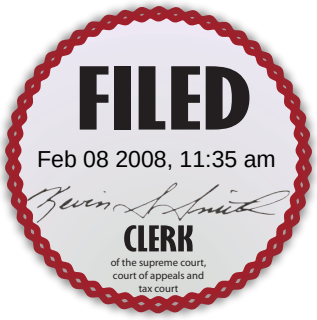

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IN THE
COURT OF APPEALS OF INDIANA

CHARLES W. BELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A01-0604-CR-145
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael H. Eldred, Judge
Cause No. 84D01-0408-MR-2011

February 8, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MAY, Judge

Charles Bell appeals his conviction of murder. Bell's purported invocation of his right to counsel was equivocal, and the trial court therefore could admit statements he made after police continued to question him. There was sufficient evidence to support Bell's conviction, and he was properly sentenced. We accordingly affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of August 1, 2004, Bell, Anthony Carter, and Nadia Williams left a party in Terre Haute and went to the home of Robert Taylor. Bell told his companions he needed to run inside the house for a minute and would be right back. Taylor and Lisa Weir were at the house. Taylor walked out onto his porch as Bell and Weir were talking inside the house. Taylor heard a gunshot and Bell ran out of the house. He told Taylor he had accidentally shot a hole in Taylor's floor. Then Weir staggered out the door and told Taylor "he shot me." (Tr. at 58-59.)

Bell ran to his car and drove off. He drove his companions back to the party, telling Carter to take Williams "somewhere, don't let her talk to nobody cause if the bitch say something, I'm gonna kill her." (*Id*. at 156-57.) Williams later told police she had informed Bell someone named Lisa was "snitching" on him, (*id*. at 168), and Bell replied "she ain't gonna be talkin' too long." (*Id*. at 169.)

The following month police found Bell hiding under insulation in the attic of a house in Terre Haute. He told police his name was Rafael. He was taken to the police station and placed in an interview room. When he was left alone in the room he turned out the lights, stood on a table, and tried to remove a ceiling tile.

Later that day, police interviewed Bell after advising him of his rights. Bell denied any awareness of or involvement in the shooting. The interrogating officer eventually told Bell he was not going to "go through every bit of the case" against Bell, (*id*. at 747), and if Bell would not talk to him "realistically then what will happen is three weeks from now, you'll get discovery once you get an attorney, you'll get discovery, you'll find out all of this information, okay." (*Id*.) Bell replied "Why can't I just get me like a lawyer right now than when I go to court tomorrow"?[1] (*Id*. at 747-48.) The officer told Bell "You can and you will, but I don't have to provide discovery for three more weeks." (*Id*. at 748.) The police briefly continued to question Bell, then ended the interrogation.

After that interview ended, Bell told the police he was ready to talk, and he was again advised of his rights. Bell told police his gun spontaneously went off, his hand was not on it, and he thought he had shot the floor. Bell was taken to court for his initial hearing the following morning. A firearms examiner tested the gun and determined it had no functional defects and would not discharge even if hit with a mallet.

DISCUSSION AND DECISION

1. Admission of Videotaped Statements

Bell argues his videotaped statements should not have been admitted into evidence because he was not promptly taken before a magistrate and police continued to question him after he asked for a lawyer. Bell's statement did not result from a coercive effect of

1 This was the language indicated in the transcript. The State asserts "the word 'than' was mistakenly inserted in this statement by the court reporter." (Br. of Appellee at 10.) Our review of the videotape leads us to the same conclusion.

his detention, and his purported request for counsel was equivocal. It therefore was not error for the police to continue questioning Bell and his statements were admissible.

Ind. Code § 35-33-7-4 provides in pertinent part: "A person arrested in accordance with the provisions of a warrant shall be taken promptly for an initial hearing before the court issuing the warrant or before a judicial officer having jurisdiction over the defendant." The purpose of the statute is to avoid unnecessary delay during which investigating officers might solicit confessions or attempt to procure other evidence. *Buie v. State*, 633 N.E.2d 250, 258 (Ind. 1994), *abrogated on other grounds by Richardson v. State*, 717 N.E.2d 32 (Ind. 1999).

Bell was arrested before noon on a Thursday when the courts were open, but he was not was taken to court until the following day. Instead, he was taken to a police interrogation room where he was questioned and his statements were videotaped. Bell asserts: "Had they immediately taken [Bell] before the Judge the Judge would have appointed him an attorney, his attorney would have advised him to remain silent and none of this would have occurred." (Br. of Appellant at 12.)

The State has a "heavy responsibility" to bring an arrestee before a neutral, detached magistrate without undue delay. *Peterson v. State*, 674 N.E.2d 528, 538 (Ind. 1996), *reh'g denied*, *cert. denied* 522 U.S. 1078 (1998). However, a confession made during a period of illegal detention is not inadmissible solely because of the delay in presenting the arrestee to a magistrate. *Id*. at 539. Suppression of a defendant's statement when the State delays too long in bringing him before the court is required only if the statement resulted from the inherently coercive effect of prolonged detention. *Id*. at

538-39. "When the confession is the product of the defendant's free will, it is admissible." *Id*. at 539.

Bell does not argue his statement resulted from the "inherently coercive effect of prolonged detention," and we accordingly cannot find error in the State's delay, without more, in bringing him before a magistrate. In *Peterson*, we found the improperly prolonged detention, standing alone, did not invalidate the trial court's finding of voluntariness. Peterson was fully informed of his pertinent constitutional rights on four separate instances, and he explicitly waived those rights each time. He was not promised anything in exchange for his statement nor was he threatened in order to coerce him into providing a statement. "The causal connection between the delayed detention and the confession was not sufficient to necessitate the exclusion of the defendant's confession," *id*., even though there was no "legitimate explanation for the State's failure to comply with the twenty-four hour time requirement." *Id*. at 538. *And see Buie*, 633 N.E.2d at 257 ("while we may view with suspicion the three hour interrogation on the evening of March 21 and into the morning of March 22, when the evidence is merely conflicting, we will not disturb the finding of the trial court").

Nor did the State improperly continue to question Bell after he asked for a lawyer. The right to have counsel present during an interrogation is "indispensable" to the protection of the Fifth Amendment privilege against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 469 (1966), *reh'g denied*. When a suspect asserts his right to counsel during custodial questioning, the police must stop until counsel is present or the

suspect reinitiates communication with the police and waives his right to counsel.[2] *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981), *reh'g denied*.

A suspect need not invoke any magic words to assert his right to counsel, but his request must be clear enough for a reasonable police officer to understand the statement as a request for an attorney. *Jolley v. State*, 684 N.E.2d 491, 492 (Ind. 1997). "Invocation of the Miranda right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." *Davis v. United States*, 512 U.S. 452, 459 (1994). The level of clarity required to meet the reasonableness standard is sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. *Id*.

In *Davis*, the statement "maybe I should talk to a lawyer" was held not to be a request for counsel, *id*. at 462, so police had no duty to stop questioning Davis. *Davis* established that "police have no duty to cease questioning when an equivocal request for counsel is made. Nor are they required to ask clarifying questions to determine whether the suspect actually wants a lawyer." *Taylor v. State*, 689 N.E.2d 699, 703 (Ind. 1997).

We cannot say Bell's statement would have been understood by a reasonable police officer to be a request for an attorney at that time. Bell had already signed a waiver of his *Miranda* rights. At one point the officer told Bell he was "not going to sit here and go through every bit of the case," and if Bell was not going to talk to the officer "realistically," then "three weeks from now, you'll get discovery once you get an attorney

[2] We note the statement that is the subject of this appeal was not given to police immediately after Bell purported to request counsel. That interrogation was concluded, and Bell told police later that afternoon he was willing to talk. The police again advised Bell of his rights, and Bell made the statement.

. . . you'll find out all this information, okay." (Tr. at 747.) Bell replied "Why can't I just get me like a lawyer right now than when I go to court tomorrow?" (*Id*. at 747-48.) That statement could reasonably have been understood as an expression of Bell's desire to be appointed counsel when he went to court the following day, rather than three weeks later when the police provided discovery.[3] The trial court did not err in admitting Bell's statement.

2. Sufficiency of Evidence

There was ample evidence to support Bell's conviction of murder. Mere presence at the crime scene is insufficient proof to support a conviction, but presence at the scene coupled with other circumstances tending to show participation in the crime may be sufficient to sustain a guilty verdict. *Rohr v. State*, 866 N.E.2d 242, 248-49 (Ind. 2007), *reh'g denied*. Such circumstantial evidence is sufficient if it allows for reasonable inferences enabling the jury to determine guilt beyond a reasonable doubt. *Id*. at 249. Bell asserts "the State failed to prove that the conduct was intentional, and they [sic] certainly failed to prove that the result was the defendant's conscience [sic] objective." (Br. of Appellant at 20.)

Bell's victim was shot in the throat. Use of a deadly weapon in a manner likely to cause death or serious bodily injury is sufficient evidence of intent to support a

[3] We are, however, concerned that the officer's various statements could have left Bell quite confused about when counsel might be made available to him. The officer told Bell "you can," indicating Bell could have a lawyer immediately; "you will," suggesting Bell could not obtain counsel until he went to court the next day; and "three weeks from now, you'll get discovery once you get an attorney," indicating Bell would obtain counsel in three weeks. As Bell correctly suggests, this confusion could have been avoided had the police followed the statutory directive and taken Bell "promptly for an initial hearing before the court issuing the warrant or before a judicial officer having jurisdiction over the defendant," Ind. Code § 35-33-7-4, instead of taking him directly to the police station for interrogation.

conviction of murder. *Chapman v. State*, 719 N.E.2d 1232, 1234 (Ind. 1999), *reh'g denied*. *And see Storey v. State*, 552 N.E.2d 477, 480 (Ind. 1990) (use of a deadly weapon in a manner likely to cause death or great bodily harm permits the jury to infer the defendant knew he was killing another).

The jury heard testimony that Bell, when told someone named Lisa was "snitching" on him, replied "she ain't gonna be talkin' too long." (Tr. at 168). Bell fled the scene after the shooting, and threatened to kill a witness if she said anything. Flight from the scene of a crime may be circumstantial evidence of guilt, *Gee v. State*, 526 N.E.2d 1152, 1154 (Ind. 1988), as may threats against potential witnesses. *West v. State*, 755 N.E.2d 173, 182 (Ind. 2001). The jury could have reasonably inferred from this circumstantial evidence that Bell was guilty.

3. Sentencing

Bell was sentenced to fifty-five years.[4] The court found neither aggravators nor mitigators, but Bell asserts the court ignored or did not give sufficient weight to mitigating circumstances he offered.

A sentencing court must consider all evidence of mitigating circumstances a defendant presents, but the finding of mitigating circumstances rests within the sound discretion of the trial court. *Long v. State*, 865 N.E.2d 1031, 1037 (Ind. Ct. App. 2007), *reh'g denied, trans. denied*. When a trial court does not find a mitigator the record clearly supports, a reasonable belief arises that the trial court improperly overlooked that

[4] When Bell committed his crime the "presumptive" sentence for murder was fifty-five years. Up to ten years could be added for aggravating circumstances or subtracted for mitigating circumstances. Ind. Code § 35-50-2-3 (1997). The current "advisory" sentence is also fifty-five years, and the term may range from forty-five to sixty-five years. Ind. Code § 35-50-2-3.

factor. *Id*. At the same time, a trial court need not regard or weigh a possible mitigating circumstance the same as urged by the defendant. *Buchanan v. State*, 767 N.E.2d 967, 972 (Ind. 2002). Nor is it obliged to make an affirmative finding expressly negating each potentially mitigating circumstance. *Id*.

Bell lists a number of mitigators he asserted at his sentencing hearing, but offers argument on only one. He notes the sentencing judge "does not comment whatsoever on the fact that the defendant has no prior juvenile adjudication and minimal misdemeanors[5] criminal history. Therefore it may be that the Judge overlooked the defendant's minimal criminal history." (Br. of Appellant at 23.) We decline Bell's invitation to hold a defendant's criminal history must necessarily be considered a *mitigating* circumstance just because it is "minimal."

Bell asserts, without explanation or citation to authority, the other mitigators he offered were "clearly significant," (*id*.), and "obviously totally and completely over looked by the Court." (*Id*. at 22.) These asserted mitigators appear to be that Bell has a supportive family, he has three children, he was "very brilliant" in school, making "decent" grades, (Sentencing Tr. at 6), he was twenty-two years old when he committed the murder, and the crime was the result of circumstances unlikely to recur.[6]

Bell does not explain why the court was obliged to find these mitigators significant, and he has therefore waived that argument on appeal. *See Cooper v. State*,

[5] The record reflects five misdemeanor charges to which Bell entered guilty pleas, including criminal recklessness and domestic battery. There were five other charges for which no disposition was indicated.

[6] Bell offers no citation to the record to support this asserted mitigator. In fact, the sentencing judge stated, "I'm not sure this isn't a circumstance that's likely to occur again." (Sentencing Tr. at 22-23.) We admonish Bell's counsel to refrain from so mischaracterizing the record.

854 N.E.2d 831, 842 (Ind. 2006) (noting Ind. Appellate Rule 46(A)(8)(a) requires argument be supported by coherent reasoning with citations to authority, and that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review).

Notwithstanding the waiver, the trial court did not abuse its discretion in deciding not to give weight to the mitigators Bell asserted. We decline to hold a defendant's choice to commit a crime is necessarily mitigated by his high intelligence level or strong family relationship. Bell does not explain why his fifty-five year sentence would be more of a hardship on his children than a minimum forty-five year sentence. *See Teeters v. State*, 817 N.E.2d 275, 280 (Ind. Ct. App. 2004) (jail is always a hardship on dependents, and Teeters did not explain how her eight-year sentence is more of a hardship on her children than would be the minimum two-year sentence), *trans. denied* 822 N.E.2d 984 (Ind. 2004).

Nor was the court obliged to find Bell's age a mitigator. Age is neither a statutory nor a *per se* mitigating factor, *Monegan v. State*, 756 N.E.2d 499, 504 (Ind. 2001), and twenty-two is "well past the age of sixteen where the law requires special treatment." *Corcoran v. State*, 774 N.E.2d 495, 500 (Ind. 2002), *reh'g denied*. We find no error in Bell's sentence.

We affirm Bell's conviction and sentence.

Affirmed.

KIRSCH, J., and RILEY, J., concur.