[Cite as *State v. Anderson*, 2018-Ohio-5408.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

KESHAWN ANDERSON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 17 MA 0103

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 16 CR 1026

BEFORE:
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed.

Atty. Paul J. Gains, Mahoning County Prosecutor and
Atty. Ralph M. Rivera, Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee

Atty. Donna Jewell McCollum, 3685 Stutz Drive, Suite 100, Canfield, Ohio 44406, for Defendant-Appellant.

Dated: December 31, 2018

WAITE, J.

{¶1} Appellant Keshawn Anderson appeals his conviction and sentencing for aggravated robbery and robbery with specifications in the Mahoning County Common Pleas Court. Appellant claims the trial court erred in denying his motion to suppress. For the reasons set forth below, Appellant's argument is without merit and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On August 23, 2016, Appellant went to a taxi station on West Federal Street in Youngstown and requested a taxi. The taxi driver ("victim") indicated that she had recognized Appellant as he had been loitering around the taxi station throughout the day prior to seeking a ride. After getting into her taxi and stating a destination, Appellant held a gun to the victim's head and demanded all the cash that was in the vehicle, approximately sixty dollars. When he got out of the taxi and fled, the victim drove to a gas station and called the police.

{¶3} Security footage from the WRTA bus station nearby the taxi stand showed an individual wandering around the station who matched the description of Appellant given by the victim. The security chief identified the person on the security footage as Appellant. There was an outstanding active capias warrant for Appellant for a misdemeanor charge in Youngstown Municipal Court, and he was taken into custody. An interrogation took place at the Youngstown Police Department which lasted approximately two hours. At the beginning of the interrogation, Appellant was read his rights pursuant to *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 760 (1996) and was presented with a written copy to sign. Appellant executed the

document. After signing the form, Detective Michael Lambert began questioning Appellant and Appellant made incriminating statements.

{¶4} On October 6, 2016, Appellant was indicted on one count of aggravated robbery, in violation of R.C. 2911.01(A)(1), (C), a felony of the first degree with a gun specification; and one count of robbery, in violation of R.C. 2911.02(A)(2), (B), a felony of the second degree with a gun specification.

{¶5} On December 12, 2016, Appellant filed a motion to suppress statements made to police during the interrogation. Appellant alleged that he was illegally arrested for aggravated robbery, thus, his statements should have been suppressed. Appellant also alleged that he did not knowingly, intelligently and voluntarily waive his right to counsel and that he signed the waiver only as an acknowledgment that his rights had been read to him, not that he intended to waive the right to counsel. Lastly, Appellant alleged in his motion to suppress that he repeatedly sought to invoke his right to remain silent and terminate the interrogation but the police continued to question him.

{¶6} A hearing on the motion to suppress was held on January 26, 2017. A DVD of the interrogation was introduced at the suppression hearing. No transcript was made of the contents of the recording for the trial court. However, the trial court took the recording under advisement and viewed the DVD prior to making its ruling. On February 1, 2017, the trial court issued a judgment entry overruling Appellant's motion to suppress, concluding: (1) although the arrest report dated September 1, 2016, indicated Appellant was arrested for failure to appear (capias) and aggravated robbery, Detective Lambert testified at the hearing that Appellant was arrested only because of the capias for failure to appear in the Youngstown Municipal Court: this arrest was not

based on the charges; (2) Detective Lambert read Appellant his *Miranda* rights; Detective Lambert informed Appellant that a signature on the form indicated they were read; (4) the trial court viewed the recording of the interview and concluded, based on a totality of the circumstances, Appellant waived his rights and (5) the statements made by Appellant during his interrogation did not clearly indicate that he was invoking his *Miranda* rights and he continued to speak after making said statements. (2/1/17 J.E.)

{¶7} Appellant subsequently pleaded no contest to the charge of aggravated robbery with a gun specification. The state dismissed the robbery charge and accompanying gun specification. Appellant reserved the right to appeal the suppression issues. The trial court found Appellant guilty and he was sentenced to four years of incarceration for aggravated robbery to be served consecutively to a sentence of three years for the accompanying gun specification, for a total stated prison term of seven years. Appellant was given credit for 257 days in jail. Appellant timely appeals his conviction and sentence.

ASSIGNMENT OF ERROR

> THE TRIAL COURT ERRED AS A MATTER OF LAW AND TO THE PREJUDICE OF APPELLANT AND VIOLATED HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT BY OVERRULING APPELLANT'S MOTION TO SUPPRESS AND ADMITTING INTO EVIDENCE APPELLANT'S STATEMENT.

{¶8} Appellant challenges the trial court's judgment on his motion to suppress and raises two issues. First, Appellant contends he did not waive his *Miranda* rights, because he was not told that the form he signed waived his right to counsel. Second,

Appellant refers to various statements made during the interrogation which he contends were tantamount to an invocation of his *Miranda* rights and, hence, the interrogation should have ceased immediately.

{¶9} An appellate court review of a ruling on a motion to suppress involves mixed questions of law and fact. "In a hearing on a motion to suppress evidence, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and evaluate the credibility of witnesses." *State v. Venham*, 96 Ohio App.3d 649, 653, 645 N.E.2d 831 (4th Dist.1994). We must accept the trial court's findings as true if they are supported by competent, credible evidence. *State v. Winand*, 116 Ohio App.3d 286, 288, 688 N.E.2d 9 (7th Dist.1996), citing *Tallmadge v. McCoy*, 96 Ohio App.3d 604, 608, 645 N.E.2d 82 (9th Dist.1994). Thereafter, an appellate court must independently determine whether these facts satisfy the applicable legal standard. *State v. Williams,* 86 Ohio App.3d 37, 41, 619 N.E.2d 1141 (4th Dist.1993), overruled on other grounds as stated in *Village of McComb v. Andrews*, 3d Dist. No. 5-99-41, 2000-Ohio-1663 (Mar. 22, 2000).

{¶10} Appellant contends that although he signed the *Miranda* waiver, his inculpatory statements to police during the interrogation were not voluntarily made and should have been suppressed. Appellant says he was told during the interrogation that his signature on the form would indicate only that he had been read his rights, and not that he intended to waive those rights. Appellant submitted a DVD recording of the interrogation to the trial court which the court apparently viewed prior to issuing its judgment. While there is no transcript of the interrogation, the record does not support Appellant's argument.

{¶11} A suspect's waiver of his right not to incriminate himself, as well as any subsequent confession, must be made voluntarily, knowingly and intelligently. *Miranda* at 444. A suspect may knowingly and intelligently waive those rights and make a statement. If the statement is later challenged as involuntary, the burden is on the state to prove the waiver was knowing, intelligent and voluntary by a preponderance of the evidence. *State v. Wesson,* 137 Ohio St.3d 309, 2013-Ohio-4575, 999 N.E.2d 557, ¶ 34.

{¶12} In determining whether a valid waiver occurred, a reviewing court is to consider the totality of the circumstances, including "the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." *Id.* at ¶ 35, quoting *State v. Edwards,* 49 Ohio St.2d 31, 358 N.E.2d 1051 (1976), paragraph two of the syllabus.

{¶13} A review of the record before us contains evidence relative to Appellant's waiver of his *Miranda* rights. First, it contains a written waiver of Appellant's *Miranda* rights. "[E]vidence of a written waiver form signed by the accused is strong proof that the waiver is valid." *State v. Eley*, 77 Ohio St.3d 174, 178, 672 N.E.2d 640 (1996), superseded by constitutional amendment on other grounds as stated in *State v. Smith,* 80 Ohio St.3d 89, 684 N.E.2d 668 (1997). Detective Lambert testified at the suppression hearing that he read Appellant his rights from a printed form, asked Appellant to sign the form and explained that his signature was not an admission of guilt but that it was an acknowledgment that his rights had been read. (1/26/17 Tr., p. 19.) Further, Appellant twice interrupted Detective Lambert and told him that he knew what

his rights were. First saying, "[w]ait up. I know my rights we're good" and then "I understand you have to read them but I know them." (State's Exh. 2.) However, Detective Lambert continued reading him his rights and handed Appellant the waiver to sign. Despite the oral and written statement that Appellant had the right to remain silent and had the right to have an attorney present, Appellant unhesitantly entered into a back and forth dialogue with the officer. (1/26/17 Tr., p. 20.) Appellant never asked for an attorney and was never hesitant in speaking with the detective during the interview. (1/26/17, Tr., p. 21.)

{¶14} Appellant also contends that even if he initially waived his *Miranda* rights, he invoked his right to remain silent during the interview and yet Detective Lambert continued the interrogation. Appellant specifically refers to three statements he made during the interrogation. First, Appellant contends that about twenty-five minutes into the interview he stated, "this little back and forth thing ain't going nowhere." (1/26/17 Tr., p. 40.) Detective Lambert continued questioning Appellant. A few minutes later Appellant said, "man, we done, man" but the interview continued. (1/26/17, Tr., p. 43.) Lastly, after Detective Lambert seemed to indicate that he was finished with questioning, the questioning continued. At that point Appellant stated, "I thought you said you didn't have nothing else." (1/26/17, Tr., p. 47.)

{¶15} After waiver, any invocation of the right to remain silent must be done unambiguously. *State v. Murphy,* 91 Ohio St.3d 516 (2001), citing *Michigan v. Mosley,* 423 U.S. 96, 104, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). If the accused makes an ambiguous statement regarding the right to end questioning the police are not required to immediately cease or ask for clarification of the statement. *Davis v. United States,*

512 U.S. 452, 461-462, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994). In *Murphy,* the defendant's statement, "I'm ready to quit talking and I'm ready to go home, too" was not deemed to be an unambiguous invocation of the right to end questioning. (Emphasis omitted.) *Id*., at pp. 520-521. Moreover, in order to unambiguously invoke his right, the defendant must articulate his desire to remain silent or to cut off questioning in a manner that is sufficiently clear to a reasonable police officer in the circumstances, so that the officer understands the statement is an invocation of the right to remain silent. *Id.* at 520.

{¶16} Appellant believes that his statements are tantamount to an invocation of his right to end questioning. However, similar to the statement in *Murphy,* the three statements cited by Appellant are all ambiguous and do not serve to clearly indicate he was invoking his right to end questioning.

{¶17} We have held that the statement "I don't want to talk about this" was ambiguous and did not reflect the defendant was invoking his right to remain silent. *State v. Gilbert,* 7th Dist. No. 08 MA 206, 2012-Ohio-1165, ¶ 79. Other appellate courts have determined similar statements to be ambiguous and failed to invoke the defendant's right to remain silent or end the interrogation. In *State v. Rednour*, 2d Dist. No. 25135, 2013-Ohio-2125, the court determined the statement by the defendant that he thought he should "shut his mouth" was ambiguous, particularly when, as here, the defendant continued talking after the statement was made. The defendant then stated that he was "done talking" but continued talking freely before specifically invoking his right to counsel and to remain silent. *Id*. at ¶ 39. The court in *Rednour* held that the statements "indicate that his desire to stop speaking was based on the fact that the

officers did not believe him" and that the defendant "continued to attempt to persuade the officers that he was innocent and had nothing to do with the murder." *Id*. at ¶ 42.

{¶18} In *State v. Strong,* 1st Dist. Nos. C-100484; C-100486, 2011-Ohio-4947 the court held that the defendant's statement, "that's all I can let you know right there as far as yesterday" was ambiguous and did not adequately indicate that defendant was invoking the right to end questioning. *Id*. at ¶ 47-48.

{¶19} However, in *State v. Griffith*, 11th Dist. No. 2001-T-0136, 2003-Ohio-6980, the court determined that the defendant unambiguously invoked his right to remain silent or to cut off questioning when he stated "I'm done," and stopped speaking in response to questioning by an officer. *Id.*, ¶ 33.

{¶20} A review of Appellant's interview shows that after brief introductory comments, Detective Lambert began reading Appellant his rights. Appellant raised his hand, motioning for Detective Lambert to stop, saying that he knew his rights. (9/1/16 State's Exh. 2.) Detective Lambert said that although Appellant may be familiar with his rights, Lambert was going to read them anyway. After the *Miranda* rights were read, Lambert stated that although Appellant may know his rights, he needed to inform Appellant that by signing the form Appellant was indicating only that his rights had been read to him, and not that Appellant was confessing or making any admissions. Detective Lambert signed the form and slid it to Appellant, who signed it without hesitation. The rest of the interview proceeded. About twenty-five minutes into the interview, Appellant said, "this little back and forth thing ain't going nowhere," followed a few minutes later by "man, we done, man." (1/26/17 Tr., pp. 40, 43.) However, he kept talking. Several minutes later Detective Lambert indicated he was finished asking

questions, but then continued questioning Appellant, who stated, "I thought you said you didn't have nothing else." (1/26/17 Tr., p. 47; 9/1/16 State's Exh. 2.)

{¶21} Appellant's three statements did not unambiguously invoke his right to end questioning. Considering the totality of the circumstances, Appellant clearly demonstrated at the outset that he understood the rights he was waiving by signing the waiver form. Appellant continues to engage with Detective Lambert throughout the interview, both during and after making his three statements. The three statements presented here as evidence of the revocation of his *Miranda* waiver cannot be construed as unambiguous. The statements do not clearly indicate that he was invoking his right, and Appellant's decision to freely continue to communicate for the duration of the questioning would not indicate to a reasonable police officer that he was invoking his right. Appellant actively participated in the interview by answering Detective Lambert's questions despite clearly being aware of his right to end the interview. Consequently, Detective Lambert was not required to end questioning or seek further clarification from Appellant. The state demonstrated, by a preponderance of the evidence, that Appellant's waiver of his *Miranda* rights was knowingly, intelligently and voluntarily made. The trial court did not err in overruling Appellant's motion to suppress on this issue.

{¶22} Accordingly, based on the foregoing, the trial court did not err in denying Appellant's motion to suppress. The record reveals he understood his *Miranda* rights and did not unambiguously invoke those rights, but continued to make statements during the interview. Appellant's assignment of error is without merit and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Robb, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.