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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 03/13/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0770
)
Appellee,) DEPARTMENT E
)
v.) MEMORANDUM DECISION
)
STEVEN ALLEN LEWIS,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-102076-001 SE

The Honorable Kristin Hoffman, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals Section/
Capital Litigation Section
and Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Peg Green, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Steven Allen Lewis (defendant) appeals the trial court's order finding him guilty of possession of dangerous drugs for sale, a class 2 felony, possession of drug paraphernalia, a class 6 felony, and misconduct involving weapons, a class 4 felony. For the following reasons, we affirm.

FACTS¹ AND PROCEDURAL BACKGROUND

¶2 In January 2008, defendant was charged with possession of dangerous drugs for sale, a class 2 felony, possession of drug paraphernalia, a class 6 felony, and misconduct involving weapons, a class 4 felony.

¶3 On the evening of December 11, 2007, a Mesa police officer pulled over defendant for failing to have a working license plate light and driving with a suspended registration. Defendant was arrested on an outstanding warrant and an inventory search was conducted on his vehicle before it was towed and impounded. The search revealed a black fanny pack on the front seat, which contained \$13,820.87, two clear plastic bags with 8.8 grams of methamphetamines and 1.8 grams of methamphetamines, respectively, and a clear glass smoking pipe with white residue. The police also found a handgun inside the

¹ We review the evidence and inferences drawn from the evidence in a light most favorable to upholding the verdict. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

center console. Defendant spoke with police that night regarding the items found in his vehicle.

¶14 Defendant subsequently moved to suppress the statements he made to police that night, arguing that the statements were involuntary and a result of police promises of leniency in exchange for defendant's cooperation.

¶15 The court held a suppression hearing and defendant submitted the December 11, 2007 transcript of the conversation between the police and defendant as evidence.

¶16 The transcript begins with Detective Coronado reading defendant his *Miranda*² rights and defendant stating he understood those rights. Detective Coronado asked if defendant would voluntarily answer questions, and defendant responded, "Yeah. It depends on what you ask." Detective Coronado stated, "Okay. We'll stop whenever you want."

¶17 When Detective Coronado asked defendant who owned the black fanny pack bag and if he wanted time to think about it, the following exchange took place:

MR. LEWIS: No, you don't got to give me no time to think about it. Per se, let's just say, if I knew whose bag it was.

DET. CORONADO: Okay.

MR. LEWIS: Okay? I guess I should say, what could you do for me?

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

DET. CORONADO: Probably help you out a lot.

MR. LEWIS: Well how much could you help me out?

DET. CORONADO: Depending on what you tell me.

MR. LEWIS: Well I could tell you a bunch.

¶18 Defendant then said to Detective Coronado, "Well let me tell you what I can do for you. . . . I could probably give you . . . some people you might . . . have wanted . . . for a long time." Defendant explained it involved the crime of drugs and was "directly involved with what's in the bag." When Detective Coronado asked if defendant could provide information about other types of crimes, such as burglaries, defendant responded that he could provide information on a person that committed burglaries, "[t]hat Mesa police wants real bad." Defendant continued that, "I do know a lot of people" and "I'd like to help you out because we would like to leave here, Dorothy and I."³

¶19 When Officer Stobinske entered the interrogation room, he asked defendant about the information defendant claimed to have and said, "Now if you want to help us, we can help you." Defendant stated, "I might have a lot of information" and "I could give you one guy you want real bad that does burglaries . . . all over." Defendant also stated he could provide

³ Dorothy was in the vehicle when defendant was arrested.

information about "two Mexican drug dealers" that "are the biggest ones around east Mesa."

¶10 Officer Stobinske said that, "Well if push were to come to shove and we couldn't work together or anything like that, you'd be getting charged with it. And I'm going to charge you with it." Defendant responded, "Okay." Defendant then offered several more names of people and disclosed the contents of the bag—\$13,000.00 and drugs. Defendant stated that he drove a drug dealer named Will to a particular location so Will could participate in a drug transaction and, thereafter, Will left the fanny pack containing the money and drugs in defendant's vehicle. Defendant also answered numerous questions about who owned the money in the bag and several people the officers questioned him about. Defendant again attempted to strike a deal with the officers, stating: "[i]f I could help you guys out . . . I'll do that. . . . And it won't cost you nothing."

¶11 Officer Stobinske stated, "I wouldn't need you to - to do a lot. I'd just need you to get me a little bit of info about [a theft] to fill in some pieces of the puzzle we don't have yet." Defendant replied, "I'm sure I could help you out with that." Defendant also asked to have his vehicle released early from being impounded as well as "I work with you, you're going to keep me from felon—charging me with felonies that isn't my felony." Officer Stobinske told defendant not to "test" him

and explained that the drugs, money, and gun were found in his vehicle and he was therefore responsible for those items.

¶12 Officer Stobinske asked if defendant could get information about a particular person and defendant said, "I can get whatever you want to know. If you tell me what you want to know, I'll find it out." Officer Stobinske subsequently stated, "We're going to try and work with you." Another officer continued, "Here's the deal. . . . we do what we call three for free, normally, okay. What that means is you have to do three deals with us in order to get your charges reduced. . . . basically if you don't come through then - then we put out a warrant for your arrest, or we come pick you up ourselves . . . and we schedule you for jail just like it happened just then. If you do come through then [the charges] go away." The officer later stated, "If for some reason you shit backwards on us, all bets are off and you go to jail." The officer further explained that even though the rule is "usually three for free. . . . if you come up with [a specific ATM theft prosecution,] [i]f somebody can successfully be prosecuted for that then we'll just go with that. . . . So you'll only have to do that one thing."

¶13 Defendant ultimately failed to obtain the required information for the police and a deal was not consummated.

¶14 The court considered the December 11, 2007 transcript and the parties' arguments and concluded that the State could

use the statements from the transcript in its case-in-chief.

The court found that:

defendant's initial conversation with respect to receiving any promise or benefits from his cooperation with the police department was initiated by the defendant and that he was, in fact, the one driving the conversation with respect to receiving some type of promise. The Court further finds that the officer's statements with respect to, "We will charge you and your girlfriend," did not constitute a threat but was an explanation of what [d]efendant could possibly expect as a result of this incident. The Court finds that there were no promises or threats used at the interrogation at the police station and the defendant was not coerced in any way. Considering the factors set forth in A.R.S. § 13-3988, the Court finds that [d]efendant's statements made to the Scottsdale Police Department while in custody were made voluntarily.

¶15 The jury found defendant guilty of all three counts and the court sentenced defendant to 8 years flat for possession of dangerous drugs for sale, 1 year for possession of drug paraphernalia, and 2.5 years for misconduct involving weapons, each count to be served concurrently with one another, and 172 days of presentence incarceration for each count.

¶16 Defendant timely appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003), 13-4031, and -4033(A)(1) (2010).

DISCUSSION

¶17 Defendant argues that his confession was not voluntary because he relied on promises made by the officers and was coerced by threats from the officers.

¶18 We review a trial court's decision to admit a defendant's statement for an abuse of discretion. *See State v. Ellison*, 213 Ariz. 116, 126, ¶ 25, 140 P.3d 899, 909 (2006). The trial court's decision is based on the evidence presented at the suppression hearing. *Id.* The trial court must look at the totality of circumstances in order to determine whether police conduct was overreaching and because its inquiry is highly fact-intensive, we will not disturb the trial court's finding absent clear and manifest error. *See State v. Trostle*, 191 Ariz. 4, 14, 951 P.2d 869, 879 (1997); *see also* Ariz. Rev. Stat. § 13-3988(B) (2010) ("trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession").

¶19 In order for a statement to be admissible, it must be voluntary and not obtained by improper inducement or coercion. *See Ellison*, 213 Ariz. at 127, ¶ 30, 140 P.3d at 910; *see also* Ariz. Rev. Stat. § 13-3988(A) ("a confession shall be admissible in evidence if it is voluntarily given"). "Promises of benefits or leniency, whether direct or implied, even if only slight in value, are impermissibly coercive." *Ellison*, 213 Ariz. at 127,

¶ 30, 140 P.3d at 910. (quoting *State v. Lopez*, 174 Ariz. 131, 138, 847 P.2d 1078, 1085 (1992)). However, where “the proposal for the ‘deal’ came from the defendant, the promise did not interfere with the [defendant’s] exercise of a free volition in giving the confession ‘[Where] the promise was solicited by the accused, freely and voluntarily, . . . they cannot be heard to say that in accepting the promise they were the victims of compelling influences.’” *State v. McVay*, 127 Ariz. 18, 21, 617 P.2d 1134, 1137 (1980) (quoting *State v. Jordan*, 114 Ariz. 452, 454, 561 P.2d 1224, 1226 (1976), *vacated on other grounds*, 438 U.S. 911 (1978)); see also *State v. Williams*, 136 Ariz. 52, 56, 664 P.2d 202, 206 (1983).

¶20 Defendant argues that his situation is distinguishable from *McVay* and *Jordan* because he “did not set any conditions; he did not make any proposals,” unlike the defendants in those two cases. We disagree. In *McVay*, the court found that the defendant’s initiation of the deal—his confession in exchange for being released from prison isolation—protected the validity of his confession. 127 Ariz. at 20-21, 617 P.2d at 1136-37. In *Jordan*, the defendant initiated the bargaining and told officers he would give a statement if “certain conditions were met.” 114 Ariz. at 454, 561 P.2d at 1226. The court held that the officers cooperated with the terms, but never made any offers to coerce or induce the defendant. *Id.*

¶21 Defendant clearly initiated the proposal for a deal by stating at the beginning of the transcript, "I guess I should say, what could you do for me?" and "how much could you help me out?" Defendant then explained, without any prompting, how he could help the police and what information he could provide to them. Defendant also made it clear that he would be willing to provide that information because he wanted to be able to leave with his girlfriend. Additionally, defendant attempted to negotiate an early release of his impounded vehicle as well as attempted to get the officers to agree not to charge him with felonies. Thus, defendant made a concerted effort to make a deal with the police by initiating the conversation, explaining to police what information he could provide, and proposing specific conditions in exchange for that information. The officers' statements about charging defendant if he did not follow through with his part of the deal did not constitute coercion or improper conduct.

¶22 Thus, we hold that defendant's statements to the officers were voluntarily made, the officers' statements were proper, and the court did not abuse its discretion in admitting those statements as evidence.

CONCLUSION

¶23 For the foregoing reasons, we affirm.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
JOHN C. GEMMILL, Judge