COURT OF APPEALS
DECISION
DATED AND FILED

December 3, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP834-CR **Cir. Ct. No. 2011CF3272**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRENTON JAMES DAWSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Affirmed*.

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

¶1 CURLEY, P.J. Trenton James Dawson appeals the judgment convicting him of first-degree reckless homicide and cocaine possession, contrary

to WIS. STAT. §§ 940.02(1) & 961.41(1m)(cm)1r (2011-12).[1] Dawson submits that the trial court erred in denying his motion to suppress the statement he made to police while seated in a squad car. Dawson argues that he was "in custody" while being interrogated in the back of the squad car, and that his statement should have been suppressed because police did not read him his ***Miranda*** rights.[2] Dawson further argues that the trial court's error in allowing the statement was not harmless. We disagree and affirm.

BACKGROUND

¶2 Milwaukee police were dispatched to Dawson's home the evening of July 11, 2011 following a "shots fired" complaint. Upon entering, police saw drug paraphernalia in the kitchen[3] and a man—twenty-six-year-old Kenneth Cunning—lying in a pool of blood on the living room floor. Dawson, who was twenty-two years old at the time, was holding a towel to Cunning's neck.

¶3 Shortly thereafter, Detective Dennis Devalkenaere arrived. When he arrived on the scene, he was told that "there was a gunshot victim, and that it was a potential suicide." Officers who arrived before Devalkenaere told him that Dawson had reported that Cunning had shot himself. Devalkenaere found Dawson seated in the back seat of a squad car across the street, and began to question him.

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[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

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

[3] Police found clear plastic "corner cut baggies with an off white chunky substance" on the kitchen countertop, a Pyrex measuring bowl with a white residue, and a digital scale, among other items. Additionally, police found numerous sandwich bags filled with suspected marijuana in the house.

¶4 Devalkenaere questioned Dawson while Dawson was seated in the back of the squad car for about thirty to forty-five minutes, but at no point did Devalkenaere or any of the officers on the scene give Dawson his ***Miranda*** warnings. While being interrogated in the squad car, Dawson explained that he and Cunning were good friends, and that while the two were in his kitchen that evening Cunning tried to tell him that he was depressed, but Dawson told him to "shut up" because he was on the phone with a girl "trying to get sex." Dawson further explained that he then put his head down and continued to talk on the phone, but looked up when he heard a gunshot and saw Cunning falling to the ground in the living room. Dawson stuck to this version of events the entire time he was in the squad car.

¶5 After being questioned in the squad car, Dawson was placed under arrest for drug trafficking and then taken to the police station. At the police station, police read Dawson his ***Miranda*** rights prior to the interrogation, and Dawson agreed to proceed with questioning after being read his rights.

¶6 During the interrogation at the police station, Dawson initially repeated the suicide story. He told police that Cunning had come to his home, and that after hearing a gunshot, Dawson realized that Cunning had shot himself.

¶7 Upon further questioning, however, Dawson admitted that the story he had told police about Cunning shooting himself was not true, and that he had shot Cunning. Dawson explained that he and Cunning had been playing a "game," as they apparently frequently did, in which they would draw weapons and point them at each other. Unfortunately, this particular time, Dawson's gun, a semi-automatic 40-caliber handgun, went off and ultimately killed Cunning.

¶8 Dawson was consequently charged with first-degree reckless homicide, keeping a drug house, and possession with intent to deliver cocaine and marijuana. Dawson filed a motion to suppress his statements made in the squad car and at the police station.[4] The trial court denied his motion, and Dawson pled guilty to first-degree reckless homicide and possession of cocaine. The other two charges were dismissed and read-in.

¶9 Dawson appeals. Additional facts will be developed as necessary.

ANALYSIS

¶10 Dawson's sole argument on appeal is that the trial court erred in denying his motion to suppress the statement he made to police while seated in the squad car. Dawson argues that he was "in custody" while being interrogated in the back of the squad car, and that his statement should have been suppressed because police did not read him his ***Miranda*** rights. *See, e.g.*, ***State v. Gruen***, 218 Wis. 2d 581, 593, 582 N.W.2d 728 (Ct. App. 1998) ("even during a ***Terry*** [***v. Ohio***, 392 U.S. 1 (1968),] stop, a defendant may be considered 'in custody' for Fifth Amendment purposes and entitled to ***Miranda*** warnings"). Dawson further argues that the trial court's error in allowing the statement was not harmless.

¶11 We need not decide whether the trial court erred by denying Dawson's motion to suppress because we conclude that any error was harmless. *See* ***State v. Kramer***, 2006 WI App 133, ¶21, 294 Wis. 2d 780, 720 N.W.2d 459. "In a guilty plea situation following the denial of a motion to suppress, the test for

[4] Dawson argued that his statement at the police station should be suppressed because he was under the influence while he was interrogated. Dawson does not renew this argument on appeal.

harmless error on appeal is whether there is a reasonable possibility that the erroneous admission of the disputed evidence contributed to the conviction." ***State v. Semrau***, 2000 WI App 54, ¶22, 233 Wis. 2d 508, 608 N.W.2d 376. When determining whether an alleged error is harmless, we may consider, "among other factors … the importance of the erroneously admitted evidence, the presence or absence of evidence corroborating or contradicting the erroneously admitted evidence," and "whether the improperly admitted evidence duplicates untainted evidence." *See* ***State v. Rockette***, 2005 WI App 205, ¶26, 287 Wis. 2d 257, 704 N.W.2d 382. Whether alleged error is harmless is a question of law we review *de novo*. *See* ***State v. Carnemolla***, 229 Wis. 2d 648, 653, 600 N.W.2d 236 (Ct. App. 1999).

¶12 The result in this case would have been the same beyond a reasonable doubt even if the trial court had granted Dawson's motion. *See* ***Rockette***, 287 Wis. 2d 257, ¶¶26-27. As noted, Dawson repeated his story about Cunning's alleged suicide more than once: he did so while in the squad car, and again at the police station. Even if the squad car statement was suppressed, as Dawson argues it should have been, the trial court still would have learned that Dawson initially lied to police about how his friend got shot. Dawson's argument that the squad car statement was more indicative of the "utter disregard for human life" element of first-degree reckless homicide, *see* WIS. STAT. § 940.02(1), than the statement at the police station because the police station statement was followed by an admission is unpersuasive. The trial court would have had the same information, that Dawson initially lied to police about how his friend got shot, whether or not the squad car statement was suppressed. Furthermore, contrary to what Dawson argues, the fact that Dawson initially lied to police was hardly the only evidence of Dawson's "utter disregard" for Cunning's life. *See* ***id.***

Dawson pointed a loaded, semi-automatic gun at his friend. He later not only lied about doing so, but also—even *after* finding out that his friend was dead—lied to police about other important details, including the location of the gun. The trial court had ample evidence with which to find Dawson guilty of first-degree reckless homicide. The trial court's decision to suppress the squad car statement was harmless, and Dawson's conviction will stand.

By the Court.—Judgment affirmed.

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