

Appellant-defendant Emeterio Cortez appeals his conviction for Murder,¹ a felony, arguing that the evidence failed to show that he waived his Miranda² rights. Cortez contends that the police officer who issued the Miranda warnings and waiver to him in Spanish during a custodial interrogation at the jail was unfairly biased. Finding no error, we affirm the judgment of the trial court.

FACTS

In 1982, Cortez and Marco Ortiz were living together in an Indianapolis apartment. At some point during their relationship, Ortiz told Cortez that he wanted to move in with another man. On June 28, 2002, the two began to argue after Cortez demanded half of the furniture that he and Ortiz had purchased together.

At some point during the argument, Cortez struck Ortiz in the head with a flashlight, rendering Ortiz unconscious. Thereafter, Cortez went to the kitchen, retrieved a knife, and stabbed Ortiz four times in the chest. Ortiz died as a result of the injuries, and it was subsequently determined that the cause of Ortiz's death was blunt force trauma to the head, several stab wounds to the heart, and one wound that punctured his lung.

Following the incident, Cortez left the apartment and went to Eleazar Robledo's house to shower and change clothes. The two then went to dinner and watched a movie.

When Cortez returned to the apartment later that evening, he noticed that Ortiz was

¹ Ind. Code § 35-42-1-1.

² Miranda v. Arizona, 384 U.S. 436 (1966).

still lying on the floor. After Cortez realized that Ortiz was deceased, Cortez attempted to commit suicide by overdosing on some pills. However, the pills only caused Cortez to fall asleep.

The next morning, Cortez went outside and began pacing back and forth in front of the building. A few minutes later, Cortez went to Pastor Yeozentih Eaton's nearby apartment and knocked on the door. Cortez asked to use Pastor Eaton's telephone, and, while dialing 911, Cortez said "policia, . . . lot of blood." Tr. p. 40. When Pastor Eaton asked Cortez what he was talking about, Cortez stated, "I kill him." *Id.* Pastor Eaton and Cortez then walked over to the apartment. Pastor Eaton saw Ortiz's body on the floor covered in blood and immediately called the police. When the police arrived, Cortez was arrested and charged with Ortiz's murder.

After arriving at the jail, Indianapolis Police Detective Michael Turner began interviewing Cortez. Shortly thereafter, Detective Turner called for the assistance of Officer Alfred Gomez to act as a translator. Officer Gomez claimed that he was fluent in Spanish and had volunteered to translate in "about 100" investigations. *Id.* at 118. Upon being briefed about the incident, Officer Gomez advised Cortez of his Miranda rights in Spanish that he read from a "Miranda card" that the Indianapolis Police Department had issued to its police officers. *Id.* at 121. After Cortez told Officer Gomez that he understood those rights, Officer Gomez read, in Spanish, a "waiver of rights" to Cortez that was contained on the back of the same card. *Id.* at 123. Upon determining that Cortez could "more or less" read and write, Officer Gomez read Cortez his rights from an "Advisement of Rights" form.

State's Ex. 20 at 5. Cortez initialed each paragraph of the rights that were set forth in the form.

Thereafter, Officer Gomez read Cortez his waiver of rights that were set forth in a written form. Cortez acknowledged his understanding of the waiver and indicated that he was going to give a statement and answer the officers' questions. Cortez, Officer Gomez, and Detective Turner all signed the waiver form. Cortez discussed the incident, answered the officers' questions, and admitted hitting and stabbing Ortiz.

On April 30, 2003, Cortez proceeded to a jury trial and was found guilty as charged. Cortez was then sentenced to fifty-five years of incarceration. Thereafter, Cortez appealed his conviction to this court, which we affirmed in an unpublished memorandum decision. Cortez v. State, No. 49A04-0306-CR-302 (Ind. Ct. App. May 27, 2004).

On October 25, 2007, Cortez filed an amended petition for post-conviction relief,³ claiming that his conviction should be set aside because his trial counsel was ineffective for not objecting to some of the final jury instructions that were given at trial. On June 18, 2008, the post-conviction court granted Cortez's request for relief.

On February 5, 2009, Cortez moved to suppress the videotape of the police interrogation, claiming that the evidence failed to show that he had waived his Miranda rights. Thus, Cortez argued that the interrogation and confession should not have been admitted into evidence.

The State provided a transcript of the Miranda warnings and waiver of rights that

Officer Gomez had given to Cortez during the interrogation. Maria Wildridge of the Marion County Prosecutor's office had transcribed the translation of the interrogation, and Cortez's counsel admitted that the translation "appeared to be accurate." Tr. p. 17. The trial court denied Cortez's motion to suppress, and a bench trial commenced on April 8, 2009. Cortez was found guilty as charged and the trial court subsequently sentenced him to fifty-five years of incarceration. Cortez now appeals.

DISCUSSION AND DECISION

I. Advisement and Waiver of Miranda Warnings

Cortez argues that his conviction must be reversed because the evidence failed to demonstrate that he knowingly and voluntarily waived his Miranda rights. Moreover, Cortez maintains that the "form that the police used to advise him of his rights was an incomplete and lackluster translation." Appellant's Br. p. 7.

We initially observe that questions regarding the admission of evidence are within the sound discretion of the trial court, and we review the court's decision only for an abuse of that discretion. Wells v. State, 904 N.E.2d 265, 269 (Ind. Ct. App. 2009), trans. denied. A trial court abuses its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before it, or if the court has misinterpreted the law. Id.

We will conclude that a defendant has waived his or her Miranda rights where "the defendant, after being advised of those rights and acknowledging an understanding of them, proceeds to make a statement without taking advantage of those rights." Cox v. State, 854

³ Cortez initially filed a pro se petition for post-conviction relief on August 14, 2006. Appellant's App. p. 163.

N.E.2d 1187, 1193 (Ind. Ct. App. 2006). The State bears the burden of demonstrating beyond a reasonable doubt that a waiver of Miranda rights was voluntary. Crain v. State, 736 N.E.2d 1223, 1230 (Ind. 2000).

We will examine the totality of the circumstances to determine if the State has met its burden of “establishing that [a defendant’s] waiver was based on his knowledge and understanding of his constitutional rights.” State v. Keller, 845 N.E.2d 154, 164 (Ind. Ct. App. 2006). Factors that are commonly considered include “the crucial element of police coercion; the length of the interrogation; its location; its continuity; the defendant’s maturity; education; physical condition; and mental health.” Miller v. State, 770 N.E.2d 763, 767 (Ind. 2002). We will look for “substantial, probative evidence of voluntariness,” and will not reweigh the evidence. Wells, 904 N.E.2d at 271.

In this case, Officer Gomez testified that he read Cortez the Miranda rights, in Spanish, and in their entirety, from a card that had been issued to Indianapolis Police Officers. Tr. p. 123. According to the translation that Wildridge prepared, Officer Gomez advised Cortez in Spanish that

You have the right to keep your silence. Anything that you say could be used against you during a trial in a court of law. You also have the right to speak with an attorney so that he (inaudible) you before asking any questions. You have the right to have an attorney present with you during the questions that are asked of you. If you do not have the money to hire an attorney, you can request one before you are ask—asked some questions, if you, if you desire. If you decide to answer our questions now without having your attorney present, you can stop answering these question[s] when you like. You also have the right to stop answering some or any question when you like until you are able to speak with an attorney. Do you understand or comprehend each one of the rights that I have explained to you? Yes or No?

State's Ex. 20 at 2-3.

Cortez told Officer Gomez that he understood the above rights, and Officer Gomez read the waiver of rights to Cortez—again in Spanish and in their entirety—from the back of the same card. Tr. p. 121, 123. After determining that Cortez was able to read and write, Officer Gomez explained that Cortez should place his initials next to the right that he was reading to signify his understanding. Id. at 4. Officer Gomez then read the rights from the advisement of rights form that provided:

You have the right to keep your silence. Anything that you say could be used against you in a court of law. You have the right to speak with an attorney so that he can advise you before answering some questions and present to the questions. If you decide to answer our questions now, without having your attorney present, you can stop answering those questions when you like. You also have the right to stop answering some or any question when you like until you are able to speak with an attorney. Do you understand the five?

Id. at 5.

After Cortez indicated that he understood and had initialed each paragraph, Officer Gomez read the following waiver to Cortez:

I do not want an attorney now. I understand and comprehend that, what I am doing and no one promised me, forced me, or pressured any type used against me, against me. I am going to give a statement and answer the questions. This is what you want to do now? Yes, or no?

Id. at 6-7. Cortez answered “yes,” initialed each of the waiver paragraphs, and told the officers about the incident. At some point, Cortez admitted that he had killed Ortiz.

Cortez now recants his prior admission that Wildridge's translation of the interrogation was accurate. In particular, Cortez points to the somewhat awkward

phraseology contained in the advisement of rights form because the language was not as clear as the verbal Miranda rights that were read to him. However, as the State points out, the reading of the form followed immediately after Cortez was verbally advised of his rights. Thus, the reading of the form was merely repetitious because Cortez had already indicated to Officer Gomez that he understood his rights. Moreover, after initialing the waiver form, Cortez again indicated that he understood his Miranda rights, was waiving them, and wished to speak to the police.

In light of these circumstances, the record supports the trial court's conclusion that Cortez's waiver of rights was knowing and voluntary. Therefore, the trial court properly admitted the videotaped interrogation and statements into evidence.

II. Translated Statements—Bias of Police Officer

Notwithstanding our conclusion above, Cortez contends in the alternative that his confession should not have been admitted into evidence because Officer Gomez, who served as a translator during the interrogation, “was a sworn police officer and therefore biased.” Appellant's Br. p. 2. In essence, Cortez asserts that the trial court's admission of his confession into evidence was error because the “translation was incomplete and inaccurate.”

Id.

As the United States Supreme Court has determined, police are engaged in the “often competitive enterprise of ferreting out crime.” Johnson v. State, 333 U.S. 10, 14 (1948). And, as Cortez correctly points out, an unbiased interpreter is crucial during trial. Arrieta v. State, 878 N.E.2d 1238, 1241 (Ind. 2008).

Although Cortez asserts that Officer Gomez was “in essence translating at trial,” appellant’s br. p. 25, his argument is misplaced. The record reflects that Detective Gomez was not an interpreter at the trial or at any hearing. Rather, Detective Gomez’s role was that of a police interrogator who was assisting Detective Turner. Cortez points to no authority—and we have found none—suggesting that a police officer should remain unbiased during an interrogation of a suspect. Indeed, the videotape of the interrogation and the corresponding transcript, which all the parties agreed was accurate, tr. p. 17, was provided to the trial court to assess whether Cortez’s waiver of the Miranda rights was knowing, voluntary, and intelligent. Because the evidence supports the trial court’s determination that Cortez waived his Miranda rights, Cortez’s claim that his statements were improperly admitted into evidence at trial because Officer Gomez was “biased” during the police interrogation fails.

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.