jury

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[3] Jordan also sought to exclude other items recovered during a search of the residence where he was arrested. The circuit court's exclusion of those items is not at issue on appeal.

found Jordan guilty of the charges. On the homicide conviction, Jordan received a life sentence with eligibility for extended supervision after fifty years. On the attempted armed robbery conviction, he received a concurrent sentence of twenty years.

¶10 This court previously rejected a no-merit appeal that was filed on Jordan's behalf. New counsel was appointed and this appeal follows.

II. DISCUSSION

¶11 Jordan argues the circuit court erred when it denied his motions to exclude evidence related to the fake Glock and Call Number 6. The State argues both that the challenged evidence was properly admitted at trial and that even if it was improperly admitted, the errors were harmless given the overwhelming evidence of Jordan's guilt.

¶12 The decision to grant or deny a motion *in limine* is committed to the discretion of the court, and we affirm if the circuit court applied the correct law to the facts of record and reached a reasonable result. *See* ***Grube v. Daun***, 213 Wis. 2d 533, 542, 570 N.W.2d 851 (1997). Whether a circuit court applied the correct legal standard in exercising its discretion is a question of law, which we review *de novo*. *See* ***Garfoot v. Fireman's Fund Ins. Co.***, 228 Wis. 2d 707, 717, 599 N.W.2d 411 (Ct. App. 1999).

A. *The Fake Glock*

¶13 Jordan argues that the evidence relating to the fake Glock is irrelevant and has no probative value. While Jordan concedes that the fact of his hiding from police was admissible, he differentiates his possession of the fake

Glock. According to Jordan, the admission of this evidence served no purpose other than to confuse the jury.

¶14 The circuit court admitted this evidence on grounds that it showed consciousness of guilt. The circuit court explained that the fake gun's probative value in this regard was not outweighed by the danger of unfair prejudice, especially since there would be no risk that the jury would somehow confuse the fake pistol with the real shotgun that was used to kill the owner of the candy store.

¶15 Evidence of an accused's consciousness of guilt is admissible at trial. *See* ***Gauthier v. State***, 28 Wis. 2d 412, 420, 137 N.W.2d 101 (1965); *see also* ***Wangerin v. State***, 73 Wis. 2d 427, 437, 243 N.W.2d 448 (1976) ("It is well established in this state that … resistance to arrest has probative value to guilt."). WISCONSIN STAT. § 904.03 establishes our rule regarding exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. It states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." ***Id.***

¶16 We agree that evidence related to the fake Glock Jordan had in his waistband at the time of his arrest, when considered in conjunction with his hiding and his statements to Carter that "he wasn't going to jail" and "was going to have a shootout with [police]," speaks to a guilty state of mind. Jordan takes issue with "lump[ing]" together all of his conduct; however, he has not provided any legal authority to support the argument that his possession of the fake Glock should be considered in isolation. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("Arguments unsupported by references to legal authority will not

be considered."). Accordingly, we conclude the circuit court properly exercised its discretion when it allowed this evidence to be introduced at trial. *See* ***State v. Quiroz***, 2009 WI App 120, ¶20, 320 Wis. 2d 706, 772 N.W.2d 710 ("We will not find an erroneous exercise of discretion if there is a rational basis for a circuit court's decision.").

¶17 Even if we were to conclude that the circuit court erred in admitting the fake Glock at trial, the error was harmless given the overwhelming evidence of Jordan's guilt. *See* ***State v. Semrau***, 2000 WI App 54, ¶21, 233 Wis. 2d 508, 608 N.W.2d 376 ("Improperly admitted evidence constitutes harmless error unless an examination of the entire proceeding reveals that the admission of the evidence has affected the substantial rights of the party seeking the reversal." (citation and quotation marks omitted)). Namely, Jordan admitted his role in the shooting to others. There was trial testimony that Jordan told his cousin he shot the candy store owner because the owner would not cooperate during the robbery attempt. Jordan also told Carter about the shooting and said that he still had the gun.

¶18 Additionally, the police recovered the murder weapon from Jordan's bedroom and found Jordan's DNA on it. Jordan's fingerprint was also on one of the cartridges inside the shotgun. In light of the overwhelming evidence against him, any error in admitting evidence of the fake Glock was harmless. 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.

B. ***Call Number 6***

¶19 Jordan also argues that evidence related to Call Number 6 should have been excluded at trial because the discussion that took place was based on the suppressed statements he made to police, and as such, the conversation was the

improper fruit of a ***Miranda*** violation. He asserts that the holding in ***State v. Knapp***, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899, should be extended to the circumstances presented here. In ***Knapp***, our supreme court held that "[w]here physical evidence is obtained as the direct result of an intentional ***Miranda*** violation, … our constitution requires that the evidence must be suppressed." ***Knapp***, 285 Wis. 2d 86, ¶2.

¶20 As support for his argument that the ***Knapp*** rule should apply in this case, Jordan relies on ***Harrison v. United States***, 392 U.S. 219 (1968), ***State v. Middleton***, 135 Wis. 2d 297, 399 N.W.2d 917 (Ct. App. 1986), *overruled by* ***State v. Stevens***, 2012 WI 97, ¶¶90, 96, 343 Wis. 2d 157, 822 N.W.2d 79,[4] and ***State v. Anson***, 2005 WI 96, 282 Wis. 2d 629, 698 N.W.2d 776. This line of cases pertains to those situations where a defendant's testimony at trial was found inadmissible because it was provided to rebut an illegally obtained statement. Jordan emphasizes that he did not know at the time of Call Number 6 that his statements to police would later be suppressed. Consequently, he analogizes that his improperly obtained statements to police impelled the discussion in Call Number 6 just as the defendants' improperly admitted statements impelled them to testify at their trials.

¶21 We are not convinced by this analogy and decline the invitation to extend ***Knapp***'s holding. In contrast to the circumstances detailed in the cases on which Jordan relies, here, Call Number 6 was comprised of voluntary statements

[4] ***State v. Middleton***, 135 Wis. 2d 297, 399 N.W.2d 917 (Ct. App. 1986), was originally overruled in part by ***State v. Anson***, 2005 WI 96, 282 Wis. 2d 629, ¶¶13, 57, 698 N.W.2d 776, as it related to the circuit court conducting an evidentiary hearing for purposes of a ***Harrison*** analysis. It was later overruled in its entirety by ***State v. Stevens***, 2012 WI 97, ¶¶90, 96, 343 Wis. 2d 157, 822 N.W.2d 79.

by Jordan to his mother relaying what he had done and what he had told police. The circuit court properly concluded Call Number 6 was not the improper fruit of the ***Miranda*** violation and admitted it into evidence.

¶22 Moreover, here too, even if it was error to admit Call Number 6, we agree with the State's assessment that the call was just one small piece of the overwhelming evidence against Jordan. There is no reasonable possibility that the error contributed to the outcome of the action. *See* ***Schwigel***, 280 Wis. 2d 193, ¶11.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.