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IN THE COURT OF APPEALS OF INDIANA

Kyle N. Doroszko,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 29, 2022

Court of Appeals Case No. 21A-CR-1645

Appeal from the St. Joseph Superior Court

The Honorable Jeffrey L. Sanford, Judge

Trial Court Cause No. 71D03-1905-MR-4

Najam, Judge.

Statement of the Case

[1] Kyle N. Doroszko appeals his conviction for involuntary manslaughter, as a Level 5 felony, following a jury trial. Doroszko raises two issues for our review:

1. Whether the trial court violated Trial Rule 47(D) and denied him the right to a fair trial when it did not allow him to directly question prospective jurors.

2. Whether the trial court erred when it admitted his confession as evidence.

[2] We affirm.

Facts and Procedural History

[3] On April 28, 2019, Doroszko agreed to sell two ounces of marijuana to Jeremiah Williams. The two decided to meet in the parking lot of a bar called Frank's Place. However, prior to their meeting, Williams formulated a plan with Trayvon Taylor to rob Doroszko. Joe Nelson then drove Williams, Taylor, and Atlantis Branch to Frank's Place. Williams and Branch had firearms. And Bilal Dedic drove Doroszko to the meeting. Both were armed.

[4] Dedic and Nelson parked their cars near each other. At that point, Williams and Taylor exited Nelson's car and got into the back seat of Dedic's car. Williams got behind the driver's seat, and Taylor sat behind Doroszko. After only a few moments, Williams exited Dedic's car. Dedic turned to see where Williams was going, and he saw Branch and Nelson run toward his car. Branch was holding "like an AR gun." Tr. Vol. 5 at 232. Dedic got "spooked," and he started to drive away with Doroszko and Taylor still in the car and the rear passenger door open. *Id.* Dedic could hear that Williams and Doroszko were engaged in "some type of . . . physical interaction." *Id.* at 233. During the altercation, Doroszko shot Taylor three times. As Dedic drove off, Branch shot

at Dedic's car. Dedic swerved, and Taylor fell out of the car. Taylor died as a result of the gunshot wounds.

[5] On April 30, Commander Michael Grzegorek and Detectives Brian Cook and Chris Kronewitter with the St. Joseph County Metro Homicide Unit ("MHU") went to Doroszko's house. Two of the officers had their weapons drawn, and one had his hand on his holstered firearm. Once they arrived, Commander Grzegorek told Doroszko that he "need[ed] to go down to [their] office[and] have a little chat about a shooting that occurred." Appellant's App. Vol. 2 at 155. Commander Grzegorek then said: "what we want to talk about, and don't—like don't bulls**t right now. Right now we know that you guys were probably the victims in this thing, okay. . . . Just be honest, okay. We got to get these guys off the street, okay." *Id*. at 156. Commander Grzegorek then stated that the officers were looking for a gun, and Doroszko responded: "I don't know where it's at." *Id*. at 157. Officers transported Doroszko to MHU to interview him.

[6] Once there, officers placed Doroszko in an interview room. Several hours later, MHU Detective Gery Mullins interviewed Doroszko. At the beginning of the interview, Detective Mullins read Doroszko his *Miranda* rights. Doroszko then signed a "Warning and Waiver Advisement As to Rights" form. Ex. Vol. 7(A) at 123. In that document, Doroszko was informed that he had the right to remain silent, that he had the right to consult an attorney before officers questioned him and have the attorney present during questioning, and that he had the right to stop answering questions at any time. *See id*. During the

interview, Doroszko gave "[s]everal different versions" of the events. Tr. Vol. 2 at 162. Ultimately, he admitted that he had shot Taylor. *See* Tr. Vol. 5 at 44. As a result, the State charged Doroszko with murder, a felony. In addition, the State filed an enhancement and alleged that Doroszko had committed the offense with a firearm.

[7] Prior to his trial, Doroszko filed a motion to suppress the statements he had made while at MHU.[1] Doroszko alleged that his waiver of his right to remain silent "was not made voluntarily, knowingly, and intelligently" as the officers had used "deception and other practices to procure" the waiver. Appellant's App. Vol. 2 at 91. Specifically, Doroszko asserted that three armed law enforcement officers had entered his home, told him "not to 'bulls**t' them," and "deceptively" told him that "they believed he was the victim in the case." *Id*. at 92. He further asserted that the officers did not read him his *Miranda* rights but nonetheless questioned him about the location of the gun. And he alleged that he had made "inculpatory statements" in response. *Id*. Thus, he maintained that the officers had engaged in a "question-first, Mirandize later" interrogation technique that rendered his subsequent waiver of his right to remain silent involuntary. *Id*.

[8] Following a hearing on Doroszko's motion, the court found that the "time lapse" between the questioning at his home and the questioning at the unit

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[1] Doroszko also sought to suppress the statements he had made at his house, which motion the trial court granted.

rendered the questions at MHU a "distinct experience from the initial questioning." Appellant's App. Vol. 3 at 157. The court also found that Detective Mullins "made no reference to [Doroszko's] prior unadvised statement at his home." *Id*. Thus, the court concluded that the questioning of Doroszko following the *Miranda* warning "was not a continuation of the pre-warning questioning in this case" and denied Doroszko's motion to suppress. *Id*. (emphasis removed).

[9] At a pre-trial hearing, the court discussed its policy regarding voir dire with the parties. The court informed the parties that it "ask[s] the voir dire" but that it would "welcome" the parties to submit their own jury questions to the court. Tr. Vol. 3 at 82. It then stated that the parties would have "an opportunity to address the jury," in that the court would allow the parties "to get up during voir dire to discuss" the "important issues that [they] want the jury to look at or the facts that are important." *Id*. The court confirmed that the parties would not be able to question the jury directly.

[10] Doroszko filed a motion in which he objected to the court's voir dire procedure on the ground that it "is contrary to Trial Rule 47(D) and the right to a fair and impartial trial[.]" Appellant's App. Vol. 2 at 67. And Doroszko requested to "personally, directly and verbally" question the prospective jurors during voir dire. *Id*. at 69. The court denied that motion. Doroszko then submitted sixty potential juror questions for the court to consider. *See* Appellant's App. Vol. 4 at 120-25, 164.

[11] The court held a bifurcated jury trial. During jury selection, the court asked numerous questions of the jury, including several questions regarding self-defense. *See* Tr. Vol. 3 at 212-13; *see also* Tr. Vol. 4 at 5-6.[2] The court then gave both parties an opportunity to address the jury. *See* Tr. Vol. 3 at 217-18; *see also* Tr. Vol. 4 at 11. At that point, Doroszko requested that the court ask the prospective jurors additional questions. The court asked some but declined to ask others. *See* Tr. Vol. 3 at 222-24; *see also* Tr. Vol. 4 at 12-14. Once the court empaneled the jury but prior to swearing the jurors in, Doroszko again objected to the court's procedure for jury selection.

[12] During the first phase of the trial, the State called Detective Mullins as a witness. As Detective Mullins testified, the State offered as evidence Doroszko's signed waiver of rights form as well as a video of Doroszko's interview with Detective Mullins in which Doroszko admitted to having shot Taylor. Doroszko objected on the ground that his waiver of rights was not voluntary. The court overruled his objection and admitted both as evidence.

[13] At the conclusion of the first phase of the trial, the jury found Doroszko guilty of the lesser-included offense of involuntary manslaughter, as a Level 5 felony. Prior to the second phase, Doroszko waived his right to a jury trial on the firearm enhancement. The trial court entered judgment of conviction

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[2] Because of COVID-19, the court divided the prospective jurors in groups and conducted voir dire in phases.

accordingly and sentenced Doroszko to an aggregate sentence of fifteen and one-half years, with three years suspended. This appeal ensued.

Discussion and Decision

Issue One: Voir Dire

[14] Doroszko first asserts that the trial court violated Indiana Trial Rule 47(D) and, thus, denied him the right to a fair trial when it did not allow him to directly question the prospective jurors. Trial Rule 47(D) provides, in pertinent part, as follows:

> The court shall permit the parties or their attorneys to conduct the examination of prospective jurors, and may conduct examination itself. The court's examination may include questions, if any, submitted in writing by any party or attorney. If the court conducts the examination, it shall permit the parties or their attorneys to supplement the examination by further inquiry. . . . The court may prohibit the parties and their attorneys from examination which is repetitive, argumentative, or otherwise improper but shall permit reasonable inquiry of the panel and individual prospective jurors.

[15] Trial courts have broad discretionary power in regulating the form and substance of voir dire. *Logan v. State*, 729 N.E.2d 125, 133 (Ind. 2000). The decision of the trial court will be reversed only if there is a showing of a manifest abuse of discretion and a denial of a fair trial. *Id*. This will usually require a showing by the defendant that he was in some way prejudiced by the voir dire. *Id*.

[16] On appeal, Doroszko contends that the court's procedure for conducting voir dire denied him the right to a fair trial because it "banned the attorneys from the physical ability to stand before the jury panel, look them in the eyes, and 'conduct the examination of the prospective jurors.'" Appellant's Br. at 8-9 (quoting Trial Rule 47(D)). And Doroszko maintains that "the trial court's inquiry in no way gave [him] sufficient information to intelligently exercise his p[er]emptory challenges[.]" *Id*. at 12.

[17] Our Supreme Court has previously addressed a similar issue. In *Logan*, prior to Logan's trial for murder, the trial court ruled that neither party would be permitted to question the prospective jurors during voir dire regarding a sentence of life without parole. 729 N.E.2d at 132. Rather, the court decided to conduct that portion of voir dire itself. *Id*. But the court informed the parties that they could submit questions, which the court would ask if appropriate. *Id*.

[18] On appeal, Logan challenged the court's procedure. The Supreme Court held that it "was error" for the court not to permit Logan or his attorney to directly question the prospective jurors regarding their views on life without parole. *Id*. at 133. In reaching that conclusion, the Supreme Court made clear that "Indiana Trial Rule 47(D) dictates in pertinent part 'the court *shall permit* the parties or their attorneys to conduct the examination of prospective jurors, and may conduct examination itself.'" *Id*. (emphasis original to *Logan*).

[19] Here, while the court allowed the parties to submit questions for the potential jurors, which the court would ask at its discretion, it did not permit Doroszko

or his attorney to directly question the prospective jurors. As in *Logan*, that was error.[3] However, in *Logan* the inquiry did not end there. Rather, the Court noted that Logan had failed to indicate what questions he would have asked, nor did he explain why the court's procedure was inadequate for purposes of empanelling a fair and impartial jury. *Id.* And the Court observed that Logan had failed to show that the court's procedure had adversely impacted his ability employ his peremptory challenges for cause, and he did not allege that any specific juror should have been removed and was not. *Id*. Thus, the Court concluded that, although it was error for the court not to permit Logan to directly question the prospective jurors, Logan had not shown that he was prejudiced and, thus, any error was harmless. *Id*.

[20] The same is true here. Doroszko does not indicate what questions he would have asked had he been allowed to directly question the prospective jurors. Further, he has failed to show that the court's procedure adversely affected his ability to exercise his peremptory challenges. And he does not allege that any specific juror should have been removed but was not. We conclude that Doroszko has not shown that he was prejudiced by the court's voir dire procedure. As such, while the court erred by not permitting Doroszko or his

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[3] We acknowledge that, in *Peppers v. State*, 152 N.E.3d 678 (Ind. Ct. App. 2020), another panel of this Court addressed the same voir dire procedure by the same trial judge that is at issue here. The court found "no error, fundamental or otherwise, in the court's conduct of voir dire." *Id.* To the extent the Court held that there was *no* error in the court's procedure for conducting voir dire, we believe that holding to be contrary to our Supreme Court's holding in *Logan* and the requirements of Trial Rule 47(D).

attorney to directly question the prospective jurors, that error was harmless. *See id*.[4]

Issue Two: Admission of Confession

[21] Doroszko next contends that the trial court abused its discretion when it admitted his confession as evidence. Doroszko initially challenged the admission of this evidence through a motion to suppress but now appeals following a completed trial. Thus, the issue is appropriately framed as whether the trial court abused its discretion by admitting evidence at trial. *Lanham v. State*, 937 N.E.2d 419, 421-22 (Ind. Ct. App. 2010). A trial court is afforded broad discretion in ruling upon the admissibility of evidence, and we will reverse such a ruling only when the defendant has shown an abuse of discretion. *Id*. at 422. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id*. We do not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court's ruling. *Id.*

[22] On appeal, Doroszko asserts that police misconduct rendered his waiver of his rights and his subsequent confession involuntary. As our Supreme Court has stated:

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[4] While Doroszko is not entitled to relief on this issue, we encourage the trial court to follow the mandates of Trial Rule 47(D) and allow parties to directly question prospective jurors. Had the court followed that trial rule here, it would have obviated an appeal on this issue in both this case and in *Peppers*.

> When a defendant challenges the admissibility of his confession, the State must prove beyond a reasonable doubt that the confession was given voluntarily. The voluntariness of a confession is determined from the totality of the circumstances. The totality of the circumstances test focuses on the entire interrogation, not on any single act by police or condition of the suspect. We review the record for evidence of inducement by way of violence, threats, promises, or other improper influences.

Henry v. State, 738 N.E.2d 663, 664 (Ind. 2000) (cleaned up). We examine the evidence most favorable to the State, together with the reasonable inferences that can be drawn therefrom. *Pruitt v. State*, 834 N.E.2d 90, 115 (Ind. 2004). If there is substantial evidence to support the trial court's conclusion, it will not be set aside. *Id*.

[23] Doroszko specifically contends that the "conduct" of the officers at his home and the "blatant lie" by Commander Grzegorek that the officers believed him to be a victim "negate[d] the voluntariness of his confession." Appellant's Br. at 14-15. A confession is voluntary if it is the product of a rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will. *Scalissi v. State*, 759 N.E.2d 618, 621 (Ind. 2001). The critical inquiry is whether the defendant's statements were induced by violence, threats, promises, or other improper influence. *Id*. Police deception and misconduct "weigh heavily against the voluntariness of the defendant's confession." *Henry*, 738 N.E.2d at 665. However, police deception does not necessarily render a confession

inadmissible. *See Clark v. State*, 808 N.E.2d 1183, 1191 (Ind. 2004). Rather, it is only one factor to consider in the totality of the circumstances. *Id*.

[24] Here, the record demonstrates that, when Commander Grzegorek arrived at Doroszko's home, he told Doroszko that he believed Doroszko to be a victim. He then asked Doroszko about the location of the gun, and Doroszko stated that he did not know where it was. At that point, officers transported Doroszko to MHU and placed him in an interview room. Thereafter, Detective Mullins interviewed Doroszko. Prior to the interview, Detective Mullins read Doroszko the warning and waiver of rights form, Doroszko read the waiver aloud to Detective Mullins, and both individuals signed the document. At no point did Doroszko indicate that he did not understand his rights or ask for an attorney. Further, Doroszko was "[m]ellow" during the interview. Tr. Vol. 2 at 162. Doroszko was allowed to use the restroom as needed, he was given drinks when asked, and there is no evidence that the police made any threats or promises during the interview.

[25] Our Supreme Court has previously upheld the admission of a confession into evidence on facts "more egregious" than those presented here. *Henry*, 738 N.E.2d at 664. In *Henry*, the Court affirmed the admission of Henry's confession even though officers had falsely informed Henry that his fingerprints were found at the scene and that someone had identified him as the killer. *Id*. And in *Light v. State*, 547 N.E.2d 1073, 1079 (Ind. 1989), the Supreme Court held that the trial court did not err when it admitted the defendant's statement

despite evidence that officers had interrogated him for four hours during which time officers cursed, lied, and smacked the defendant on the arm.

[26] Here, under the totality of the circumstances, we cannot say that the statement by Commander Grzegorek, which he made at a different location and several hours prior to Doroszko's interview at MHU, overbore Doroszko's free will such that his statement was involuntary. *See Henry*, 738 N.E.2d at 665. We therefore affirm the court's admission of Doroszo's confession as evidence.

Conclusion

[27] In sum, the trial court erred when it conducted voir dire, but the error was harmless. And the court did not abuse its discretion when it admitted Doroszko's confession as evidence. We therefore affirm Doroszko's convictions.

[28] Affirmed.

Vaidik, J., and Weissmann, J., concur.