

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff-Appellee,)	Supreme Court No. 20130357
vs.)	
)	District Court No. 09-2013-CR-00603
Ronald William Rogers, Jr.,)	
)	
Defendant-Appellant.)	

APPEAL FROM THE CRIMINAL JUDGMENTS
EAST CENTRAL JUDICIAL DISTRICT
CASS COUNTY CR. NO 09-2013-CR-00603
THE HONORABLE LISA K. FAIR MCEVERS, PRESIDING

APPELLEE’S BRIEF

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[¶3] STATEMENT OF ISSUES

[¶4] Whether the Defendant was “in custody” for Miranda purposes when he was placed in a locked medical facility by physicians and not law enforcement, questioned at his own request, and did not have his freedom of movement restricted in any way.

[¶5] Whether the Defendant’s confession was voluntary when the Defendant requested to speak with law enforcement officers, did not appear to be under any distress during his interview, and explicitly acknowledged that his statement was made voluntarily.

[¶6] STATEMENT OF THE CASE

[¶7] Ronald Rogers (the Defendant) shot and killed his wife, Elizabeth Rogers (Elizabeth), on February 19, 2013. (Transcript of Plea Change Hearing at 5:8-15.) On February 21, 2013, the Defendant was placed into Prairie St. John’s Hospital in Fargo because of a suicidal comment that he made. (Transcript of Motion Hearing¹ at 26:1-23.) On that same day, the Defendant requested to speak with law enforcement officers about Elizabeth’s autopsy. (Tr. at 21:5-18.) He was interviewed on February 22, 2013. During that discussion, he confessed to murdering her. (Transcript of Police Interview No. 2 at 107-108.) He was arrested and charged with Murder and Willful Disturbance of a Dead Body. (Appellant’s Appendix at 2.)

¹ Further citations to the Motion Hearing will be marked “Tr”. Citations to other transcripts will be explicitly noted.

[¶8] The Defendant later moved to suppress his confession. (Id.) The Defendant argued that he was in custody at the time of the confession and that his confession was not made voluntarily. A hearing was held on the Motion on June 6, 2013. (Id.)

[¶9] The district court denied the Defendant's Motion by way of a written order filed June 25, 2013. (Appellant's Appendix at 32.) The district court concluded that the Defendant was not in custody because he initiated the meeting with law enforcement and law enforcement did not show any force or restrain the Defendant during the interview.

[¶10] The district court also found that the Defendant's confession was voluntarily. It relied on the fact that the Defendant initiated the interview, the Defendant did not appear to be cognitively impaired in any way, and that the Defendant verified that his statement was made voluntarily.

[¶11] On September 17, 2013, the Defendant entered a conditional plea of guilty. He reserved the right to have this Court review the district court's Order Denying Motion to Suppress. (Appellant's Appendix at 6.)

[¶12] The State requests that this Court affirm the decision of the District Court.

[¶13] **STATEMENT OF FACTS**

[¶14] At approximately 10:30 P.M. on Tuesday, February 19, 2013, Fargo Police Officers were dispatched to a town home in South Fargo on a report of a suicide. (Tr. at 103:7-22) When they arrived they found Elizabeth lying on the floor dead. (Transcript of Police Interview No. 2 at 107.) She had a semi-automatic hand gun in her right hand. It appeared that she died of a single gunshot wound to the head. (Transcript of Police Interview No. 2 at 107.)

[¶15] The Defendant was at the residence. (Tr. at 104:2-6.) He consented to a search of the home. (Tr. at 110:3-4.) During the search, he appeared to suffer from a panic attack and was brought to Essentia Hospital (Essentia) in Fargo. (Tr. at 110:7-17, Tr. at 104:9-10.) Because of the Defendant's medical condition officers stopped searching the home and obtained a search warrant. (Tr. at 110:7-17.)

[¶16] Shortly after the incident, Detective Matt Ysteboe interviewed the Defendant at Essentia. (Tr. at 104:9-22.) During the interview, the Defendant indicated that Elizabeth held the handgun in her right hand, raised it to the right side of her head, and fired a single shot. (Transcript of Police Interview No. 1 at 15-20.) Because officers were still searching the home, the Defendant was not allowed to return that evening. (Tr. at 109:8-17.) The Defendant rented a room at the Days Inn Hotel in Fargo. (Tr. at 111:3-17.)

[¶17] Detective Ysteboe along with Detective Josh Loos visited with the Defendant at his hotel room sometime during the afternoon of February 20, 2013.

(Tr. at 111:3-17.) The purpose of their visit was to provide him with a list of items seized during the execution of the search warrant. (Tr. at 111:22-25; Tr. at 112:1-3.) At that time, the Defendant had some questions about Elizabeth's autopsy, however the autopsy had not yet been performed. (Tr. at 112:4-16.)

[¶18] The next day at approximately 9:00 A.M., staff at the Days Inn hotel contacted the Fargo Police Department and requested that officers perform a welfare check on an intoxicated male in the lobby of the hotel. (Tr. at 23:18-24; Tr. at 24:22-24.) Fargo Police Officer Dane Ronning took the call. (Tr. at 24:3-10.) Officer Ronning was not involved in the investigation into the death of Elizabeth. (Tr. at 26:6-21.) He was working a patrol shift that day. (Tr. at 26:6-21.) The only information that he had about Elizabeth's death was that it was a suicide. (Tr. at 26:6-21.)

[¶19] The Defendant made a comment during the welfare check that Officer Ronning considered a threat that the Defendant may commit suicide. (Tr. at 25:3-25.) As a result, Officer Ronning brought the Defendant back to Essentia. (Tr. at 26:22-23.) There Officer Ronning completed paperwork to place the Defendant on a medical hold and turned the Defendant over to medical staff. (Tr. at 26:24-25; Tr. at 27:1-4.) Neither Officer Ronning nor anyone else in law enforcement was involved in further decisions about the Defendant's medical care. (Tr. at 27:5-11.)

[¶20] Essentia nurses assessed the Defendant several times and he was not in any particular distress. (Doc ID # 88.) Each time the Defendant was alert and

oriented to his surroundings and made eye contact when spoken to. (Doc ID # 88.) His appearance, speech patterns and motor activity were within defined limits. (Doc ID # 88.)

[¶21] The Defendant was discharged from Essentia at approximately 3:30 P.M. on February 21, 2013 and transferred to Prairie St. John's Hospital (Prairie) in Fargo. (Doc ID # 88.) Prairie does not honor medical holds placed on an individual by law enforcement. (Tr. at 64:4-10.) Rather, a patient must be referred to Prairie by a doctor through Prairie's Needs Assessment Department. (Tr. at 55:12-25; Tr. at 56:1-23.) Staff from Prairie then reviews medical documentation. (Tr. at 55:12-25; Tr. at 56:1-23.) Finally the referring doctor consults with an admitting doctor from Prairie along with a Licensed Addiction Counselor from Prairie. (Tr. at 55:12-25; Tr. at 56:1-23.) Only after this process is completed is a patient accepted at Prairie. (Tr. at 55:12-25; Tr. at 56:1-23.) Law Enforcement was not involved in the decision to admit the Defendant to Prairie. (Tr. at 56:21-23.)

[¶22] While at Prairie, the Defendant was given two clinical withdrawal assessments. (Tr. at 44:14-25; Tr. 45:1-15.) The first was given at 4:40 P.M., and the second was given at 8:00 P.M. (Tr. at 44:14-25; Tr. 45:1-15.) These were done to assess the Defendant's level of distress. (Tr. at 44:14-25; Tr. 45:1-15.) Each time, the Defendant was oriented to time and space. (Doc ID # 90; Doc ID # 91; Tr. at 46-52:1-12.) He acted and communicated appropriately and did not have any thought disturbances. (Doc ID # 90; Doc ID # 91; Tr. at 46-52:1-12.)

Because of his score on the clinical withdrawal assessments, he was not given any additional medication to help him with detoxing. (Doc ID # 90; Doc ID # 91; Tr. at 46-52:1-12.)

[¶23] At approximately 9:20 P.M. on February 21, 2013, the Defendant called the Fargo Police Department and asked to speak with a supervisor. (Tr. at 20:24-25; Tr. at 21:1-15.) Lieutenant Ross Renner talked briefly with the Defendant who stated that he was concerned about the results of his wife's autopsy and wanted to speak with an officer. (Tr. at 21:16-18.)

[¶24] By that time, officers had learned that the story the Defendant told to law enforcement shortly after Elizabeth's murder could not have been true. (Tr. at 142:23-25; Tr. at 143:1-2.) Detective Joshua Loos attended Elizabeth's autopsy in Bismarck. (Tr. at 141:1-8.) There he learned that Elizabeth had been shot in the left side of her head and not the right as the Defendant had claimed. (Transcript of Police Interview No. 2 at 95-96.) As a result of this information an additional search warrant was obtained for the Defendant's home. (Tr. at 116:11-24.)

[¶25] After that warrant was executed, Detectives Loos and Ysteboe went to Prairie, in the early morning hours of February 22, 2013, in response to the Defendant's request to speak about Elizabeth's autopsy. (Tr. at 117:17-22; Tr. at 34:13-17.) When they arrived, they spoke with Carrie Avery. (Tr. at 34:21-25; Tr. 35:1-3.) She did not immediately let them speak with the Defendant. (Tr. at 118:11-18; Tr. at 36:3-10.) Rather she told them to wait while Geoffrey Maina, a nurse working directly with the Defendant contacted him to make sure that he still

wanted to speak with the Detectives. (Tr. at 118:11-18; Tr. at 36:3-10.) The Defendant explicitly stated to Maina that he wished to speak with the Detectives. (Tr. at 37:2-7.)

[¶26] Carrie Avery directed Maina to bring the Defendant to a room in Prairie that is quiet and private. (Tr. at 37:11-17.) She alone chose the location of the meeting and did not obtain any input in this decision from law enforcement. (Tr. at 37:18-22.) The room is large and well lit. (Tr. at 37:23-25; Tr. at 38:1-25.) Avery described it as 18 feet by 25 feet. (Tr. at 38:8-10.) There is more than one way in and out of the room. (Tr. at 38:13-19.) There is a window in the room. (Tr. at 39:1-3.) The Detectives did not lock the doors or prevent him from leaving the room. (Tr. at 120:11-18.)

[¶27] The interview with the Defendant was recorded by the Detectives. (Tr. at 12:1-14; Doc ID# 65.) There was also a motion activated video surveillance system in the room, but it did not capture any audio. (Tr. at 12:1-14; Doc ID# 65.) The audio and video recordings were combined into a single file for use during court proceedings. (Tr. at 12:1-14; Doc ID# 65.)

[¶28] During the interview Detectives Loos and Ysteboe wore street clothes. (Tr. at 121:7-21.) Detective Ysteboe had a gun on his belt that was not visible to the Defendant for much of the interview. (Tr. at 121:7-21.) Detective Loos had a gun on his belt that was mostly covered by a large baggy sweatshirt. (Tr. at 121:7-21.)

[¶29] They sat with the Defendant at a small table for most of the interview.

(Tr. at 120:19-24.) At other times during the interview, the Defendant moved freely about the room. (Tr. at 152:13-25; Tr. at 153:1-19.) The Defendant acted out the events of the murder and used the Detectives as props to help him tell the story. (Tr. at 152:13-25; Tr. at 153:1-19.) At one time, the Defendant had Detective Loos lay on the ground with a fake plastic training gun and positioned him to simulate how Elizabeth was found. (Tr. at 155:9-14.)

[¶30] The detectives were polite and did not raise their voices during the interview. (Tr. at 149:5-22; Tr. at 123:16-19.) The Defendant was not handcuffed. (Tr. at 124:6-7.) The detectives did not threaten the Defendant. (Tr. at 149:5-11.) The interview was conversational and the Defendant asked and answered questions freely. (Id.) The Defendant was not given a Miranda warning. (Tr. at 151:1-4.)

[¶31] The Defendant was not impaired by drugs or alcohol during the interview. (Tr. at 122:1-24.) He stated that he felt fine. (Tr. at 122:8-9) Twice during the interview Geoffrey Maina entered the room to check on the Defendant. (Tr. at 76:3-25; Tr. at 77:1-25.) In both instances, the Defendant indicated that he was fine. (Tr. at 76:3-25; Tr. at 77:1-25.) At the end of the interview, the Defendant was asked if his statement was the product of threats, coercion or force and he indicated that it was not. (Transcript of Police Interview No. 2 at 137.) He also acknowledged that his statement was voluntary and the truth. (Transcript of Police Interview No. 2 at 137.)

[¶32] After the interview, the Defendant was not immediately arrested. (Tr.

at 40-42; Tr. at 131:16-25; Tr. at 132:1-12; Tr. at 157:6-25; Tr. at 158:1-25; Tr. at 159:1-14.) The detectives told Prairie staff that they wanted to arrest him. (Tr. at 40-42; Tr. at 131:16-25; Tr. at 132:1-12; Tr. at 157:6-25; Tr. at 158:1-25; Tr. at 159:1-14.) However, before they were allowed to take him into custody he had to be released from Prairie's care. (Tr. at 40-42; Tr. at 131:16-25; Tr. at 132:1-12; Tr. at 157:6-25; Tr. at 158:1-25; Tr. at 159:1-14.) The Defendant was brought back into another part of Prairie where patients were being cared for. (Tr. at 40-42; Tr. at 131:16-25; Tr. at 132:1-12; Tr. at 157:6-25; Tr. at 158:1-25; Tr. at 159:1-14.) The detectives were not allowed to accompany the Defendant back into his unit. (Tr. at 40-42; Tr. at 131:16-25; Tr. at 132:1-12; Tr. at 157:6-25; Tr. at 158:1-25; Tr. at 159:1-14.) The Defendant's treating physician was contacted and the discharge process was completed. (Tr. at 41:25; Tr. at 42:1-15.) This took approximately 15 to 20 minutes. (Tr. at 41:25; Tr. at 42:1-15.) The Defendant was not released to the custody of law enforcement until after he was discharged from Prairie. (Tr. at 40-42; Tr. at 131:16-25; Tr. at 132:1-12; Tr. at 157:6-25; Tr. at 158:1-25; Tr. at 159:1-14.) No incriminating statements were made after he was placed in custody.

[¶33] LAW AND ARGUMENT

[¶34] I. The Defendant Was Not In Custody So No Miranda Warning Was Required.

[¶35] A. Standard of Review

[¶36] A district court's custody determination is a "mixed question of fact and law." State v. Golden, 2009 ND 108, ¶8, 766 N.W.2d 473. Whether a person is in custody is "fully reviewable on appeal." State v. Huether, 2010 ND 233, ¶14, 790 N.W.2d 901.

[¶37] B. Miranda Requirement

[¶38] In Miranda v. Arizona, 384 U.S. 436 (1966), the United States Supreme Court held that four specific warnings must be given to a person who is subjected to custodial interrogation. This Court has defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." State v. Huether, 210 ND 233 at ¶14 (emphasis added).

[¶39] "When analyzing whether the accused was in custody, all circumstances surrounding the interrogation must be considered, but the ultimate inquiry is whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest." State v. Sabinash, 1998 ND 32, ¶14, 574 N.W.2d 827. The subjective views of the officers or the suspect are not relevant to the custody determination; rather the test is an objective one. Stansbury v. California, 511 U.S. 318, 323 (1994). This Court considers how a

reasonable person in the suspect's position would have understood the situation.
State v. Golden, at ¶ 9.

[¶40] C. Analysis

[¶41] Here the Defendant initiated contact with law enforcement. The detectives went to Prairie only after he requested to speak with law enforcement about the autopsy. When the detectives arrived at Prairie the Defendant again expressly indicated that he wanted to speak with law enforcement. The detectives would not have been let into the facility but for his approval.

[¶42] The interview was not conducted in a law enforcement dominated environment. Carrie Avery chose where it would take place. The room was large and well lit. The Detectives did not block the door. The door was unlocked and the Defendant could have left at any time.

[¶43] During the interview the detectives were calm and conversational. They did not threaten the Defendant. The Defendant and the detectives both asked and answered questions.

[¶44] The detectives did not handcuff the Defendant or restrain his freedom of movement in any way. He was allowed to move about the room. He even placed his hands on Detective Loos while the detective was lying on the floor with his gun in its holster. An arresting officer does not lie on the floor and give an arrested person an opportunity to disarm or hurt them.

[¶45] This Court must also consider the fact that the Defendant was not completely free to leave Prairie. The Defendant was on a medical hold that was

set in motion by law enforcement. However, when Officer Ronning brought the Defendant to Essentia he did so to protect the Defendant's welfare not to further an investigation. Officer Ronning was not involved in the investigation of Elizabeth's death. When he brought the Defendant to Essentia he thought that Elizabeth committed suicide.

[¶46] After the Defendant was dropped off at Essentia, law enforcement had no further role in his medical care. Rather he was initially treated at Essentia and then transferred to Prairie. Medical doctors made the decision to transport him to Prairie not law enforcement. A reasonable person would not understand a medical hold to be consistent with a formal arrest.

[¶47] Howe v. Fields, 132 S. Ct. 1181 (2012) provides useful guidance for the analysis of this issue. Although it is not entirely on point the situation in Howe is somewhat analogous to the question presented to this Court. Randall Fields was in prison on an unrelated matter when he was questioned about sexual contact with a twelve year old boy. Fields confessed and was convicted. The conviction was upheld by the Michigan state courts. He was granted habeas relief by the United States District Court and the Sixth Circuit Court of Appeals affirmed that decision. The United States Supreme Court reversed.

[¶48] The Howe court reiterated that “[n]ot all restraints on freedom of movement amount to custody for purposes of Miranda.” Rather the question is “whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in Miranda.”

[¶49] Here there were not the same kinds of pressures on the Defendant that Miranda was designed to protect against. This was an interview done at the Defendant's request in a neutral environment. Law enforcement placed no restriction on his freedom of movement.

[¶50] Based on the totality of the circumstances, the Defendant was not in custody when he confessed to murdering Elizabeth. Because he was not in custody, there was no requirement to read Miranda warnings to him.

[¶51] **II. The Defendant's Confession Was Voluntary.**

[¶52] **A. Standard of Review**

[¶53] When this Court reviews a district court's denial of a motion to suppress it "defer[s] to the district court's findings of fact and resolve[s] conflicts in testimony in favor of affirmance." State v. Smith, 2005 ND 21, ¶ 11, 691 N.W.2d 203. If "there is sufficient competent evidence fairly capable of supporting the trial court's findings, and the decision is not contrary to the manifest weight of the evidence" this court will affirm the decision of the district court. City of Fargo v. Thompson, 520 N.W.2d 578, 581 (N.D. 1994).

[¶54] **B. Voluntariness Requirement**

[¶55] An involuntary confession is not admissible against a Defendant because it would be a violation of due process. State v. Norrid, 2000 ND 112, ¶ 18, 611 N.W.2d 866. "A confession is voluntary if it is a product of the defendant's free choice rather than a product of coercion." State v. Goebel, 2007 ND 4, ¶ 16, 725 N.W.2d 578 (citation omitted). Voluntariness is determined by

examining the totality of the circumstances. State v. Kirkpatrick, 2012 ND 229 at ¶ 9, 822 N.W.2d 851. The two prongs of the voluntariness inquiry are (1) the characteristics and conditions of the accused at the time of the confession and (2) the details of the setting in which the confession was obtained. *Id.* at ¶ 9.

[¶56] C. Analysis

[¶57] The district court's conclusion that the Defendant's confession was voluntary is supported by abundant competent evidence and should be upheld. He spoke with law enforcement at his request. At the end of his interview, the Defendant expressly stated that his statement was voluntary.

[¶58] There was also no conclusive evidence that the Defendant's decision making process was impacted by drugs or alcohol. He told the Detectives that he felt fine. During the interview nurse Maina interrupted twice to check on the Defendant's state and twice he indicated that he was fine and wanted to proceed.

[¶59] The district court's decision is also supported by the medical records that were admitted at the motion hearing. These tests were done for purely medical reasons by different medical professionals at different times prior to the confession. All of these tests show that the Defendant was not in any acute medical distress. He was oriented to time and space and able to carry on appropriate conversations. The totality of the evidence supports the district court's conclusion.

[¶60] CONCLUSION

[¶61] The Defendant was not in custody when he confessed to murdering Elizabeth. His confession was voluntary. The decision of the district court should be affirmed.

Dated this 26th day of March, 2014.

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[¶62] CERTIFICATE OF SERVICE

[¶63] A true and correct copy of the foregoing document was sent by e-mail on the 26th day of March, 2014, to: Benjamin Pulkrabek at pulkrabek@lawyer.com

Tristan J. Van de Streek, NDID #05849