

[Cite as *State v. Kent*, 2009-Ohio-3889.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
**No. 90795**

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JOHN KENT**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
**AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Common Pleas Court  
Case No. CR-485882

**BEFORE:** Boyle, J., Dyke, P.J., and Sweeney, J.

**RELEASED:** August 6, 2009

**JOURNALIZED:**

**ATTORNEY FOR APPELLANT**

Thomas A. Rein  
Leader Building, Suite 940  
526 Superior Avenue  
Cleveland, Ohio 44114

**ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor  
Colleen Reali  
T. Allan Regas  
Assistant County Prosecutors  
The Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court’s decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court’s decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court’s announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, John Kent, appeals his conviction and the trial court's denial of his motion to suppress. Finding no merit to the appeal, we affirm.

{¶ 2} Kent was charged with one count of aggravated murder, a violation of R.C. 2903.01, and two counts of aggravated robbery, as defined under R.C. 2911.01(A)(1) and (A)(3). The first two counts of the indictment also carried firearm specifications. Kent pled not guilty to all of the charges, and prior to his jury trial he moved to suppress oral statements that he made to Cleveland detectives after being arrested and jailed. The trial court held a suppression hearing and ultimately denied Kent's motion, finding that Kent voluntarily made the statements after having been told his *Miranda* rights. We glean the following facts from the evidence presented at Kent's jury trial.

{¶ 3} On June 10, 2006, around 6:00 a.m., Timothy Humphrey ("the victim") was shot in his left thigh and lower right leg in the course of being robbed outside Brooke Ricci and John Gilbert's home, located at 2122 Mayview Road – a known crack house. The victim died as a result of blood loss.

{¶ 4} The events preceding the victim's death up until 1:00 a.m. are undisputed. In the evening of June 9, Ricci contacted Kent to arrange a drug buy for her friend, Michael Mihna. Kent, a drug dealer who lived on the east

{¶ 5} side of Cleveland, regularly sold crack cocaine to Ricci and Gilbert and had known them for a few years. Kent traveled to Ricci and Gilbert's apartment and purported to sell Mihna 5 grams of cocaine. A few hours later, around 1:00 a.m., Mihna returned to Ricci and Gilbert's apartment because Kent had not given him the full 5 grams. Kent then gave Mihna more cocaine and Mihna left the apartment.

{¶ 6} As for the events that transpired after Mihna left the apartment, the state and Kent presented conflicting testimony. According to Kent, he left Ricci and Gilbert's apartment at approximately 2:00 a.m., immediately following Mihna, and went directly to Colette Stevens's house where he spent the night. Kent testified that he had no involvement in the robbery or shooting of the victim. Stevens, who testified that she was like an aunt to Kent, corroborated Kent's testimony. She testified that she saw Kent sound asleep in her living room at 6:00 a.m. on June 10 – the same time that the victim was shot.

{¶ 7} In contrast, the state presented the testimony of numerous witnesses directly tying Kent to the shooting and robbery. Both Ricci and Gilbert testified that Kent hung out at their apartment drinking while they got high. They further testified that Kent ultimately proposed the idea of robbing someone and asked them both if they knew of anyone; more specifically, he asked Ricci if she knew anyone who would have drugs available to sell. Ricci

suggested Humphrey, who was the boyfriend of her friend and previously had sold her drugs. Kent's plan was to lure the victim over to the apartment under the guise of a drug transaction. Once Humphrey completed the drug sale, Kent planned to rob him on the street. According to Ricci and Gilbert, Kent said that if anything went wrong, "he would shoot [Humphrey]."

{¶ 8} Using Kent's cell phone, Ricci called the victim around 5:00 a.m. to arrange the drug transaction. Kent gave Ricci \$25 to pay the victim for the drugs and then waited in the bushes to rob him. Ricci met the victim outside her apartment and gave him the money for the drugs. As she was walking up her building stairs, she heard the victim and Kent arguing and then heard gunshots. She looked out her window and saw the victim lying on the ground and Kent standing over him, going through his pockets. Gilbert, who was waiting in Kent's rented car – a white Jeep Liberty – drove Kent to the east side immediately following the shooting.

{¶ 9} Cleveland Detective Michael Beaman testified that a resident in the neighborhood reported seeing a white Jeep Liberty flee the scene immediately following the shooting.

{¶ 10} The state also offered the testimony of Richard Lengen, who testified that he spent the night at Ricci and Gilbert's apartment on June 9. He stated that Ricci woke him around 6:00 a.m., that she was visibly shaken, and that she

asked him to help her find Gilbert. Lengen looked out the window and saw Humphrey lying on the ground. Ricci ultimately told Lengen what happened and then asked him to get rid of Kent's cell phone. Lengen threw the cell phone in a dumpster but later contacted the police and led them to the phone. Through the cell phone records of the recovered phone, the police were led to Kent and confirmed that he used his phone to call the victim numerous times shortly before the victim's death.

{¶ 11} Cleveland Detective Henry Veverka interviewed Kent on September 1, 2006, the day following Kent's arrest. Det. Veverka testified that Kent admitted to knowing Ricci and Gilbert but stated that he had not seen them in a couple of months. Kent acknowledged that he regularly sold them drugs in the past and admitted that he saw them on June 9, 2006. He further admitted that he was driving a white Jeep Liberty on this evening and ultimately confessed to being present when the victim was shot, despite his earlier claim of having no involvement in or knowledge of the shooting. Kent identified Gilbert as the shooter. Kent stated that he waited in the car while Gilbert robbed and shot the victim. Kent further stated that it was Ricci's idea to rob the victim.

{¶ 12} The state further presented rebuttal witnesses to counter Kent's and Stevens's testimony. Stevens, Kent's alibi witness, testified that Kent took her cell phone and kept her phone for a couple of days because he had lost his. Kent

likewise testified that he lost his phone and that he had reported it stolen on June 10, 2006. The state presented cell phone records and testimony revealing that several calls were made from Stevens’s cell phone to Kent’s cell phone on June 10, 2006 after 6:00 p.m. – many hours after Kent reported his phone stolen and hours after Stevens would have seen Kent and should have been aware that his cell phone was lost.

{¶ 13} The jury found Kent guilty on all three counts of the indictment, and the trial court sentenced him to a total of 33 years in prison. Kent appeals, raising the following four assignments of error:

{¶ 14} “[I.] The trial court committed reversible error when it denied appellant’s motion to suppress statements when there is no written evidence that appellant waived his *Miranda* rights prior to police interrogation.

{¶ 15} “[II.] The trial court committed reversible error when it denied appellant’s motion to suppress by admitting the alleged statements of appellant due to the fact that the alleged statements were not made voluntarily by appellant and were in fact obtained through coercion, intimidation and threats.

{¶ 16} “[III.] The state failed to present sufficient evidence to sustain a conviction against appellant.

{¶ 17} “[IV.] Appellant’s convictions are against the manifest weight of the evidence.”

Motion to Suppress

{¶ 18} In his first two assignments of error, Kent argues that the trial court erred in failing to grant his motion to suppress because the police failed to secure a signed waiver of his *Miranda* rights, and his statements were not voluntarily made. We disagree.

{¶ 19} A motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8. “When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.” (Internal citations omitted.) *Id.*

A. *Miranda* Rights

{¶ 20} “A suspect in police custody ‘must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him



prior to any questioning if he so desires.” *State v. Lather*, 110 Ohio St.3d 270, 2006-Ohio-4477, ¶6, quoting *Miranda v. Arizona* (1966), 384 U.S. 436, 479.

{¶ 21} Kent argues that his motion to suppress should have been granted because the police failed to obtain a signed waiver of his *Miranda* rights prior to interrogating him. He further argues that the police failed to even read him his *Miranda* rights prior to taking his oral statement. Kent’s argument, however, lacks merit.

{¶ 22} At the suppression hearing, Det. Veverka testified that he read Kent his *Miranda* rights prior to interrogating him. According to Det. Veverka, he “advised [Kent] that he had been placed under arrest on a warrant for aggravated murder, and that [the detectives] would like to talk to him. At that point – I *Mirandized* him and let him know that he did not have to talk to us.” Det. Veverka further testified that he asked Kent whether he understood his rights and whether he would be “willing to talk with officers without consulting a lawyer or having a lawyer present.” Det. Veverka testified that Kent responded “yes” to both questions.

{¶ 23} Additionally, Cleveland Detective Michael Beaman testified that, although not present for the entire reading of the *Miranda* rights, he heard Det. Veverka begin to read Kent his *Miranda* rights before he exited the interview room.

{¶ 24} Although Kent testified at the suppression hearing that he was never advised of his *Miranda* rights, the trial judge obviously found Det. Veverka's testimony more credible.

{¶ 25} As for Kent's claim that the police failed to obtain a signed waiver of his *Miranda* rights prior to interrogating him, the law does not impose such a requirement. Indeed, the law does not even impose a strict requirement that the waiver be in the form of an explicit statement; instead, waiver can be inferred from the words and actions of the accused. See *North Carolina v. Butler* (1979), 441 U.S. 369, 375; *State v. Scott* (1980), 61 Ohio St.2d 155, paragraph one of the syllabus. Here, Det. Veverka's testimony constitutes credible evidence, supporting the trial court's conclusion that Kent was advised and subsequently waived his *Miranda* rights.

B. *Voluntary Waiver*

{¶ 26} In order for a defendant's waiver of *Miranda* rights to be valid, the waiver must be knowingly, intelligently, and voluntarily made. *Miranda*, supra, at 444. The state bears the burden of demonstrating, by a preponderance of the evidence, that a defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights based on the totality of the circumstances. *State v. Gumm*, 73 Ohio St.3d 413, 429, 1995-Ohio-24. The totality of the circumstances includes "the age, mentality and prior criminal experience of the accused; the length,

intensity, and frequency of interrogation; the existence of threat or inducement.” *State v. Campbell*, 90 Ohio St.3d 320, 332, 2000-Ohio-183, quoting *State v. Edwards* (1976), 49 Ohio St.2d 31, paragraph two of the syllabus. Absent a showing that the waiver was voluntary, the waiver is invalid and the defendant’s statements should be suppressed. *Miranda*, supra.

{¶ 27} Kent argues that his statements were not freely and voluntarily made. He contends that Det. Veverka was “tough,” intimidating, and threatening. He claims that Det. Veverka told him that if he refused to cooperate, he would face lethal injection if convicted.

{¶ 28} Under the totality of the circumstances, we cannot say that Kent’s statements were coerced or involuntary. At the time of questioning, Kent was 28 years old. The questioning involved a single interview that lasted approximately one and one-half to two hours. Kent was given coffee and cigarettes during the interrogation. Kent was responsive, alert, and had the mental capacity to understand the proceedings. (Kent had attended three years of St. Ignatius High School and ultimately obtained his G.E.D.) Although Kent claimed that he was never told his *Miranda* rights, the trial court found otherwise based on the testimony of Det. Veverka. Kent also conceded to knowing the *Miranda* rights prior to being arrested in the instant case. Indeed, Kent had previous experience with the criminal justice system, which included serving a six-month prison term

for drug trafficking and drug possession. Finally, although there is no dispute that Det. Veverka was “tough” in questioning Kent, Det. Veverka denied making any threats and testified that he only informed Kent of the potential penalties if convicted.

{¶ 29} Thus, based on this evidence, we cannot say that Det. Veverka’s methods were coercive or that Kent made an involuntary confession. Accordingly, we find that the trial court did not err in denying Kent’s motion to suppress.

{¶ 30} The first and second assignments of error are overruled.

Sufficiency and Manifest Weight of the Evidence

{¶ 31} In his third and fourth assignments of error, Kent argues that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. We disagree.

{¶ 32} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. On review for sufficiency, courts are to assess not whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 33} A challenge to the manifest weight of the evidence, on the other hand, attacks the credibility of the evidence presented. *Thompkins* at 387. Because it is a broader review, a reviewing court may determine that a judgment of a trial court is sustained by sufficient evidence, but nevertheless conclude that the judgment is against the weight of the evidence. *Id.*, citing *State v. Robinson* (1955), 162 Ohio St. 486, 487.

{¶ 34} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as a “thirteenth juror,” and, after “reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Thompkins* at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶ 35} Kent claims that there was insufficient evidence to convict him because the only evidence revealing that he shot the gun came from Gilbert, a codefendant with a clear motivation to lie. Kent’s argument lacks merit for several reasons. First, although Gilbert was also convicted for murder and testified in part to receive a more favorable sentence, the jury was aware of this. Credibility issues are left for the trier of fact to resolve. Second, apart from Gilbert and Ricci’s testimony directly tying Kent to the robbery and shooting, the state presented other direct and circumstantial evidence of Kent’s involvement in the crimes, including Kent’s own admission to Det. Veverka, Kent’s cell phone, the cell phone records, and testimony that Kent’s vehicle was seen fleeing the

scene immediately following the shooting. Finally, the state also presented the testimony of Gilbert's sister, who corroborated Gilbert's and Ricci's statements that Gilbert carried a gun.

{¶ 36} As for Kent's claim that the jury clearly lost its way by believing Gilbert and Ricci, we find this argument to also lack merit. Here, the jury was informed that Ricci had been offered a plea deal in exchange for her testimony against Gilbert and Kent. The jury was further aware of Gilbert's and Ricci's relationship and their obvious bias. Again, matters of credibility are left for the jury to resolve. And given the other evidence presented, which corroborated Ricci's and Gilbert's testimony, we cannot say that the jury lost its way.

{¶ 37} Nor can we say that the conviction is against the manifest weight of the evidence because the jury did not believe Kent or his alibi witness. The state poked numerous holes in Stevens's testimony through the cell phone records and Kent's own admission to Det. Veverka. Thus, it was clearly within the jury's province to find Kent's self-serving testimony and Stevens's testimony not credible.

{¶ 38} Accordingly, the third and fourth assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

---

MARY J. BOYLE, JUDGE

ANN DYKE, P.J., and  
JAMES J. SWEENEY, J., CONCUR