[Cite as *State v. Fricke,* 2015-Ohio-1747.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 26125
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2010-CR-3778
v.	:	
	:	(Criminal Appeal from
JOSEPH D. FRICKE, JR.	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 8th day of May, 2015.

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FAIN, J.

{¶ 1} Defendant-appellant Joseph Fricke appeals from his conviction and sentence, following a no-contest plea, for Sexual Imposition and Receiving Stolen Property. He contends that the trial court erred by overruling his motion to suppress statements made by him, because he was deceived by the fact that the police did not inform him, when interviewing him about the theft charge, that other charges might be pursued.

{¶ 2} We conclude that the record does not support Fricke's claim that he was tricked, deceived, or coerced into giving his statement to the police. The record indicates that his statements were voluntary. Accordingly, the judgment of the trial court is Affirmed.

I. Fricke's Statements to Police

{¶ 3} In October 2010, the University of Dayton Police Department was called regarding a possible burglary on Irving Avenue. The property was not owned by the University, but students attending the University were living there. The officers learned that a party had been held at the residence the night before, and that several items of personal property were missing. The officers were also informed about unwanted sexual contact occurring the same night as the party.

{¶ 4} Later that day, University of Dayton police officer Tom Weber was assigned to the investigation, which revealed that Fricke was involved in the matter. Weber telephoned Fricke and asked him to come to the police department for an interview. Fricke agreed, and met with Weber and Officer Watts in an interview room.

{¶ 5} Prior to beginning the interview, Weber completed a pre-interview form. At

the top of the form, he filled in "theft" as the reason for the interview. The issue of the sexual contact was not listed on the form. Weber indicated that, at that time, he was not even certain of what offense the described sexual contact constituted, and that he merely forgot to include it on the pre-interview form. Fricke was informed of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Fricke acknowledged that he understood these rights, which he chose to waive. The interview went on for about an hour, during which Weber asked Fricke to tell him what happened the night of the party.

{¶ 6} At the end of the interview, Fricke was given the option of providing a written statement. Fricke agreed to do so, and was left alone in the interview room while completing the statement. After the interview, Frick left the building.

II. The Course of Proceedings

{¶ 7} Fricke was indicted on one count of Sexual Imposition in violation of R.C. 2907.06(A)(1), one count of Sexual Imposition in violation of R.C. 2907.06(A)(3), and one count of Receiving Stolen Property in violation of R.C. 2913.51(A). Fricke moved to suppress statements made to the University police, claiming that his statement was not voluntarily given. Following a hearing, the motion to suppress was overruled. Thereafter, Fricke pled no contest to the charge of Receiving Stolen Property and to one count of Sexual Imposition, in violation of R.C. 2907.06(A)(1). The remaining count of Sexual Imposition was dismissed. Fricke was designated a Tier I sex offender, and was sentenced appropriately. From his conviction and sentence, Fricke appeals.

III. The Omission of a Reference to Possible Additional Suspected Offenses on a Pre-Interview Form Does Not Render a *Miranda* Waiver Involuntary

{¶ 8} Fricke's sole assignment of error states as follows:

> APPELLANT'S MOTION TO SUPPRESS WAS IMPROPERLY OVERRULED BECAUSE THE INVOLUNTARY STATEMENT WAS OBTAINED IN VIOLATION OF APPELLANT'S CONSTITUTIONAL RIGHTS.

{¶ 9} Fricke contends that his statements to the police were not voluntary. In support, he argues that the police deceived him by failing to inform him that they were investigating, not only the theft charges, but also the claims of sexual assault. He claims that by this omission, Weber impliedly promised that no additional charges would occur if he spoke with the police. He further claims that because of this, his "will was overborne and his capacity for self-deprivation was critically impaired due to the implied promise of leniency at the time of his confession."

{¶ 10} A trial court acts as the trier of fact during hearings on motions to suppress, and, thus, is in the best position to determine questions of fact and to evaluate witness credibility. *State v. Porter*, 178 Ohio App.3d 304, 2008-Ohio-4627, 897 N.E.2d 1149, ¶ 12 (2d Dist.). Therefore, in reviewing the trial court's decision, we must accept the findings of fact that are supported by competent, credible evidence, and then independently determine whether those facts meet the applicable legal standards. *Id.*

{¶ 11} As noted, Fricke does not claim that he was not properly informed of his rights under *Miranda*. Rather, he claims that the omission of a reference to the sexual

conduct offense rendered his confession involuntary. "A confession may be involuntary even when *Miranda* warnings are given, or even if *Miranda* warnings are not required." *Porter*, at ¶ 14. "To be voluntary, a waiver of *Miranda* rights need not be the product of free will, it simply means that the suspect's decision was free from official coercion." *State v. Hetzel*, 2d Dist. Montgomery No. 14411, 1996 WL 391730, * 2 (July 12, 1996).

{¶ 12} We have addressed the question of whether an omission of reference to one suspected crime, during questioning regarding another crime, constitutes coercion. In *State v. Overholser*, 2d Dist. Miami No. 99-CA-35, 2000 WL 125960, *2 (Feb. 4, 2000), we stated:

> The mere failure to advise a suspect of the scope of a criminal investigation has been held not to vitiate a Miranda waiver, because "a valid waiver does not require that an individual be informed of all information 'useful' in making his decision where all information 'might ... affect [his decision to confess].' " *Colorado v. Spring* (1987), 479 U.S. 564, 576, 107 S.Ct. 851, 93 L.Ed.2d 954. See *State v. Hetzel* (July 12, 1996), Mont.App. No. 14411, unreported.
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> In *Colorado v. Spring*, supra, the defendant was questioned by agents of the Bureau of Alcohol, Tobacco, and Firearms concerning certain firearms transactions that led to his arrest, but was also asked a question about the shooting of a man named Walker in Colorado. Arguably, the fact that the scope of the custodial interrogation was going to include a suspicion of murder would have been of considerable significance to the defendant in that case when he contemplated whether to waive his Miranda

> rights. Nevertheless, the United States Supreme Court held that the agents were not obliged to provide him with that information when they solicited his waiver.

Id., at *2. *Accord*, *Hetzel*, supra; *State v. Campbell*, 69 Ohio St.3d 38, 630 N.E.2d 339 (1994).

{¶ 13} The record in this case establishes that Fricke was informed of his rights, and waived them. Fricke was in his late twenties, and had approximately two years of post-high school education, when he voluntarily appeared for the interview. Before beginning the interview, Weber advised Fricke of his rights. Fricke indicated that he understood his rights. Fricke did not appear intoxicated or under the influence of drugs or alcohol. The interview lasted about an hour. Fricke did not request a break or anything to drink. As noted by the trial court, "[Fricke] made logical or appropriate responses to the questions that were asked. There were no express threats or express promises. [Fricke] did not hesitate to talk to the officers. [He was not] reluctant to say anything and the officers [did not] have to persist in questioning to get any information." Dkt. No. 72, p. 7. The trial court chose to credit the testimony of Weber regarding the interview, and ultimately determined that Fricke's statements were voluntarily made.

{¶ 14} We find nothing in the record to indicate coercive conduct by the police. We further conclude that the mere fact that reference to a possibly suspected offense was omitted from the pre-interview form does not render Fricke's statements involuntary, because that omission does not create an implied promise of leniency. Accordingly, the sole assignment of error is overruled.

IV. Conclusion

{¶ 15} Fricke's sole assignment of error having been overruled, the judgment of the trial court is Affirmed .

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DONOVAN and WELBAUM, JJ., concur.

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