

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Sylvester Ford,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 2, 2024

Court of Appeals Case No.
23A-CR-697

Appeal from the Marion Superior Court
The Honorable Shatrese M. Flowers, Judge

Trial Court Cause No.
49D28-2002-MR-6950

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

[1] On February 16, 2020, then-sixteen-year-old Sylvester Ford shot and killed his uncle Devon Ford, with whom he had lived for a few weeks. In the presence of and after consulting with his great-grandmother¹ and adoptive mother Martha Suttles,² Ford waived certain rights and agreed to speak with Detective Jill Liter, ultimately giving three separate statements, during the third of which he admitted to killing Devon. Ford’s statements to Detective Liter were admitted at trial over his objection. A jury found Ford guilty of murder, after which he was sentenced to a fifty-year term of incarceration. On appeal, Ford contends that the trial court abused its discretion in admitting his statements to police. We affirm.

¹ The record refers to Martha Suttles both as being Ford’s grandmother or great-grandmother. We refer to her as the latter because Ford identifies her as such in his appellate brief.

² We note that Martha’s last name is spelled “Suttles” at some places in the record and “Settles” in others. Martha did not testify at trial or give an accurate spelling of her last name and she appears to have passed away at some point between Devon’s murder and Ford’s trial. Given the confusion as to Martha’s last name, we will refer to her throughout this decision as Martha.

Facts and Procedural History

- [2] Prior to 2020, Ford had lived with and been adopted by Martha. In early 2020, Ford had been removed from Martha's home after he had been found to be a delinquent child for committing an unlawful act on another minor who had been in Martha's care and had lived in Martha's home. Ford had then moved in with Devon, and, as of February 16, 2020, had lived with Devon for approximately two and one-half weeks.
- [3] Around 10:00 a.m. on February 16, 2020, Ford shot Devon multiple times while Devon was lying in his bed. After shooting Devon, Ford took Devon's cellular phones and \$120.00 from his dresser. Ford packed the gun that he had used in the shooting and two magazines of ammunition into his backpack and left the apartment.
- [4] Upon leaving the apartment, Ford encountered Michael Preer, who he asked to call 911, claiming that four men had entered their apartment and shot his uncle. Ford was carrying a backpack and talking on one of two cellular phones that he was carrying when he encountered Preer. Despite finding it odd that Ford would ask him to call 911 when Ford had access to a cellular phone himself, Preer called 911. Ford then walked to a nearby Burger King where he discarded his backpack in the restaurant's dumpster.
- [5] Kevin Lloyd, Devon's brother, called Devon's cellular phone at 10:26 a.m. and Ford answered. Lloyd found this to be unusual because Devon did not generally let people use his phone. Ford told Lloyd that Devon was not

breathing. Ford then “started talking gibberish, talking real fast” before “[t]he call ended.” Tr. Vol. III pp. 79–80. A short time later, Stacy Ford, Devon’s sister, called Devon’s cellular phone. Again, Ford answered. Ford told Stacy that “[f]ive guys [had] r[u]n in” the apartment and had shot Devon. Tr. Vol. III p. 88. Ford “kept talking really fast” and said “[m]an, she’s crying” before hanging up after Stacy had started to cry. Tr. Vol. III p. 88.

[6] Shortly after discarding his backpack in the Burger King dumpster, Ford returned to Devon’s apartment complex, still talking on two cellular phones, where he was approached by officers. Ford told officers that three males had “entered the apartment and shot his uncle.” Tr. Vol. III p. 58. Ford agreed to take the officers to Devon’s apartment. When they arrived at the apartment, officers found Devon lying on the bed, unresponsive and lifeless. No one else was inside the apartment and there were no signs of disarray. Officers observed several gunshot wounds on Devon’s body.

[7] When Officer David Kirstein escorted Ford away from the crime scene, Ford stated that he had been taking the trash out when he had seen “a vehicle pull up and a subject get out of that vehicle with a black mask on.” Tr. Vol. III p. 66. The person who had gotten out of the vehicle had “mean-mugged [Ford] and it [had] scared [him], so [he had] got[ten] behind the dumpster.” Tr. Vol. III p. 66. Ford had eventually re-entered the apartment, where he claimed to have found his uncle shot. Ford told Officer Kirstein that he had then left the apartment and had walked to a nearby Burger King to use the restaurant’s Wi-Fi and make some phone calls. Officer Kirstein transported Ford to the police

department. When Ford arrived at the police station, he was found to have \$120.00 “rolled up and put in his sock.” Tr. Vol. III p. 218.

- [8] Officers located three fired cartridge cases along with several fired bullets and bullet fragments near Devon’s body. Officers also retrieved Ford’s backpack from the Burger King’s dumpster. Officers discovered a firearm, two magazines, and an unfired cartridge inside the backpack. The backpack also contained school supplies, including a notebook with Ford’s name written on it.
- [9] Shortly after Ford had arrived at the police station, Detective Liter spoke to Martha and Ford in an interview room. While Ford initially expressed confusion as to whether Martha or Devon was his legal guardian, Martha explained to Ford that she had adopted him and that she was his legal guardian. Detective Liter explained that she was going to read the waiver of rights before giving Ford and Martha “time alone and in private to [give them the opportunity] to discuss what [she] had just read to them and to discuss [whether] they were willing to talk to [her] without an attorney.” Tr. Vol. II p. 104. Detective Liter asked Martha and Ford if they understood the waiver-of-rights form, and both indicated that they did. Detective Liter gave the waiver-of-rights form to Martha and Ford and left the room, instructing Martha and Ford “to take their time” and “to open the door when they were ready.” Tr. Vol. II p. 105. Approximately seven or eight minutes later, Ford opened the door and stated that he was ready.

[10] After both Ford and Martha had signed the waiver-of-rights form, Ford told Detective Liter that he had been taking the trash out that morning when a silver car had pulled up with three men inside. Ford indicated that all three men had exited the vehicle and one had been wearing a ski mask. Ford further indicated that all three men had gone into Devon's apartment and that he had hidden behind the dumpster because he became scared when "the one that had the mask on was mean mugging him." Tr. Vol. III p. 184. Ford indicated that once the men had left, he had returned to the apartment and retrieved Devon's gun from the top of the refrigerator, claiming that the gun "was kind of hot." State's Ex. 117B Supp. Tr. p. 13. Ford told Detective Liter that he had "squeezed the trigger, to make sure no bullets come out." State's Ex. 117B Supp. Tr. p. 13. Ford indicated that he had wanted to get rid of the gun and its magazine, so he packed them in his backpack, which he had thrown into the Burger King dumpster. Ford admitted that he had not called 911, indicating instead that he had called "his people." Tr. Vol. III p. 185; State's Ex. 117B Supp. Tr. p. 18. Ford further admitted that he had known that Devon was dead but claimed that he had hidden the gun because he did not want Devon to get in trouble if Devon had not had a license for the firearm. Ford repeatedly denied shooting Devon. After that interview concluded, Ford was escorted back to a holding cell.

[11] A couple of hours later, Ford informed an officer that he wanted to speak with Detective Liter again because "he had lied before, and he wanted to tell the detective the truth now." Tr. Vol. III p. 196. The officer informed Detective

Liter that Ford wanted to speak with her again. Detective Liter contacted Martha, who returned to the police station. When Martha arrived, she was escorted back to an interview room with Ford. Detective Liter again read Ford his *Miranda*³ rights and the waiver-of-rights form. When Ford indicated that “he didn’t need that again,” Detective Liter explained that she needed to re-inform him of his rights. After Detective Liter had read Ford his rights, she again informed Ford and Martha that she would leave the room to give them privacy to discuss whether they wanted to speak to her without an attorney present and again instructed them to open the door when they were ready. A few minutes later, Ford opened the door and stated that they were ready. Ford and Martha then signed a second waiver-of-rights form.

[12] During the second interview, Ford claimed that a twenty-year-old man named Jeron had killed Devon. Ford indicated that Jeron had been the man in the ski mask and that Jeron had threatened to kill him if he identified Jeron. Ford further indicated that Jeron had instructed him to throw the gun away after Jeron had shot Devon. Detective Liter ended the interview after questioning the plausibility of Ford’s story.

[13] Ford was again escorted back to a holding cell after the second interview concluded, at which time he informed an officer that he wanted to speak with Detective Liter again because he was “about to just say it was an accident just

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

to get it over with” because he had “shot [his] uncle.” Tr. Vol. III p. 210. The officer informed Detective Liter about Ford’s statements.

[14] Detective Liter stopped Martha before she left the police station and escorted her back to an interview room. Ford was brought back to the interview room. Only “a couple of minutes, maybe five to six minutes” had passed since the end of the second interview. Tr. Vol. II p. 108. Detective Liter informed Ford and Martha that she would not reread his rights since they “just had concluded the second interview,” and Ford “interrupted [Detective Liter] and said yeah, I remember this.” Tr. Vol. II p. 108. Detective Liter also asked Martha if she understood Ford’s rights and Martha answered in the affirmative.

[15] During the final interview, Ford admitted that he had shot Devon, claiming that it had been an accident. Ford indicated that he had been playing with Devon’s gun when he had accidentally shot Devon in the ankle. Ford further indicated that he had just kept on shooting because he “didn’t know how to stop” and that he had thrown the gun away because he did not want anyone to think that he had shot Devon on purpose. State’s Ex. 117D Supp. Tr. p. 75.

[16] An autopsy revealed that Devon had been shot in the hand; in the forearm, with that bullet traveling into the left side of his torso; in the left side of his torso, with that bullet traveling through his stomach, liver, diaphragm, and lung, exiting through his back; again in the left torso, with the bullet traveling through the kidney and exiting through Devon’s mid-back; in the right knee and right buttock; and in the left side of the face, with the bullet traveling into

the spinal cord where it was recovered. The cause of death was determined to be “multiple gunshot wounds.” Tr. Vol. III p. 155.

- [17] On February 19, 2020, the State charged Ford with murder. Ford subsequently filed a motion to suppress his statements to Detective Liter, which the trial court denied after a hearing. The case proceeded to trial, where Ford’s statements to Detective Liter were admitted into evidence over Ford’s objection. After the jury had found Ford guilty, the trial court sentenced Ford to a fifty-year term of imprisonment.

Discussion and Decision

- [18] Ford contends that the trial court abused its discretion in admitting his statements to Detective Liter. “The trial court has broad discretion to rule on the admissibility of evidence.” *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017). “Rulings on the admissibility of evidence are reviewed for an abuse of discretion and ordinarily reversed when admission is clearly against the logic and effect of the facts and circumstances.” *Id.*

- [19] The Fifth Amendment, the Due Process Clause of the Fourteenth Amendment, and Article I, Section 14, of the Indiana Constitution protect the privilege against self-incrimination and ensure that only a person’s voluntary statements can be used against that person in a criminal prosecution. The privilege applies not only in court proceedings but also when law enforcement interrogates a suspect who is in custody—*i.e.*, custodial interrogation. The privilege also prohibits the use of compelled statements in juvenile delinquency proceedings.

D.M. v. State, 949 N.E.2d 327, 332–33 (Ind. 2011) (internal citations omitted, emphasis added).

[20] Indiana Code section 31-32-5-1 provides that

Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:

...

(2) by the child’s custodial parent, guardian, custodian, or guardian ad litem if:

- (A) that person knowingly and voluntarily waives the right;
- (B) that person has no interest adverse to the child;
- (C) meaningful consultation has occurred between that person and the child; and
- (D) the child knowingly and voluntarily joins with the waiver.

[21] The Indiana Supreme Court has interpreted Indiana Code section 31-32-5-1 to mean that

[i]n Indiana, there are thus four requirements that must be satisfied before a juvenile’s statements made during a custodial interrogation can be used in the State’s case-in-chief. First, both the juvenile and his or her parent must be adequately advised of the juvenile’s rights. Second, the juvenile must be given an opportunity for meaningful consultation with his or her parent. Third, both the juvenile and his or her parent must knowingly, intelligently, and voluntarily waive the juvenile’s rights. Finally, the juvenile’s statements must be voluntary and not the result of coercive police activity.

D.M., 949 N.E.2d at 333–34 (internal citations omitted). “The State bears the burden of proving beyond a reasonable doubt that the juvenile received all of the protections of Indiana Code section 31-32-5-1 ... and that both the juvenile and his or her parent knowingly, intelligently, and voluntarily waived the juvenile’s rights[.]” *Id.* at 334.

A. Martha Was Ford’s Guardian as it Related to Indiana Code Section 31-32-5-1

[22] In challenging the admission of his statements to Detective Liter, Ford argues that Devon, not Martha, was his legal guardian. While Ford acknowledges that he had been both raised and adopted by Martha, he points to the fact that he had lived with Devon for approximately two-and-one-half weeks as evidence that Devon was his guardian. Even if Devon could have qualified as Ford’s guardian, Devon had been killed by Ford prior to the questioning, meaning that as of the time that Ford made the challenged statements to Detective Liter, Devon was deceased and could no longer act as Ford’s guardian.

[23] Ford asserts on appeal that Detective Liter had “insisted” that he accept Martha as his “real guardian,” Appellant’s Br. p. 10, but the record demonstrates that it was Martha who had asserted that she was Ford’s legal guardian. Martha was Ford’s adoptive mother, *i.e.*, his legally recognized parent, and nothing in the record suggests that Martha had relinquished her position as such. In fact, the record indicates that although Ford had moved out of Martha’s home prior to the questioning, he had done so because of a no-contact order with another juvenile in Martha’s care, not because of any issues with Martha. The record

clearly establishes that Martha was a proper guardian for Ford under Indiana Code section 31-32-5-1.

B. Martha's Interests Were Not Adverse to Ford's

[24] Ford also argues that Martha's interests were adverse to his. In making this argument, Ford does not point to any evidence that he claims proves that Martha's interests were adverse to his own. He merely claims that Martha's "interests *may* have been more with the [juvenile listed in the no-contact order], who still lived with her, than with him" and Martha "*might* have less interest in protecting his juvenile rights than helping prosecute a relative's killer." Appellant's Br. p. 12 (emphases added). In *K.S. v. State*, 849 N.E.2d 538, 543 (Ind. 2006), the Indiana Supreme Court held that "[t]he parent of an alleged juvenile delinquent does not have a conflict of interest by virtue of being a parent of both the juvenile and the victim." In a similar vein, we cannot say that Martha's interests were adverse to Ford's interests merely because she was the guardian of Ford's prior juvenile victim and was related to Devon. Ford also asserts that Detective Liter had enlisted Martha "as an ally against" him. Appellant's Br. p. 12. The record, however, demonstrates the opposite, with Martha appearing to be a loving, caring advocate for Ford. Ford has failed to convince us that Martha's interests were adverse to his.

C. Ford and Martha Were Not Denied an Opportunity to Engage in Meaningful Consultation due to Their Alleged Lack of Sophistication

[25] In arguing that his waiver was not knowing or voluntary, Ford asserts that neither he nor Martha were “very sophisticated about juvenile rights,” claiming that neither he nor Martha “appeared to understand the consequences of his statements.” Appellant’s Br. pp. 13, 14. In support, Ford claims that when first given the opportunity to consult with Martha, she had indicated that she believed that the police would release Ford after he gave his statement. While Martha may have asserted as much, her statement, when considered with the record as a whole, does not suggest that she was unsophisticated but rather that she appeared to have believed Ford’s asserted innocence. Martha’s statement therefore did not necessarily demonstrate a lack of sophistication but rather a belief in Ford.⁴

D. Even if Detective Liter’s Failure to Pause the Recording Equipment had Denied Ford and Martha the Opportunity to Engage in a Private, Meaningful Consultation, Any Error Was, At Most, Harmless

[26] Finally, Ford argues that he and Martha had been denied the opportunity to engage in meaningful consultation because Detective Liter had apparently

⁴ Ford also claims that he “perhaps lacks emotional maturity,” pointing to the fact that he changed his statement regarding what had happened to Devon on numerous occasions. Appellant’s Br. p. 14. Ford, however, has not developed this claim further and, without more, we are unable to see how the fact that Ford changed his version of the events numerous times demonstrates a lack of emotional maturity.

failed to pause the recording equipment when she left the room to give Ford and Martha privacy to discuss whether to sign the waiver form. The Indiana Supreme Court has held that “a consultation can be meaningful only in the absence of police pressure.” *Washington v. State*, 456 N.E.2d 382, 383 (Ind. 1983). The goal of such consultation “is to afford the juvenile defendant a stabilizing and relaxed atmosphere in which to make a serious decision that could possibly affect the rest of his life.” *Andrews v. State*, 441 N.E.2d 194, 198 (Ind. 1982). “Privacy is essential to a meaningful consultation.” *S.D. v. State*, 937 N.E.2d 425, 431 (Ind. Ct. App. 2010), *trans. denied*. “The meaningful consultation requirement is met only when the State demonstrates actual consultation of a meaningful nature or the express opportunity for such consultation, which is then forsaken by the juvenile in the presence of the proper authority, so long as the juvenile knowingly and voluntarily waives his constitutional rights.” *Id.*

To prove that actual consultation of a meaningful nature occurred, the State needs only to prove that the police provided a relatively private atmosphere that was free from police pressure in which the juvenile and the parent could have had a meaningful discussion about the allegations, the circumstances of the case, and the ramifications of their responses to police questioning and confessions.

D.M., 949 N.E.2d at 335 (internal quotations omitted).

[27] In asserting that he was denied a meaningful opportunity to consult with Martha in private because the consultation period was recorded after Detective

Liter had allegedly failed to pause the recording equipment, Ford points to our decision in *S.D.* In *S.D.*, we concluded that because the consultation between the juvenile and his guardian was videotaped, both were aware of the video cameras in the room, and it was evident that the juvenile and his guardian “were aware that they were being recorded” during their allegedly private consultation period, the video cameras constituted an improper police presence and infringed on the privacy necessary to any meaningful consultation. 937 N.E.2d at 431. Unlike the situation in *S.D.*, however, it is not evident from the record that Ford and Martha were aware that they were being recorded during their consultation.

[28] That being said, while we do not condone any act by police, intentional or negligent, that may potentially deny a juvenile suspect the privacy to engage in meaningful consultation with a guardian prior to waiving one’s rights to an attorney or against self-incrimination, we need not address this question today. Based on the record before us, we conclude that even if the trial court had erred in admitting the challenged statements, such error was, at most, harmless given the other evidence of Ford’s guilt.

Generally, errors in the admission of evidence are to be disregarded unless they affect the substantial rights of a party. In viewing the effect of the evidentiary ruling on a defendant’s substantial rights, we look to the probable impact on the fact finder. The improper admission is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction. Moreover, any error in the admission of evidence is not

prejudicial, and is therefore harmless, if the same or similar evidence has been admitted without objection or contradiction.

Hoglund v. State, 962 N.E.2d 1230, 1238 (Ind. 2012) (cleaned up).

[29] Ford's statements during the first interview with Detective Liter were largely cumulative of other unchallenged evidence. The unchallenged evidence indicates that Ford had made numerous substantially similar comments regarding his original version of the events that transpired. He had made these comments to Preer, responding officers, and Officer Kirstein, all of which were made prior to the statements in question and were admitted without objection. Ford had described to Preer, the responding officers, and Officer Kirstein that a group of men had entered Devon's apartment and shot Devon. Ford made a similar statement to Stacy. Ford's statements prior to his interviews with Detective Liter were largely the same, with the only variation being the number of men that he alleged were in the group that he claimed had shot Devon. However, his overall version of the events was the same, *i.e.*, that a group of men had entered Devon's apartment and had shot Devon.

[30] While Preer had observed Ford carrying a backpack and two cellular phones just after he had come out of the apartment, Ford did not have the backpack, which was subsequently recovered from the Burger King dumpster, when he returned to the area surrounding the apartment complex and encountered the responding officers. In addition, Kevin testified that he had found it odd that Ford had answered Devon's cellular phone because Devon did not usually

allow people to use it. In both his conversations with Kevin and Stacy, Ford acted suspiciously, speaking very quickly before abruptly ending each call.

[31] Alfred Thompson, who lived downstairs from Devon, heard “three loud bangs” coming from the upstairs apartment “directly above his bedroom and bathroom.” Tr. Vol. III p. 29. After hearing the sound, Thompson looked out his door and saw Ford coming down the stairs and leaving the apartment building. Thompson did not see any other individuals going up to or coming down the stairs from Devon’s apartment prior to or after the shooting.

[32] The murder weapon, magazines of ammunition, Devon’s two cellular phones, and \$120.00 from Devon’s dresser were the only things that appeared to have been removed from the apartment, which, apart from damage from the gunshots, did not show any signs of disarray. In disposing of the gun and ammunition, Ford had placed the items in his backpack, which had also included other identifying information. When Ford arrived at the police station, he was found to have \$120.00 “rolled up and put in his sock.” Tr. Vol. III p. 218.

[33] Ultimately, the evidence established that Ford had (1) been in the apartment with Devon prior to the shooting, (2) acted suspiciously immediately after the shooting, (3) fled the apartment after the shooting, and (4) attempted to dispose of the murder weapon. Ford’s flight and attempt to dispose of the murder weapon both demonstrated a consciousness of guilt. *See Myers v. State*, 27 N.E.3d 1069, 1077 (Ind. 2015) (finding that flight could be demonstrative of a

consciousness of guilt); *Stone v. State*, 555 N.E.2d 475, 477 (Ind. 1990) (providing that attempts to conceal evidence could be considered to reveal a consciousness of guilt). The unchallenged evidence is sufficient to support an inference of Ford's guilt. As such, even if the trial court had abused its discretion in admitting Ford's statements to Detective Liter, the admission of the evidence was, at most, harmless given the other substantial evidence of Ford's guilt. *See Hoglund*, 962 N.E.2d at 1238.

[34] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.

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