STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0617

State of Minnesota,
Respondent,

vs.

Tommie James Scarver,
Appellant.

Filed June 16, 2009
Affirmed
Randall, Judge[*]

Ramsey County District Court
File No. 62-K4-07-002132

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Klaphake, Judge; and Randall, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

RANDALL, Judge

On appeal from a conviction of possession of a firearm by an ineligible person, appellant argues that his interview with police should have been suppressed because he did not waive his *Miranda* rights. We affirm.

FACTS

After being dispatched to the residence of appellant Tommie James Scarver, police searched the residence and found a firearm under a mattress. Appellant was taken into custody and interviewed by St. Paul Police Sergeant Thomas Bergren. Using a standard form, Bergren told appellant about his rights against self-incrimination. Bergren began by reading the form's introductory paragraph, which instructs the interviewee to read along with the officer and initial each statement if he understands it. Bergren then explained to appellant that he had the right to remain silent and refuse at any time to answer any questions asked by the police officer; anything he did or said could be used against him; he had the right to talk to a lawyer and have the lawyer with him during questioning; and if he could not afford an attorney, one would be appointed for him, and he could remain silent until talking to the attorney. After reading each right, Bergren asked whether appellant understood the right, and appellant initialed the form on the corresponding line. When Bergren finished reading all of the rights, appellant signed his name on the bottom of the form. Appellant then gave a statement to Bergren, in which he admitted possessing the gun found in his house.

Appellant was charged with one count of possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(b) (2006). Appellant moved to suppress his statement to police on the ground that he did not waive his *Miranda* rights. The district court denied the motion, finding that Bergren properly informed appellant of his *Miranda* rights and that appellant understood those rights and voluntarily waived them by his conduct of engaging in a lengthy interview with Bergren. The case was tried to a jury, which found appellant guilty as charged. The district court sentenced appellant to an executed term of 60 months in prison. This appeal followed.

D E C I S I O N

> The Fifth Amendment to the U.S. Constitution and Article I, Section 7 of the Minnesota Constitution protect persons from compelled self-incrimination. Because of the coercion inherent in custodial interrogation, a criminal suspect 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. Farrah, 735 N.W.2d 336, 340 (Minn. 2007) (footnote omitted) (quoting *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602 (1966)).

> The defendant may waive his *Miranda* rights provided the waiver is made voluntarily, knowingly and intelligently. The prosecution has the burden of proving a valid waiver by a preponderance of the evidence. Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. Factors commonly considered include age, intelligence and education, familiarity with the criminal justice system, physical and mental condition, and language

> barriers. Findings of fact surrounding a claimed *Miranda* waiver are reviewed for clear error; legal conclusions based on those facts are reviewed de novo.

Id. at 341.

Appellant argues that the district court erred in finding a valid waiver of his *Miranda* rights because: (a) the form said nothing about waiver; (b) Bergren did not ask about waiver; and (c) appellant did not affirmatively say that he wanted to give a statement. Appellant's argument is contrary to caselaw.

> If police fully advise an accused of his or her *Miranda* rights and the accused indicates that he or she understands the rights but nevertheless gives an incriminating statement, the state is deemed to have met its burden of proving that the accused knowingly and intelligently waived his or her rights.

State v. Jones, 566 N.W.2d 317, 322 (Minn. 1997) (emphasis omitted); *see also State v. Butzin*, 404 N.W.2d 819, 827 (Minn. App. 1987) (stating that waiver of privilege against self-incrimination may be inferred from conduct, such as answering questions without hesitation), *review denied* (Minn. June 9, 1987).

Bergren advised appellant of his *Miranda* rights. Appellant indicated that he understood his *Miranda* rights by initialing and signing the form stating those rights and then proceeded to give a lengthy statement to Bergren. There could be more of a record here. The state is advised, "the more the better," to preserve evidence. Here, looking at the totality of the record, the district court did not err in concluding that appellant made a valid waiver of his *Miranda* rights.

Affirmed.