COURT OF APPEALS
DECISION
DATED AND FILED

August 17, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0440-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TORAN D. BROOKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DIANE S. SYKES, Judge. *Affirmed.*

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

PER CURIAM. Toran D. Brooks appeals from a judgment entered after he pled guilty to second-degree intentional homicide, while armed, contrary to §§ 940.05(1) and 939.63(1)(a)(2), STATS., pursuant to a plea negotiation that reduced the charge from first-degree intentional homicide. Brooks claims that the trial court should have granted his motions to suppress his confession and

evidence discovered as a result of his confession because: (1) his arrest was illegal; and (2) any statements obtained were involuntarily given. Because there was probable cause to arrest Brooks and because his statements were voluntarily made, we affirm.

BACKGROUND

On February 25, 1997, the victim, Ahmad Williams, was fatally shot while driving a car in which Brooks was riding. During the immediate investigation on the same day, Romale O'Quin gave a statement to police that he saw Williams go outside and get into a car that people had surrounded. He stated he went back into his house and did not see what happened or who shot Williams. He gave no names of anyone who was standing around the car and provided no specific descriptions of anyone. At 1 a.m., the morning of February 26, O'Quin contacted the police and informed them that he had lied in his original statement, and he now identified the shooter as a black male nicknamed "One Pac," whom O'Quin then identified from police photos as Brooks.

At 7:20 a.m., after the police had corroborated details of O'Quin's second statement, they arrested Brooks. He confessed to the crime and provided information as to where to find the murder weapon, which was subsequently recovered. He was charged with first-degree intentional homicide, while armed. Prior to trial, Brooks moved to suppress the statements he gave police, arguing they were the product of an unlawful arrest and also involuntarily educed. When the trial court denied his suppression motions, he pled guilty in exchange for an amended charge of second-degree intentional homicide. Brooks was sentenced to a forty-five-year prison term. He now appeals.

ANALYSIS

The issue in this case involves whether or not the suppression motions were properly denied. When reviewing an order granting or denying a motion to suppress evidence, the findings of fact, if any, of the trial court will be sustained unless they are clearly erroneous. *See* ***State v. Callaway***, 106 Wis.2d 503, 511, 317 N.W.2d 428, 433 (1982) (citation omitted). However, appellate courts will independently examine the circumstances of the case to determine whether constitutional requirements have been satisfied. *See* ***id.***

A. Illegal Arrest.

Brooks first claims that the trial court should have granted his suppression motions because the police did not have probable cause to arrest him and, therefore, his arrest was illegal. We reject this claim.

The State bears the burden of showing the existence of probable cause. *See* ***State v. Cheers***, 102 Wis.2d 367, 388, 306 N.W.2d 676, 685 (1981). We are obliged to consider the totality of the circumstances. *See* ***id.*** In order for there to be probable cause to arrest, the evidence provided must be shown to be reliable and emanating from a credible source. *See* ***Laster v. State***, 60 Wis.2d 525, 532-35, 211 N.W.2d 13, 16-18 (1973). Brooks argues that the State failed to meet its burden because it did not prove that O'Quin was a reliable and credible source of information. We are left unconvinced.

Brooks, as did the accused in ***Sanders v. State***, 69 Wis.2d 242, 230 N.W.2d 845 (1975), contends that the information supplied to the police by the witness was so unreliable within the context it was given, that it ought to be discounted as untrustworthy. As a result, Brooks argues that O'Quin's second statement cannot form the basis for probable cause. The supreme court found that

Sanders's contention lacked merit and, for the same reasons, Brooks's contention fails.

In ***Sanders***, the crucial witness had previously given two false statements to the police before naming Sanders as the trigger person in the homicide of two police officers. *See* ***id.*** at 251-55, 230 N.W.2d at 851-53. When the witness was asked to explain his retraction, he stated that he was a friend of Sanders and also a co-member of a neighborhood organization. *See* ***id.*** at 254, 230 N.W.2d at 852. Furthermore, police were able to find another witness who corroborated the witness' account of the shootings. *See* ***id.***

Here, when O'Quin gave his initial statement, he supplied only very general descriptions of five individuals who supposedly were present at the scene of the shooting. He provided no estimates of age or weight. All of the individuals were described as between five-feet-ten inches and six-feet tall. He mentioned no names and differentiated between the individuals only by clothing.

In contrast, O'Quin's second and retracting statement contained names and nicknames of the individuals present at the shooting. He described the nature and caliber of the murder weapon. In addition, he informed police that the perpetrator was nicknamed "One Pac," and that in August 1996, One Pac had been shot a number of times while riding a bicycle. As noted above, the police did not immediately arrest Brooks after taking the second statement. Rather, they first verified the 1996 shooting. Then police linked the shooting incident to Brooks when O'Quin identified him from a photo identification. Further, within the six-hour expanse before Brooks was arrested, the police were also able to identify the individuals that O'Quin had identified with more specificity. If the corroborative circumstances present in ***Sanders*** were sufficient for the supreme court to

conclude adequate trustworthiness and reliability to warrant the existence of probable cause, "*a minore ad majus*" (all the more so), the same conclusion is reasonably warranted under the circumstances presented to us. Brooks's first claim of error therefore fails.

B. Voluntary Statement.

Next, Brooks claims that the trial court erred in concluding that any statements he made to police were voluntarily given.

An accused's statement is voluntary unless it is the product of coercive police activity. *See* ***State v. Clappes***, 136 Wis.2d 222, 235-36, 401 N.W.2d 759, 765 (1987). Initially, we focus on whether the police employed actual coercive or improper pressure to compel a statement from a suspect. If an accused fails to establish that the police used actual coercive or improper pressure to obtain an incriminating statement, a trial court does not need to balance the personal characteristics of the accused against the governmental activity that may have induced the statement. *See* ***id.*** at 239-40, 401 N.W.2d at 767.

Upon review, we shall uphold the trial court's findings of fact underlying the voluntariness determination unless they are clearly erroneous. *See* ***State v. Harris***, 189 Wis.2d 162, 173-74, 525 N.W.2d 334, 338 (Ct. App. 1994), *aff'd,* 199 Wis.2d 227, 544 N.W.2d 545 (1996). Whether a statement is voluntary, however, is an issue of constitutional fact that we review independently. *See* ***State v. Santiago***, 206 Wis.2d 3, 17, 556 N.W.2d 687, 692 (1996).

The basis for Brooks's claim that his statement was involuntary is two-fold. First, he asserts that he repeatedly requested counsel while he was being interrogated, but the detectives interviewing him refused to grant his request.

Second, he claims that the interrogating detectives promised they would go to the judge handling the case to seek a reduction of the charge if Brooks would cooperate. If, however, he did not cooperate, they would seek to obtain a first-degree murder charge. We consider each assertion in turn.

Initially, at a suppression hearing on July 21, 1997, the trial court granted Brooks's motion to suppress his statement because it was involuntarily given. Although the trial court found that Brooks had twice been advised of his ***Miranda***[1] rights, that he understood these rights, and that he had not asked for the presence of a lawyer, it nevertheless granted the motion because it could not reconcile how the detectives who took Brooks's statement could not recall the presence of O'Quin in the interrogation room. The State then requested that the trial court hear additional testimony. The court granted the request. On July 22, the trial court heard the testimony of the two detectives. They stated that they were not present when O'Quin was brought to the interrogation room, were unaware that O'Quin had been brought there, and did not know that O'Quin had advised Brooks "you might as well tell the truth because I already have."

In reversing its earlier ruling that Brooks's statement was involuntary, the trial court inferentially granted greater weight and credibility to the detectives' version of events, i.e., they were unaware that O'Quin had been shown to Brooks before he gave his statement. This determination is better left to the trial court who can assess the demeanor of the witnesses. *See* ***State v. Pires***, 55 Wis.2d 597, 602-03, 201 N.W.2d 153, 156 (1972) (credibility of witnesses testifying at a hearing outside of the presence of the jury, such as a suppression

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

hearing, is a question to be resolved by the trial judge). We can assume that the trial court made findings of fact sufficient to support its conclusions of law.

To lend further support to the trial court's ultimate ruling, we note that ***Schilling v. State***, 86 Wis.2d 69, 87, 271 N.W.2d 631, 640 (1978), ***Jordon v. State***, 93 Wis.2d 449, 466-67, 287 N.W.2d 509, 517 (1980), and ***Barrera v. State***, 99 Wis.2d 269, 292, 298 N.W.2d 820, 830-31 (1980), all found nothing coercive or improper in confronting an accused with possible incriminating evidence. Thus, neither the facts nor the law provide a basis for Brooks's first assertion.

Brooks's second assertion relates to an alleged promise to intercede with the trial court if he cooperates. As the record shows, the detective who supposedly made the promise denied the allegation. No finding of fact was made by the trial court in this regard. When faced with this type of a challenge, in the absence of specific findings, we are empowered to assume that the trial court again gave more credence to the detective's denial than to Brooks's allegation, particularly here where the trial court had already found that his requests for counsel were incredible. *See* ***Jacobson v. American Tool Cos., Inc.***, 222 Wis.2d 384, 389-90, 588 N.W.2d 67, 70 (Ct. App. 1998). Thus, we conclude that the second basis for Brooks's claim also fails.

By the Court.—Judgment affirmed.

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