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NO. COA01-786

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Guilford County
No. 00 CRS 83135

DEREK LYNN HENDRICKS

Appeal by defendant from judgment entered 30 November 2000 by Judge Jerry Cash Martin in Guilford County Superior Court. Heard in the Court of Appeals 18 April 2002.

Roy Cooper, Attorney General, by Jeffrey B. Parsons, Assistant Attorney General, for the State.

Ames C. Chamberlin for defendant-appellant.

THOMAS, Judge.

Defendant, Derek Lynn Hendricks, appeals a conviction of possession of a firearm by a convicted felon. He contends his *Miranda* rights were violated and, therefore, the trial court erred in denying his motion to suppress. For the reasons herein, we find no error.

The evidence of what occurred in the Greensboro Police Department's interrogation room is contested.

The State's evidence tends to show the following: On 15 March 2000, Greensboro Police Department Detectives D.R. Russ and K.A. Davis from the Greensboro Police Department were called to the

scene of an armed robbery at Grady's American Grill (Grady's). Within a short time, other police officers had arrested defendant as a possible suspect in the robbery. They found a .22-caliber pistol in the room where defendant had been staying at the nearby Red Roof Inn. Defendant was taken to the Greensboro Police Department with Russ and Davis following.

The interrogation room measured six by eight feet, was windowless, and had a two-way mirror. The room was guarded but defendant was allowed access to a nearby restroom. He was also provided juice to drink.

Initially, defendant told Russ and Davis that his name was Tony Saunders. Davis searched for the name, without success, in a computer database that keeps track of persons arrested in Guilford County. Russ and Davis then went back to Grady's and interviewed witnesses to the robbery. Those witnesses were not able to identify defendant, with the manager of the restaurant saying that defendant did not appear to be the robber.

The officers returned to the department after having been gone approximately one hour and resumed the interrogation of defendant. During the interview, but before the detectives learned defendant's real name, defendant mentioned that Jack Hatfield had been his attorney. He did not ask to call him or ask for another attorney, however.

Russ continued questioning defendant, who then said his name was Nation Lynch. Davis searched the database and located a photograph under that name. He also ran a Federal Bureau of

Investigation criminal history search. Davis discovered that Nation Lynch was an alias for Derek Hendricks, defendant's real name, and that defendant was a convicted felon. Upon learning defendant's true identity, Russ read him his *Miranda* rights from a Greensboro Police Department form. Russ checked off each right as defendant indicated positively that he understood it. Defendant then signed the line under the "Statement of Rights" portion of the form, indicating that he understood his rights. He refused, however, to sign the lower portion of the form, titled "Waiver of Rights." Next to the line titled, "Time," Russ wrote "1319" (1:19 p.m.). The *Miranda* rights were read to defendant more than four hours after he had been taken into custody, although almost all of those hours had been spent trying to establish his identity.

After defendant refused to sign a waiver of his *Miranda* rights, he was asked if he would continue talking with the police. Defendant replied that he would. Russ then questioned him about the .22-caliber pistol, with defendant admitting that he owned it. He had earlier denied possession.

Defendant's evidence, meanwhile, tends to show the following: The detectives asked defendant who his attorney was, and he replied, "Jack Hatfield." The officers became verbally abusive, and then left him for awhile before returning to continue the interrogation. The officers called him a liar and said he "screwed up" by not making a statement. Defendant responded to questioning about the pistol by stating, "Since you want me to say the gun is mine, the gun is mine." He testified that he made the statement

acknowledging possession of the pistol before he was advised of his *Miranda* rights. Defendant did admit to providing police with two false names regarding his identity. Finally, defendant testified that Russ reviewed the *Miranda* Rights form with him, but not until approximately 5:00 p.m.

Defendant was convicted in a jury trial of possession of a firearm by a convicted felon. He was sentenced to a term of nineteen to twenty-three months in prison.

By his sole assignment of error, defendant contends the trial court erroneously failed to suppress his statement admitting possession of the pistol. The confession, he argues, was obtained in violation of his constitutional rights. We disagree.

In reviewing the denial of a motion to suppress, our examination is limited to determining whether the trial court's findings of fact are supported by competent evidence and whether those factual findings in turn support legally correct conclusions of law. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982).

Conflict in testimony ordinarily raises a question of credibility of the witnesses, which is for determination by the trial court. *State v. Blackmon*, 280 N.C. 42, 48, 185 S.E.2d 123, 127 (1971).

No evidence obtained from a suspect during a custodial interrogation may be used against him unless the interrogation was preceded by appropriate warnings regarding his *Miranda* rights, which include the right to have counsel present. *Miranda v.*

Arizona, 384 U.S. 436, 479, 16 L. Ed. 2d 694, 726 (1966). *Miranda* rights may be waived, provided the waiver is made knowingly, intelligently, and voluntarily. *Id.* Defendant argues there is insufficient evidence that he waived his right to counsel and, therefore, his admission regarding the gun must be suppressed. He also maintains that the evidence is in conflict regarding whether he was advised of his *Miranda* rights prior to admitting possession of the firearm.

Russ, meanwhile, testified that defendant "rambled" at times during the interview and it was during some of the rambling when defendant mentioned the name Jack Hatfield. He said if defendant had requested an attorney, he would have had to end the interview. Further, Russ claimed to have read aloud defendant's *Miranda* rights. He said he placed a check mark by each right as defendant indicated he understood it. Defendant then signed the portion of the form setting forth the rights, two of which read:

3. You have a right to talk with a lawyer and to have a lawyer present with you while you are being questioned.

4. If you want a lawyer but are unable to afford one, a lawyer will be appointed to represent you before any questioning if you wish.

Finally, Russ testified that after defendant said he understood his *Miranda* rights, Russ asked him if he wanted to continue to talk with the officers. Defendant said he would talk to them. Defendant then admitted that the pistol found in his hotel room was his. Davis's testimony corroborated Russ's.

As is required, the trial court determined the weight of the

evidence and credibility of the witnesses. See *Blackmon*, 280 N.C. at 48, 185 S.E.2d at 127. It found that: (1) the testimony of defendant is not believable and, although it is not to be discounted, it is not to be given much weight; (2) defendant did not request an attorney, but he did disclose the name of an attorney, Jack Hatfield; (3) after properly being advised of his constitutional rights, defendant freely, knowingly, and intelligently waived his rights; and (4) defendant's statement concerning possession of the .22-caliber revolver was made freely, voluntarily, and understandingly.

The competent evidence in this case sufficiently supports the trial court's findings of fact. Further, those findings support legally correct conclusions of law.

Accordingly, we find no error.

NO ERROR.

Judges MARTIN and TYSON concur.

Report per Rule 30(e).