

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1999 SESSION

F I L E D

April 23, 1999

Cecil W. Crowson
Appellate Court
Clerk

STATE OF TENNESSEE,

)

00166

)

C.C.A. NO. 01C01-9804-CC-

Appellee,

)

WARREN COUNTY

VS.

)

HON. CHARLES D. HASTON,

DARRYL GENE FARMER,

)

JUDGE

)

Appellant.

(First-Degree Murder)

FOR THE APPELLANT:

FOR THE APPELLEE:

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(On Appeal)

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OPINION FILED: _____

A F F I R M E D

J O H N H . P E A Y ,
Judge

O P I N I O N

On September 30, 1993, the defendant was found guilty by a jury of first-degree murder and sentenced to life in prison. In the defendant's first direct appeal, this Court remanded the case to the trial court to find whether the defendant requested counsel during questioning prior to confessing to the crime. On remand, the trial court found that the defendant "did not invoke his right to counsel, even in an equivocal manner." The defendant's conviction was then reinstated in accordance with the order of this Court. The defendant now appeals and argues that the evidence preponderates against the trial court's finding. After a review of the record and applicable law, we affirm the judgment of the trial court.

On January 22, 1993, the defendant was arrested on drug charges and brought to the library of the district attorney general's office for questioning. According to Officer Wix, an employee of the Tennessee Bureau of Investigation, the defendant was advised of his constitutional rights and then questioned regarding the pending drug charges. The defendant was eventually questioned about the murder of Christopher Boyd. According to Officer Wix and Assistant District Attorney General Robert Boyd, the defendant initially denied having any knowledge of the murder. Another suspect, Mike Eldridge, was then brought into the room. After Mr. Eldridge said he had told the police of the defendant's involvement with the murder, the defendant indicated that he was willing to talk to the police about the murder. The defendant subsequently signed a waiver of his rights and confessed to the murder of Christopher Boyd. This confession was reduced to writing by General Robert Boyd, who testified that he read the statement to the defendant and asked him if he wanted to add anything. The defendant did not change any of the

facts regarding the murder. The defendant then signed the statement. According to Officer Wix and General Boyd, the defendant was never threatened or coerced into making a statement. Officer Wix further testified that the defendant never requested an attorney. During cross-examination on this issue, General Boyd testified,

I know we discussed whether or not he wanted a lawyer. He may have said, 'Maybe, I need to talk to a lawyer, or, maybe, I don't.' But I don't - I know he never asked to talk to a lawyer. I know that he was afforded the opportunity on two or three (2 or 3) occasions to ask for one if he wanted to do that.

At the suppression hearing, the defendant testified that he was read his constitutional rights by Officer Wix when the police began to question him about the murder of Christopher Boyd. The defendant testified that after the police brought Mr. Eldridge in the room, the defendant told Officer Wix and General Boyd, "I think I need an attorney. . . I need to call an attorney." According to the defendant, at that point Officer Wix gave the defendant a telephone book and told him to call an attorney. The defendant testified that Officer Wix "was very hostile. He began threatening me with the electric chair." The defendant claimed that he requested an attorney at least twice before he gave his statement, "[a]nd, then, I finally just - I give up, and I just - I told them what had happened basically."

The defendant now contends that the evidence preponderates against the trial court's finding that the defendant did not invoke his right to counsel. In the defendant's first appeal, this Court held that "[w]hether the [defendant] did or did not make an equivocal or unequivocal request for an attorney is a question of fact." State v. Farmer, 927 S.W.2d 582, 594 (Tenn. Crim. App. 1996). The findings

of fact made by a trial judge at the conclusion of a suppression hearing are binding upon this Court unless the evidence contained in the record preponderates otherwise. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996).

Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence. So long as the greater weight of the evidence supports the trial court's findings, those findings shall be upheld.

Id.

In the defendant's case, the trial court found that after "reviewing the testimony contained in the transcript, considering the parties' arguments, and evaluating the witnesses' credibility based upon the court's opportunity to observe the witnesses' prior testimony and assess their demeanor, this court finds that the [defendant] did not invoke his right to counsel, even in an equivocal manner." The trial judge obviously accredited the testimony of Officer Wix and General Boyd and rejected the testimony of the defendant. As the evidence does not preponderate against this finding, the defendant's contention is without merit. Accordingly, we affirm the judgment of the trial court.

JOHN H. PEAY, Judge

CONCUR:

DAVID H. WELLES, Judge

THOMAS T. WOODALL, Judge