IN THE COURT OF APPEALS OF THE STATE OF ALASKA

SHYHEIM STEFAN CHAVIS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13158 Trial Court No. 3PA-16-02231 CR MEMORANDUM OPINION No. 6981 — November 17, 2021

Appeal from the Superior Court, Third Judicial District, Palmer, Kari Kristiansen, Judge.

Appearances: Emily L. Jura, Assistant Public Defender, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Patricia L. Haines, (brief), and Mackenzie Olson, (oral argument), Assistant Attorneys General, Office of Criminal Appeals, Anchorage, and Clyde "Ed" Sniffen Jr., Acting Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Judge HARBISON.

Shyheim Stefan Chavis was convicted, following a jury trial, of first-degree robbery and attempted first-degree murder after he broke into a home and shot one of the occupants.[1]

Chavis appeals his convictions, advancing two claims of error. First, Chavis argues that the superior court erred in failing to suppress inculpatory statements that he made to law enforcement during two in-custody interviews. Chavis argues that his statements should have been suppressed as involuntary based on threats that were made against him in the second interview. Second, Chavis argues that the superior court committed plain error in failing to intervene during the prosecutor's improper closing arguments.

For the reasons explained in this opinion, we conclude that the superior court erred when it found that the law enforcement officers who conducted Chavis's interviews had not threatened Chavis. Because of this error, the superior court applied the wrong legal presumption when it evaluated whether Chavis's statements to law enforcement were voluntary. We therefore remand this case to the superior court with instructions to reconsider whether Chavis's statements from the second interview were voluntary under the correct legal presumption. We reserve any ruling on Chavis's second claim until the proceedings on remand are complete.

Background facts and procedure

In the early morning hours of July 21, 2016, multiple people broke into the Butte area home of Charles and Kathryn Clark. At least one was armed with a handgun and wearing latex gloves and a ski-type face mask. Upon entering the home, one of the intruders encountered Kathryn Clark in the living room, placed a gun to her head, and

[1] AS 11.41.500(a)(1) and AS 11.41.100(a)(1)(A) & AS 11.31.100, respectively.

told her not to move. Charles Clark, who was in the bedroom, heard Kathryn scream and armed himself with a revolver. Before Charles exited the bedroom, he was shot twice in the arm by one of the intruders. At some point, either before or after he was shot, Charles discharged his gun.

After Charles was shot, the intruders fled through a window. The Clarks called 911, and the Alaska State Troopers responded to their residence. At the residence, the troopers recovered two bullets from the Clarks' bedroom floor. A third bullet was removed from Charles's wound at the hospital. The troopers also discovered bullet damage in the doorway between the bedroom and the mudroom. After examining Charles's revolver, the troopers determined it had fired one shot. The troopers recovered no guns other than Charles's revolver during their investigation.

The troopers conducted a search soon after the incident and recovered three latex gloves a short distance from the Clarks' home. Testing of one of the gloves later revealed DNA consistent with Chavis's DNA. Law enforcement analysis of cell phone records further revealed that Chavis's cell phone and two other cell phones had traveled from Anchorage to Butte and back during the late hours of July 20 and early morning hours of July 21, 2016.

Based on this information, the troopers identified Chavis as a suspect, and they located him at the Anchorage Correctional Complex, where he was detained on an unrelated charge. The troopers then interviewed Chavis on two separate occasions a few days apart. During the first interview, Chavis denied any significant involvement in the incident at the Clarks' home. During the second interview, Chavis confessed to entering the Clarks' home and firing a handgun.

A grand jury indicted Chavis on one count of attempted first-degree murder, two counts of first-degree robbery, two counts of first-degree assault, one count

of third-degree assault, and one count of first-degree burglary. Prior to trial, Chavis filed a motion to suppress the statements he made to the troopers, arguing that the statements were involuntary. After conducting an evidentiary hearing, the superior court found that the troopers had not threatened Chavis during either interview and Chavis's statements were voluntary. The court therefore denied the motion to suppress.

The case then proceeded to a jury trial. At trial, the jury found Chavis guilty of all counts.[2] This appeal now follows.

Why we remand for further consideration of whether Chavis's confession was voluntary

Chavis argues that his confession was involuntary and that the superior court erred when it denied his motion to suppress it.

It has long been held that "[a] confession is not admissible into evidence unless it is voluntary."[3] The burden is on the prosecution to "prove the voluntariness of the confession by a preponderance of the evidence."[4] A court determines whether a confession was voluntary by examining "the totality of circumstances surrounding the confession."[5]

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[2] AS 11.41.100(a)(1)(A) & AS 11.31.100, AS 11.41.500(a)(1), AS 11.41.500(a)(3), AS 11.41.200(a)(1), AS 11.41.200(a)(2), AS 11.41.220(a)(1)(A), and AS 11.46.300(a)(1). The third-degree assault, first-degree burglary, and one of the first-degree robbery counts merged with Chavis's other conviction for first-degree robbery; and the two counts of first-degree assault merged with his conviction for attempted first-degree murder.

[3] *Ladd v. State*, 568 P.2d 960, 967 (Alaska 1977).

[4] *Beavers v. State*, 998 P.2d 1040, 1044 (Alaska 2000) (citing *Sprague v. State*, 590 P.2d 410, 413 (Alaska 1979)).

[5] *Ladd*, 568 P.2d at 967.

In *Beavers v. State*, the Alaska Supreme Court held that it is inherently coercive for a law enforcement officer to threaten a defendant with harsher punishment or to suggest that the defendant's failure to cooperate will be reported to an authoritative body, judge, jury, or district attorney.[6] The court further held that statements made in response to police threats are presumptively involuntary, and that such statements must be suppressed unless the State can *affirmatively* show that the statements were voluntarily made.[7]

In other words, although the burden is always on the prosecution to prove that a defendant's statements were voluntary, *Beavers* adopted a heightened presumption of involuntariness when the statements at issue were made in response to police threats. The issue presented here is whether the superior court erred in failing to apply this heightened *Beavers* presumption in determining whether Chavis's statements were voluntary. We conclude that it did.

During the investigation of the home invasion at issue in this case, but prior to Chavis's indictment on any charges, he was interviewed on two separate occasions while in pretrial detention for an unrelated offense. During the first interview, Alaska State Trooper Ronald Hayes told Chavis that the criminal investigation was a "wave" coming at him whether he liked it or not. Hayes suggested that Chavis could reduce the impact of the wave by cooperating with the investigation. Chavis then admitted that he

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[6] *Beavers*, 998 P.2d at 1047 ("There is no legitimate purpose for the statement that failure to cooperate will be reported and because its only apparent objective is to coerce, we disapprove the making of such representations." (quoting *United States v. Harrison*, 34 F.3d 886, 891 (9th Cir. 1994))); *see also State v. Waterman*, 196 P.3d 1115, 1124 (Alaska App. 2008) ("The [supreme] court's condemnation of [threats to report failure to cooperate] is sweeping. It appears to condemn such representations as coercive, even if they are true.").

[7] *Beavers*, 998 P.2d at 1046.

was an unwitting passenger in the vehicle involved in the robbery, but he otherwise denied involvement in the incident, and he provided several different reasons for his cell phone's presence in the Butte area around the time the crime occurred.

During the second interview, conducted five days later, Hayes returned to his wave metaphor and he reminded Chavis of the "huge wave" that was coming. He then told Chavis that this wave could hit him like a "splash" or like a "tsunami," and that the troopers had been discussing his case with the district attorney's office. Hayes told Chavis that the prosecutor assigned to Chavis's case was "very interested in what's going on here right now." And Hayes warned Chavis that, if he did not tell the truth, "this whole thing of me trying to go to the [prosecutor] on your behalf and tell them that you're cooperating and trying to do what's right is gone." Hayes then recounted some of the evidence against Chavis and returned to the wave metaphor:

> Now, this is the part where it becomes a splash or it becomes a tsunami. Okay? So I'm going to throw the ball back to you. I'm going to say, tell me what you know, tell me all the players. You have your whole life ahead of you. Okay.
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> . . . .
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> You're 22. You will recover from this. But if you mother-fuck me and I walk out of this place, you will be doing a lot of time.

At first, Chavis again denied involvement in the incident. But after further questioning, Chavis admitted that he borrowed a handgun, traveled to the Clarks' home, and entered the home armed with the borrowed handgun. Chavis also admitted to firing two shots, knowing that both the Clarks were in the home. Chavis said that he fired the shots without thinking because he was scared, and he "[didn't] even know how it all happened."

Prior to trial, Chavis moved to suppress his confession, arguing that he had been threatened by Hayes and that his confession was not voluntary. The superior court denied Chavis's motion to suppress. The court also rejected Chavis's claim that he had been threatened. The court stated that it had reviewed the two interviews, and it found specifically that "the officers never threatened, deprived, or mistreated Chavis at any point."

On appeal, Chavis contends that Hayes threatened him during the interviews, and that, under *Beavers*, the superior court was required to presume that his confession was involuntary unless the State presented affirmative evidence that his will was not overcome by the threats.[8] Specifically, Chavis argues that he was threatened during his second interview when Hayes informed him that a "huge wave" was coming that could hit him like a "splash" or a "tsunami"; when Hayes told him that he was in regular communication with the assigned district attorney who would learn whether Chavis was cooperating; and when Hayes warned him that he would "do a lot of time" if he "mother-fuck[ed]" the trooper.[9]

In response, the State argues that the trooper's statements were not threats, and instead claims that the statements "simply explained the potential benefits of

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[8] *See id.* at 1047.

[9] The State argues that Chavis failed to preserve this argument because his suppression motion focused on statements made by the trooper during the first interview while his appellate brief focuses on statements made during the second interview. We agree that Chavis's pleadings in the superior court cited only the first interview and attached a transcript only of the first interview. But the State submitted audio recordings of both interviews to the superior court, and when the court issued its ruling, it explained that it had reviewed both interviews and concluded that "the officers never threatened, deprived, or mistreated Chavis at *any* point." (Emphasis added.) Given this ruling, we conclude that the question of whether the troopers made threats during either the first or second interview is preserved for appeal.

cooperation." According to the State, the fact that Chavis's cooperation could mitigate the tsunami to a "splash" was not a threat of harsher than normal treatment, but an assertion that Chavis might be better served if he advanced exculpatory or mitigating information sooner. Similarly, the State argues that Hayes's statement that Chavis would do "a lot of time" if Chavis "mother-fuck[ed]" him "simply reiterated that if Chavis did not cooperate, Trooper Hayes would not take affirmative action to help Chavis."

The State's argument relies on what the Alaska Supreme Court recognized in *Beavers* as the "arguable equivalence" between promises and threats.[10] As the Ninth Circuit wrote in *United States v. Harrison*, "In many ways, both types of statements are simply different sides of the same coin: 'waive your rights and receive more favorable treatment' versus 'exercise your rights and receive less favorable treatment.'"[11] Despite this arguable equivalence, *Beavers* made clear that there is a difference between threats and promises, and that they are treated differently under Alaska law. Threats trigger the presumption described in *Beavers*, whereas promises do not.

Thus, as the supreme court explained in *Beavers*, an officer's promise to convey a suspect's cooperation to the prosecutor is not a threat, as it does not threaten harsher treatment but only promises the suspect a benefit if they cooperate. In contrast, an officer's statement that they will tell the prosecutor if the suspect refuses to cooperate *is* a threat, because "there is no legitimate purpose for the statement that failure to cooperate will be reported and because its only apparent objective is to coerce."[12]

Here, Hayes told Chavis that he had been talking to the prosecutor assigned to Chavis's case, and that the prosecutor was "very interested in what's going on here

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[10] *Beavers*, 998 P.2d at 1047.

[11] *Harrison*, 34 F.3d at 891.

[12] *Beavers*, 998 P.2d at 1047 (quoting *Harrison*, 34 F.3d at 891).

right now." Hayes then told Chavis that if Chavis did not tell the truth, "the whole thing of me trying to go to the [prosecutor] on your behalf and tell them you're cooperating and trying to do what's right is gone." In the same conversation, Hayes told Chavis that a "wave" (and later, a "huge wave") was coming, and that it could hit Chavis like a "tsunami" or a "splash," depending on his level of cooperation. Hayes also told Chavis to "tell me what you know" and warned Chavis that "this is the part where it [*i.e.*, the wave] becomes a splash or it becomes a tsunami." Hayes, in other words, effectively told Chavis that the coming wave would turn into a tsunami if he refused to cooperate.

Hayes's use of a violent, exaggerated metaphor, instead of a neutral description of the potential punishment Chavis faced, constituted an unambiguous threat of harsher treatment. Hayes's threat of a "tsunami" closely resembles the threat at issue in *Beavers*, where the trooper told Beavers that he was "really going to get hammered" if he tried to hide the truth. This type of language is, by its very nature, threatening, and would be understood as such by a suspect undergoing interrogation.

The threat of a tsunami was not Hayes's only threat to Chavis. Hayes also warned Chavis that he would "do a lot of time" if he "mother-fuck[ed]" Hayes. On appeal, the State argues that when Hayes made this statement, he was only promising favorable treatment, not threatening harsher treatment. But this statement is an even more obvious threat, as it expressed in unambiguous terms that, if Chavis did not tell the truth and cooperate, he would face a more serious jail sentence. It is akin to a statement cited in *Beavers* as an example of a threat, where the interviewing detectives told the defendant they would ask for "a lot of jail time" if he refused to cooperate.[13]

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[13] *See Beavers*, 998 P.2d at 1048 (citing *State v. Strayhand*, 911 P.2d 577, 582-85 (Ariz. App. 1995)).

In sum, we agree with Chavis that Hayes made threats during the interrogation of Chavis, and that Chavis's confessions must therefore be considered presumptively involuntary unless the State presents affirmative evidence indicating that Chavis's will was not overborne. We therefore remand this case to give the State an opportunity to present that affirmative evidence, and for the superior court to determine whether the State has rebutted the *Beavers* presumption. We express no opinion as to whether Chavis's confession should ultimately be suppressed.

Conclusion

We REMAND this case to the superior court with instructions to reconsider its denial of Chavis's motion to suppress his confession. The superior court shall transmit its order on remand to this Court within sixty days of the date of the distribution of this order. We retain jurisdiction.