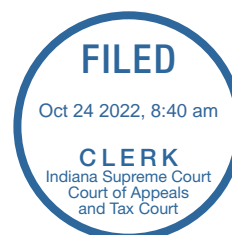


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Joshua Adam Ferrell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 24, 2022

Court of Appeals Case No.
21A-CR-2892

Appeal from the LaPorte Superior
Court

The Honorable Jaime M. Oss,
Judge

Trial Court Cause No.
46D01-2107-F5-852

Crone, Judge.

Case Summary

- [1] Joshua Adam Ferrell appeals his conviction for level 5 felony possession of methamphetamine, arguing that the trial court abused its discretion in admitting his allegedly involuntary confession. We affirm.

Facts and Procedural History

- [2] The evidence favorable to the trial court's ruling shows that in June 2021, LaPorte County Sheriff's Deputy Wade Wallace ran the license plate of a Pontiac that he observed swaying back and forth on the road and learned that both registered owners had suspended licenses. When the Pontiac turned left, Deputy Wallace saw that the driver was one of the registered owners. Deputy Wallace initiated a traffic stop and parked his car behind the Pontiac.
- [3] Deputy Wallace approached the passenger side of the Pontiac and spoke to the driver and the front-seat passenger, who was later identified as Ferrell. Ferrell gave Deputy Wallace a false name, and when Deputy Wallace asked for his date of birth, Ferrell provided a year but no month or day. Deputy Wallace believed that Ferrell was not telling the truth and might be intoxicated.
- [4] Deputy Wallace asked the driver to step out of the vehicle, and they walked behind the Pontiac and stood in front of the police car to talk. The driver was cooperative, provided Ferrell's real name, and informed Deputy Wallace that there might be a warrant for Ferrell's arrest. The driver denied that there was anything illegal in the car but did not consent to a search of the vehicle. At

some point, Deputy Wallace radioed Deputy Jon Samuelson and his canine partner for backup.

[5] When Deputy Samuelson arrived, the officers approached the Pontiac and asked Ferrell to step outside. Deputy Samuelson recognized Ferrell and thanked him for not running because he did not want to “sic” his dog on him. State’s Ex. 1 at 00:20.¹ Deputy Wallace handcuffed Ferrell and asked him whether there was anything illegal in the car. Ferrell answered, “Not that I know of, sir.” *Id.* at 00:42. While Deputy Wallace patted Ferrell down, he asked him again whether there was anything illegal in the car, asked Ferrell to be honest with him, and said, “I’m not the petty police.” *Id.* at 00:58. Deputy Wallace walked Ferrell to the front of his police car so that Deputy Samuelson could perform the dog sniff on the Pontiac. *Id.* at 01:38. Deputy Wallace asked Ferrell again whether there was “any dope in the car,” and Ferrell said, “Not that I know of.” *Id.* at 02:04. Deputy Wallace told him that he worked with honesty and that he was “not the petty police” and that “unless you got weight in there, I’m not gonna fuck with it, but if you guys lied about it.” *Id.* at 02:09. Ferrell again said, “Not that I know of.” *Id.* at 02:20. Then, Ferrell said, “If there’s anything in there it’s mine.” *Id.* at 02:30.

[6] At this point, the canine alerted to the presence of drugs near the driver’s-side door. Deputy Wallace said, “Be honest with me. Tell me what’s in there.” *Id.* at

¹ State’s Exhibit 1 is a redacted version of Deputy Wallace’s dashcam video.

2:52. Ferrell admitted that there was methamphetamine in the car. *Id.* at 2:56. Deputy Wallace asked him how much methamphetamine, and Ferrell said a gram, maybe a little more. *Id.* at 03:02. Deputy Wallace then informed Ferrell of his *Miranda* rights. *Id.* at 03:25. Ferrell told Deputy Wallace that the methamphetamine was in a cigarette pack in the driver's-side door, and that is where Deputy Samuelson subsequently found it. Lab testing determined that methamphetamine weighed 2.2 grams.

[7] As the Pontiac was being searched, Ferrell smoked a cigarette while he was handcuffed. He joked that he was fast and could outrun the canine officer. *Id.* at 10:37. Later, Ferrell asked if he could smoke another cigarette. One of the officers held a cigarette out for Ferrell, and Ferrell grabbed it with his mouth. *Id.* at 19:09. Ferrell told Deputy Wallace that he had had a “mental breakdown” and had been “trying to put the pieces back together.” *Id.* at 3:37. Ferrell said that he needed to go to “some type of hospital” and had been “seeing stuff and hearing shit lately.” *Id.* at 19:12.

[8] Deputy Wallace put Ferrell in his police car and drove toward the jail. During the drive, Deputy Wallace and Ferrell talked. Ferrell told Deputy Wallace that he needed medical attention, but the deputy observed nothing in Ferrell's demeanor that led him to believe that was true. Tr. Vol. 2 at 128. The booking officer “felt that [Ferrell] was under the influence of something,” but Ferrell assured him “multiple times that he was not.” *Id.* at 199. Ferrell told him that he had been “seeing shadows” but “not at that time.” *Id.* Based on Ferrell's statement that he had been seeing shadows, he was placed on mental health

observation until he could be cleared by the jail's mental health professional. The following day, he was seen by the mental health director, who was familiar with him. She believed that he was exhibiting symptoms of methamphetamine withdrawal. *Id.* at 11-12. He "had a very intense brow," was sweating and pacing back and forth, and told her that he was hearing voices. When she attempted to explain the psychological effects of substance withdrawal, he became hostile with her, which was abnormal for him. She then ended the session.²

[9] The State charged Ferrell with level 5 felony possession of methamphetamine. Ferrell filed a motion to suppress all the statements he made to the officers, claiming that they were involuntary. The trial court found that the statements were voluntary and denied the motion. A jury found Ferrell guilty of level 6 felony possession of methamphetamine. Ferrell admitted that he had a prior conviction for dealing a controlled substance, and the conviction was enhanced to a level 5 felony. The trial court sentenced Ferrell to an executed term of three years. This appeal ensued.

Discussion and Decision

[10] Ferrell alleges that his confession was involuntary, and therefore its admission violated his rights against self-incrimination under the Fifth Amendment to the

² Ferrell remained under medical observation for substance withdrawal, but there is no further information in the record regarding his mental health condition.

United States Constitution and Article 1, Section 14 of the Indiana Constitution. “The decision whether to admit a confession is within the discretion of the trial judge and will not be reversed absent an abuse of that discretion.” *Carter v. State*, 730 N.E.2d 155, 157 (Ind. 2000) (quoting *Jones v. State*, 655 N.E.2d 49, 56 (Ind. 1995)). We review a trial court’s determination of voluntariness as a sufficiency of the evidence question. *Weisheit v. State*, 26 N.E.3d 3, 18 (Ind. 2015), *cert. denied* (2016). We will not reweigh the evidence but will consider the evidence most favorable to the trial court’s conclusion, together with the reasonable inferences that can be drawn therefrom. *Pruitt v. State*, 834 N.E.2d 90, 114 (Ind. 2005), *cert. denied* (2006). If the trial court’s determination of voluntariness is supported by substantial evidence, we will affirm. *Wilkes v. State*, 917 N.E.2d 675, 680 (Ind. 2009), *cert. denied* (2010).

[11] When “a defendant challenges the voluntariness of a confession under the United States Constitution, the state must prove the statement was voluntarily given by a preponderance of the evidence.” *Pruitt*, 834 N.E.2d 114. “When a defendant challenges the admissibility of his confession [under the Indiana Constitution], the State must prove beyond a reasonable doubt that the confession was given voluntarily.” *Henry v. State*, 738 N.E.2d 663, 664 (Ind. 2000). To determine whether a confession was voluntary, we use the totality of the circumstances test, which “focuses on the entire interrogation, not on any single act by police or condition of the suspect.” *Id.* We consider “any element of police coercion; the length, location, and continuity of the interrogation; and the maturity, education, physical condition, and mental health of the

defendant.” *Wilkes*, 917 N.E.2d at 680. “To determine that a confession was given voluntarily, the court must conclude that inducement, threats, violence, or other improper influences did not overcome the defendant’s free will.” *Clark v. State*, 808 N.E.2d 1183, 1191 (Ind. 2004). “Other factors that can influence the voluntariness of a confession include the use of alcohol or drugs and fatigue.” *Shelby v. State*, 986 N.E.2d 345, 365 (Ind. Ct. App. 2013), *trans. denied*.

[12] Here, Ferrell claims that his confession that he possessed the methamphetamine located in the Pontiac was involuntary because it was obtained by coercive police tactics, he was promised leniency for a confession, and he was too intoxicated to know what he was doing. Ferrell’s claims of coercive police tactics are without merit. We are unpersuaded that any of the police tactics that Ferrell directs us to were improper or coercive or that they even have any relevance to the voluntariness of his confession.³

[13] As for the alleged promise of leniency, he directs us to Deputy Wallace’s statements that “he was not the petty police,” “I work with honesty,” and “unless you got weight in there, I’m not going to fuck with it.” In support, he cites *Ashby v. State*, 265 Ind. 316, 320, 354 N.E.2d 192, 195 (1976), in which our supreme court held that a confession obtained by a promise of immunity or mitigation of punishment is inadmissible. However, our supreme court has declined to extend *Ashby* to cases that “do not involve ‘direct or implied

³ For example, Ferrell implies that the traffic stop was a pretext for an investigation for illegal substances and complains that Deputy Wallace separately questioned the driver.

promises' of immunity or leniency." *A.A. v. State*, 706 N.E.2d 259, 263 (Ind. Ct. App. 1999) (quoting *Pamer v. State*, 426 N.E.2d 1369, 1374 (Ind. Ct. App. 1981)). "[V]ague and indefinite statements by the police that it would be in a defendant's best interest if he cooperated do not render a subsequent confession inadmissible." *Clark v. State*, 808 N.E.2d at 1191. In *Clark*, our supreme court held that the officer's statements that "there's a way you can work around this" and that the defendant would have no future unless he was honest about what had happened did not constitute a promise or threat that rendered that defendant's confession involuntary. *Id.*; see also *Turner v. State*, 682 N.E.2d 491, 494-95 (Ind. 1997) (concluding that officer's urging a suspect to help himself by telling the police the truth does not constitute a promise of leniency); *Love v. State*, 272 Ind. 672, 676, 400 N.E.2d 1371, 1373 (1980) (concluding that police statement to juvenile defendant that his "cooperation might help in assisting him" did not render confession involuntary). Deputy Wallace's statements are similar to the vague assurances that our courts have determined did not constitute direct or implied promises of leniency rendering a confession involuntary.

[14] Finally, as for Ferrell's level of intoxication, we note that "[a] defendant's statement will be deemed incompetent only when he is so intoxicated that it renders him not conscious of what he is doing or produces a state of mania." *Brooks v. State*, 683 N.E.2d 574, 576 (Ind. 1997). Ferrell claims that he was in a manic state due to methamphetamine withdrawal because he told the officers that he was having hallucinations, and the mental health director believed that

he was behaving abnormally and was experiencing symptoms of narcotics withdrawal, including hearing voices. We note that the health professional did not see Ferrell until the day after his arrest. Further, while the health professional testified that hallucinations may occur during a manic state, she did not testify that Ferrell was in a manic state.

[15] The record shows that at the time of the traffic stop, Ferrell was “conscious and alert and able to answer all of [the officer’s] questions [...] and form his own sentences. Tr. Vol. 2 at 121. He appeared to be “wide awake.” *Id.* at 121. Ferrell did not appear confused or have any difficulty understanding the conversation with the officers. He did not slur his speech. He displayed no difficulty with his balance or coordination when he exited the Pontiac and when he walked to the police vehicle, and he was able to smoke cigarettes and drink from a water bottle while handcuffed. Although Ferrell told Deputy Wallace that he had had a mental breakdown the night before and needed to go to a hospital, Deputy Wallace did not observe anything in Ferrell’s demeanor that made him believe that that was true. We conclude that there is substantial evidence of probative value that shows that Ferrell understood what was happening and was in control of himself.

[16] Based on the totality of circumstances shown by the record, substantial evidence of probative value supports the trial court’s determination that Ferrell’s confession was given voluntarily beyond a reasonable doubt. Thus, the trial court did not abuse its discretion by admitting Ferrell’s statements to police, and we affirm his conviction.

[17] Affirmed.

May, J., and Weissmann, J., concur.