COURT OF APPEALS
DECISION
DATED AND FILED

February 17, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1313-CR **Cir. Ct. No. 2007CF5040**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTONIO PUGH,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 CURLEY, P.J. Antonio Pugh appeals the judgment, entered following a jury trial, convicting him of armed robbery with threat of force, as a habitual criminal, contrary to WIS. STAT. §§ 943.32(2) and 939.62 (2007-08).[1]

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

Pugh also appeals from the order denying his postconviction motion. He argues that the trial court erroneously exercised its discretion both when denying his motion to suppress his statements given during the booking process and at sentencing.[2] When Pugh admitted his real name was Antonio Pugh and volunteered that he was wanted for armed robbery, the booking process was ongoing and the routine booking exception applied so that ***Miranda*** warnings were not required.[3] In addition, the trial court properly exercised its discretion at sentencing. We affirm.

I. BACKGROUND.

¶2 Several employees of the Interstate Blood Bank, located in the City of Milwaukee, testified at Pugh's jury trial. According to Yvette Huddleston, on September 10, 2007, Pugh, who was then a regular blood donor, came to the blood bank and asked to use the restroom. She buzzed him into that portion of the building where the men's restroom was located. Shortly after Huddleston buzzed Pugh into the area that accessed the restroom, she observed a man in the general vicinity of the restroom wearing a black t-shirt and a black cap, with his back towards her, waving what she originally thought was a gun in the air.[4] Huddleston identified Pugh as the man she buzzed into the back of the office.

[2] Pugh has incorrectly identified the standard of review used when reviewing a motion to suppress statements. The correct standard of review can be found in ¶9 of this opinion.

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

[4] Huddleston originally told the police that she saw a small gun. At trial, she denied seeing a gun, but testified she did believe a robbery was taking place.

¶3 Laquanna Spicer also testified. At the time of the armed robbery, Spicer was employed as a phlebotomist at the blood bank. During her testimony, she described the layout of the blood bank with the aid of a diagram. She explained that she had just come to work on the morning of September 10, 2007, and had entered a locked area when she noticed that the door to the men's restroom was slightly ajar. She proceeded to a second locked door and knocked on it. After another employee opened it for her, Spicer saw Pugh come out of the restroom "fully masked with a gun in [his] hand." The man waved the gun in the air and told Spicer, "This is a holdup. I just came for the money." Despite the mask, she recognized the man as Pugh. Pugh then ran through the employee entrance and into the hallway.

¶4 David Huynh, who at the time was the assistant manager of the blood bank, also testified. He stated that it was his job to pay blood bank donors. Consequently, Huynh was responsible for counting the money, and when the blood bank closed on the Saturday preceding the robbery, there was $1426 in a blue pouch.[5] On the morning of September 10, 2007, Huynh was seated at the payment booth when a fellow employee told him that a robbery was taking place. He thought she was kidding until the robber, who Huynh could tell was a black male despite the mask, came into the payment booth and pointed a gun at him. Huynh testified that the robber said, "This is a robbery," and then said, "David, give me the money. I don't want to shoot you." Huynh had not yet brought the money into the payment booth, so he told the robber he did not have the money

[5] The robbery took place on a Monday. Huynh testified that the blood bank was not open on Sundays.

and the two went to a different room where Huynh gave him the blue pouch that contained the money.

¶5 Also testifying at the jury trial for the State was Police Officer Carlos Rutherford. The trial court permitted Rutherford to testify after denying the defense's motion to suppress Pugh's statements to Rutherford. Rutherford stated that on October 24, 2007, he was participating in the execution of a search warrant on an unrelated matter at a house when he discovered a man sleeping in one of the bedrooms. The man identified himself as "Demetrius R. Pugh." After learning that Demetrius Pugh had open warrants, Rutherford arrested the man and took him to the police station. When the police records revealed that the fingerprints of the arrested man did not match those of Demetrius Pugh, but did match those of an Antonio Pugh, Rutherford asked the man what his true identity was. The man said: "All right, man. You got me. That's my real name [Antonio Pugh], and I am wanted for armed robbery." Pugh did not testify at the trial. His defense was mistaken identity, and his mother testified he was at home at the time of the robbery.

¶6 The jury convicted Pugh of the charge. Approximately one month later, the trial court sentenced Pugh to six years of initial confinement, to be followed by six years of extended supervision.

II. ANALYSIS.

A. Pugh's statements made at the time of booking were admissible under the routine booking exception.

¶7 Pugh argues that the trial court erroneously exercised its discretion when it denied his motion to suppress his statements made at the time of booking. He claims that the information asked of him, which revealed both his true identity

and an admission of guilt, exceeded those questions ordinarily asked at booking, and consequently, that he should have been advised of his ***Miranda*** rights before any questions were asked concerning his actual identity.

¶8 The State argues that Rutherford was entitled to ask for Pugh's true identity consistent with the "routine booking exception" to the requirements of ***Miranda***, which the Wisconsin Supreme Court adopted in ***State v. Stevens***, 181 Wis. 2d 410, 511 N.W.2d 591 (1994), *overruled on other grounds by* ***Richards v. Wisconsin***, 520 U.S. 385 (1997). This exception provides that "questions directed to the defendant about biographical data, such as the defendant's name and address, that are not intended to elicit incriminating responses, may be considered routine booking questions that are exempted from the coverage of ***Miranda***." ***Stevens***, 181 Wis. 2d at 433 (citing ***Pennsylvania v. Muniz***, 496 U.S. 582, 601 (1990) (Brennan, J., plurality opinion)).

¶9 In reviewing a motion to suppress an inculpatory statement, our review is mixed. *See* ***State v. Turner***, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987). We will uphold the trial court's findings of historical or evidentiary facts as long as they are not clearly erroneous; however, we independently determine whether those facts resulted in a constitutional violation. ***Id.***

¶10 We are satisfied that the trial court correctly determined that the questions asked of Pugh during booking, following the discovery that the fingerprints of Pugh were not those of Demetrius Pugh, fell within the routine booking exception to the giving of ***Miranda*** warnings.

¶11 Under ***Miranda***, "statements of the defendant obtained from questions asked while in custody or otherwise deprived of his freedom of action in any significant way could not be used as evidence against him, unless preceded by

the ***Miranda*** warnings." ***State v. Clappes***, 117 Wis. 2d 277, 282, 344 N.W.2d 141 (1984) (emphasis omitted). However, ***Miranda*** does not require the suppression of all statements made in custody before ***Miranda*** warnings are given: "Volunteered statements of any kind are not barred by the Fifth Amendment." ***Id.***, 384 U.S. 436, 478 (1966). Thus, ***Miranda*** does not apply to all statements resulting from police contact, but only those "statements resulting from a custodial interrogation of a defendant." ***State v. Buck***, 210 Wis. 2d 115, 123, 565 N.W.2d 168 (Ct. App. 1997).

¶12 However, there are limits on the admissibility of statements given during routine booking before ***Miranda*** warnings must be given prior to interrogating a prisoner. The United States Supreme Court in ***Rhode Island v. Innis***, 446 U.S. 291 (1980), addressed for the first time the definition of "interrogation" under ***Miranda***. ***Innis***, 446 U.S. at 297. ***Innis*** concluded:

> ***Miranda*** safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under ***Miranda*** refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect…. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response.

Innis, 446 U.S. at 300-02 (footnotes omitted).

¶13 The necessity for the routine booking exception to the ***Miranda*** warnings has been discussed in numerous cases. *See* ***United States v. Doe***, 878

F.2d 1546, 1551 (1st Cir. 1989) (explaining that the exception for "routine booking interrogation, involving questions, for example, about a suspect's name, address, and related matters … serve[s] a legitimate administrative need") (citations and one set of quotation marks omitted); ***United States v. Avery***, 717 F.2d 1020, 1025 (6th Cir. 1983) ("Ordinarily, however, the routine gathering of biographical data for booking purposes should not constitute interrogation under ***Miranda***."); ***United States v. Booth***, 669 F.2d 1231, 1237 (9th Cir. 1981) ("Certainly not every question is an interrogation. Many sorts of questions do not, by their very nature, involve the psychological intimidation that ***Miranda*** is designed to prevent."); ***State v. Foster***, 562 So. 2d 808, 809 (Fla. Dist. Ct. App. 1990) ("[T]he routine gathering of biographical data for booking purposes cannot be characterized as an inherently coercive custodial interrogation."); ***State v. Smith***, 203 N.W.2d 348, 351 (Minn. 1972) (noting that "booking questions have value to the criminal process independent of any tendency to uncover admissions" and "police have a legitimate interest in orderly records identifying the names, addresses, and places of employment of those arrested").

¶14 In ***State v. Bryant***, 2001 WI App 41, 241 Wis. 2d 554, 624 N.W.2d 865, this court approved the admissibility of statements given during the completion of an "arrest report," which later were used against Bryant. ***Id.***, ¶¶1, 5. There, the detective asked Bryant for his name and address, and not only did he comply and state both his name and address, but he also volunteered that he had just moved from Illinois and was on parole. ***Id.***, ¶3. Later, he was charged with possession of cocaine with the intent to deliver within one thousand feet of a school zone. ***Id.***, ¶6. His address, volunteered by him, put him within the school zone. ***Id.***, ¶18.

¶15 We determined that the questioning of Bryant fell within the routine booking exception because the detective was not engaged in interrogation.

> The facts here confirm that when [the detective] asked Bryant the biographical questions at the detective bureau, he was not engaged in "interrogation." Nothing in the record supports a conclusion that the question about Bryant's residence was intended to elicit an incriminating response.

Id., ¶24. Similarly, here the officer questioning Pugh's identity had no idea that Pugh was wanted for armed robbery, and the question asking him, if, indeed, he was Antonio Pugh, was only motivated by a desire to verify the identity of a prisoner in the jail.

¶16 Given the circumstances, we are satisfied that the inquiry concerning Pugh's true identity fell within the routine booking exception and no ***Miranda*** warnings were required, making the statements admissible at trial.

B. The trial court properly exercised its discretion at sentencing.

¶17 Pugh also contends that the trial court erroneously exercised its discretion at sentencing. Pugh writes:

> [T]he reasons that the court gave at the time of his sentencing for the length of his sentence were not clearly explained, not linked to relevant facts, and do not appear to be the product of a process of reasoning that was either clearly stated on the record or could reasonably derived by inference.

We disagree.

¶18 The appellate standard of review of a trial court's sentencing decision is well established: we limit our review to determining whether the trial court appropriately exercised its discretion. *See* ***State v. Klubertanz***, 2006 WI

App 71, ¶20, 291 Wis. 2d 751, 713 N.W.2d 116. To appropriately exercise its discretion, the trial court is to consider objectives including, but not limited to, protection of the community, punishment and rehabilitation of the defendant, and deterrence to others. *See* ***State v. Gallion***, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. In crafting a sentence to fulfill these objectives, the court is to consider the facts relevant to those objectives, including, but not limited to, the gravity of the offense, the defendant's personal and criminal history, and any aggravating or mitigating factors. *See* ***id.***, ¶¶40 n.10, 43 n.11. The relative weight assigned to each factor and objective is left to the trial court. *See* ***State v. Stenzel***, 2004 WI App 181, ¶9, 276 Wis. 2d 224, 688 N.W.2d 20.

¶19 The sentencing transcript reflects that the trial court respectfully and thoughtfully explained its sentence. The trial court acknowledged that Pugh contended he was the victim of mistaken identity, but the trial court told Pugh that the testimony of two of the eyewitnesses identifying Pugh as the robber was persuasive. The trial court characterized Pugh's crime as a "very serious crime," as it involved a gun and a mask. Indeed, we note that after the robbery one of the victims was so traumatized that he never went back to work at the blood bank. The trial court stated that there were some positives in Pugh's background, but also noted some negative history, stating that Pugh had been consistently committing crimes from the time he was a teenager. The trial court also observed that there was a degree of premeditation here, with Pugh entering the facility early in the morning and getting access to the restroom, where he donned his mask. Given all the factors, the trial court found that Pugh posed a medium risk for committing further offenses and the seriousness of the offense fell in the intermediate range. In light of all the circumstances, the trial court stated that it was left with little option except to send Pugh to prison. The trial court then

sentenced Pugh to six years of initial confinement and six years of extended supervision.

¶20 As the State noted in its brief, Pugh was facing a forty-year maximum sentence and a possible six-year enhanced sentence because he was convicted as a habitual criminal. Pugh's sentence was well within the maximum. Additionally, the trial court addressed the three primary factors and explained its sentence. Consequently, the trial court properly exercised its discretion at sentencing.

¶21 For the reasons stated, the judgment of conviction and the order denying the postconviction motion are affirmed.

By the Court.—Judgment and order affirmed.

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