INDIGENT DEFENDANT SERVICES AND MIRANDA

STATE OF NORTH CAROLINA v. JEREMY DUSHANE MURRELL
No. 484A06
FILED: 27 AUGUST 2008

1.

1. Confessions and Incriminating Statements--waiver of rights after appointment of counsel--knowing and voluntary--knowledge of indigent services rules not required
The trial court did not err in a first-degree murder prosecution by concluding that defendant's waiver of his rights was knowing and voluntary and that his statement to investigators was admissible. Counsel had been appointed but defendant waived his rights and elected not to have counsel present when making his statement to investigators after initiating contact. Whether defendant was advised of the provisions of IDS (indigent services) rules about the appointment of counsel in capital cases is immaterial to a determination under Miranda.

Late in the evening on 21 August 2003, defendant approached Lawrence Matthew Harding, who was seated in his own vehicle in a parking lot adjacent to his place of employment. Defendant fatally shot Harding twice in the head and neck with a firearm and, after transporting him to Durham in the vehicle, placed his body inside the trunk and took from him a watch and approximately $130.00. Three days later, defendant abandoned the vehicle--along with Harding's body--near a bus station in Richmond, Virginia. The victim was not discovered until 29 August 2003, more than one week after the murder. Defendant was apprehended and subsequently convicted of first-degree murder, first-degree kidnapping, and robbery with a dangerous weapon and was sentenced to death for the murder on 17 February 2006

Defendant assigns error to the trial court's 30 January 2006 order denying his pretrial motion to suppress evidence. Defendant moved before trial to suppress an inculpatory statement he made to law enforcement on 28 October 2003, following his arrest on 24 October 2003, on the basis that he did not knowingly and voluntarily waive his right to counsel before making this statement.
At the conclusion of the hearing on defendant's motion to suppress, the trial court made, *inter alia*, the following findings of fact: On 24 October 2003, defendant was questioned

by police investigators for approximately three hours at the Winston-Salem City Police Department. Immediately after this interview, during which defendant "did not make any admissions of any type . . . in any way," defendant was arrested for firstdegree kidnapping and robbery with a dangerous weapon of Matthew Harding, but was not charged with murder. Detective D.L. Elmes subsequently transported defendant to the Forsyth County jail and gave defendant his business card in case defendant wished to speak with him or "wanted to get anything off his chest." At approximately 8:00 a.m. on 28 October 2003, defendant initiated contact with investigators by placing a telephone call from the county jail to the number listed on Detective Elmes' business card and leaving a voice mail message requesting to meet with him. When the investigators arrived at the jail, they advised defendant of his *Miranda* rights. Defendant stated that he understood these rights and wanted to answer questions, indicated that he was aware he had already been appointed counsel, and responded that he did not wish to have an attorney present during questioning but instead chose to waive the appearance of his appointed counsel. Before making his statement, defendant told the investigators, "I want y'all to help me."

Based upon its findings of fact, the trial court concluded that defendant's statement to investigators "was made freely, voluntarily, and understandingly and . . . without promise of hope or reward . . . and without force or pressure." The court determined that the statement was admissible as a result. Although defendant assigned error to the trial court's findings of fact, he has failed to make any argument on appeal that these findings were unsupported by competent evidence.

[3] We note that Part 2 of the IDS rules "*places with [IDS]* the responsibility for appointing and compensating counsel in capital cases." Indigent Def. Servs. Rules, Part 2, *reprinted in* 2008 Ann. R. N.C. 973 (emphasis added). Thus, we are bound by the trial court's findings of fact, and our review on appeal is limited to a determination of whether these findings support the lower court's conclusions of law. *See State v. Cheek*, 351 N.C. 48, 62-63, 520 S.E.2d 545, 554 (1999) (citing *State v. Watkins*, 337 N.C. 437, 438, 446 S.E.2d 67, 68 (1994)), *cert. denied*, 530 U.S. 1245 (2000).

Defendant asserts that his waiver of the right to have an attorney present during questioning was not knowing and voluntary because he "could not possibly waive a right that he did not know

existed." However, defendant does not contend that investigators did not apprise him of his right to have an attorney present. Rather, he argues that certain steps should have been taken to notify the North Carolina Office of Indigent Defense Services (IDS) that defendant might potentially become a capital defendant. *See* N.C.G.S. §§ 7A-498.1 to -498.8 (2007) ("Indigent Defense Services Act"); Indigent Def. Servs. Rules, Subpart 2A ("Appointment and Compensation of Trial Counsel in Capital Cases"), *reprinted in* 2008 Ann. R. N.C. 974-79.[3] Yet the decision of the Supreme Court of the United States in *Miranda v. Arizona* expressly dispels any notion that the failure of investigators to *obtain* counsel for a defendant constitutes a violation of the Fifth Amendment right against selfincrimination:

> This does not mean, as some have suggested, that each police station must have a 'station house lawyer' present at all times to advise prisoners. It does mean, however, that if police propose to interrogate a person *they must make known to him that he is entitled to a lawyer and that if he cannot afford one, a lawyer will be provided for him prior to any interrogation.*

384 U.S. 436, 474 (1966) (emphasis added). **Whether defendant was advised of the provisions of the IDS rules pertaining to the appointment of counsel in capital cases is immaterial to a determination under *Miranda* of whether defendant was informed "that if he is indigent a lawyer will be appointed to represent him." *Id.* at 473; *see also Moran v. Burbine*, 475 U.S. 412, 422 (1986) ("Events occurring outside of the presence of the suspect and entirely unknown to him surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right.").**

In this regard, the instant case is easily distinguishable from *State v. Steptoe*, in which the defendant clearly communicated his desire to have a lawyer and to speak with an attorney, and only *after* the investigators "discouraged the appointment of counsel" did the defendant issue a statement. 296 N.C. 711, 716-17, 252 S.E.2d 707, 710-11 (1979). Here, in contrast, defendant had already been appointed counsel but waived his *Miranda* rights and elected not to have counsel present when making his statement to investigators after initiating contact with them. The trial court did not err in concluding that defendant's waiver was knowing and voluntary and that his statement to investigators on 28 October 2003 was thus admissible. Defendant's assignments of error related to this issue are overruled.