

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-11-011

Appellee

Trial Court No. 10 CR 75

v.

KC R. Goble

DECISION AND JUDGMENT

Appellant

Decided: August 17, 2012

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Omar Shaaban, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of Common Pleas, denying appellant's motion to suppress. On February 1, 2011, appellant was found guilty of one count of murder, in violation of R.C. 2903.02, in connection with the death of his infant son. For the reasons set forth below, the judgment of the trial court is affirmed.

{¶ 2} Appointed counsel, Omar Shaaban, has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In a brief filed on appellant's behalf, appointed counsel sets forth one proposed assignment of error asserting that the trial court erred in denying appellant's motion to suppress. In support of his request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to find any appealable issues.

{¶ 3} *Anders, supra*, and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978), set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses. Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is frivolous. *Id.* If the appellate court determines that the appeal is frivolous, it may grant the counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits. *Id.*

{¶ 4} In the case before us, appointed counsel has satisfied the requirements set forth in *Anders*. This court further notes that appellant has not filed a separate brief on his own behalf following notification by appointed counsel of his right to do so. At this juncture, this court shall proceed with an examination of the potential assignment of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 5} On September 7, 2010, the trial court conducted an evidentiary hearing to consider appellant's motion to suppress. Subsequent to this hearing, written closing arguments were submitted to the court by both sides. On September 27, 2010, the motion to suppress was denied. On February 1, 2011, appellant entered a plea of no contest. Appellant was found guilty of one count of murder, in violation of R.C. 2903.02.

{¶ 6} The following undisputed facts are relevant to this matter. On January 12, 2012, the Clyde Police Department received a call from the attending physician at Bellevue Hospital regarding an infant boy who had been brought to the emergency room by his parents. Appellant is the infant's father. The infant was not expected to survive. Treating medical personnel suspected the severely injured infant had suffered physical abuse and contacted authorities. The chief of police and a detective from the Clyde Police Department met with both parents at the hospital and recorded their conversations. The detective advised appellant of his Miranda rights prior to interviewing him. The detective asked appellant if he understood his rights and appellant affirmatively responded. Appellant subsequently disclosed that he became frustrated while lying on

the sofa feeding the baby. Appellant grabbed the baby by his shirt, lifted the baby over his head, and forcefully threw him across the room towards his infant swing where the infant struck the infant swing, causing fatal injuries to the infant.

{¶ 7} As a result of these revelations, the investigating officers and the parents next traveled to the residence where the incident occurred. Photographs were taken of the scene and discussions continued between the officers and appellant regarding the details of what had occurred. For the whole duration of this interview process, although the location changed, appellant was not outside of the presence and control of the lead detective.

{¶ 8} Counsel for appellant presents the following potential assignment of error:

Whether the trial court erred by improperly denying appellant's motion to suppress upon finding that his confession was given voluntarily and that Detective Roach had not needed to read him his *Miranda* rights a second time.

{¶ 9} It is well-established that a defendant who is subjected to custodial interrogation must be advised of his or her *Miranda* rights and make a knowing and intelligent waiver in order for statements obtained to be admissible. *State v. Treesh*, 90 Ohio St.3d 460, 739 N.E.2d 749 (2001). In this case, it is suggested by withdrawing counsel that appellant was subjected to a separate, subsequent interrogation upon traveling with the detective to the family residence. It is likewise well-established a suspect who receives adequate *Miranda* warnings prior to custodial interrogation need

not be warned again before each subsequent interrogation. *Wyrick v. Fields*, 459 U.S. 42, 103 S.Ct. 394, 74 L.Ed.2d 214 (1982).

{¶ 10} We find that although the above guiding legal parameters are useful in our analysis, they are not ultimately determinative. We find, based upon our careful review of the transcript of proceedings from below and the record in its entirety, that appellant was not subjected to a separate, subsequent interrogation. On the contrary, consistent with the trial court's determination at the motion to suppress hearing, we likewise find that the discourse occurring at the scene of the infant's death constituted a continuation of an ongoing interview in which appellant had been properly Mirandized. Thus, there was not an arguable need for appellant to be Mirandized a second time at the scene of the infant's death.

{¶ 11} The record reflects that appellant was never outside of the physical presence and control of the detective. The record reflects that the amount of time that elapsed from the initial portion of the interview to the continuation of the interview at the scene of the incident was an hour or so. It was not a significant length of time. The record is devoid of any evidence in support of the notion that this should possibly be construed as two separate interrogations so as to possibly require a second set of warnings. The record reflects that the interrogation was conducted by the same lead detective throughout the process. The record shows that the fundamental facts furnished by appellant did not materially differ at the scene in comparison to the initial discussions.

Given these facts and circumstances, we find that the trial court did not err in denying appellant's motion to suppress. Appellant was properly Mirandized.

{¶ 12} Based upon the foregoing, we find that substantial justice has been done. We find the proposed assignment of error not well-taken. This court, as required under *Anders*, has undertaken its own independent examination of the entire record to determine whether any issue of arguable merit is presented for appeal. We have found none. Accordingly, we grant the motion of appellant's counsel to withdraw. The judgment of the Sandusky County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
