STATE OF MINNESOTA
IN COURT OF APPEALS
A10-194

State of Minnesota,
Respondent,

vs.

Deangelo Valentino Madison,
Appellant.

Filed December 21, 2010
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27CR0920462

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Johnson, Chief Judge; and Bjorkman, Judge.

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

STONEBURNER, Judge

Appellant challenges his conviction of two counts of first-degree criminal sexual conduct, arguing that the district court erred by denying his motion to suppress a confession which he argues was involuntary. We affirm.

FACTS

The underlying facts relevant to this appeal are undisputed. K.W. and her roommate, L.P., invited about ten people, including Mamady Keita and appellant, Deangelo Madison, to a gathering at their duplex in South Minneapolis. K.W. was acquainted with Keita, but had never met Madison before this gathering. After approximately two hours of drinking and socializing, all the guests left the house.

Later that evening, K.W. drove L.P. to work and returned to the duplex alone. Keita and Madison were in the house when she arrived. Keita approached K.W. in the kitchen. K.W. asked Keita why he was there and screamed at him to leave. But Keita came toward K.W., backing her into a corner. Keita attempted to pull K.W. to the ground. When his attempts failed, Keita called for help, and Madison came from the back part of the house. Keita told Madison to help him get K.W. to the ground.

Keita and Madison grabbed K.W.'s arms and pulled her to the floor; K.W. was still fighting and screaming for help. Madison held K.W.'s arms down and then covered her mouth with his hand so that she could not scream. Keita removed K.W.'s pants and underwear and put something, possibly his fingers, into K.W.'s vagina while Madison

held her down. Keita also attempted to penetrate K.W.'s vagina with his penis, but K.W. fought back and prevented him from doing so.

Keita and Madison then dragged K.W. to a bedroom, where each of the men had sexual intercourse with K.W. Madison held K.W. down for Keita, and Keita held K.W. down for Madison. Keita and Madison then put their clothes back on and Keita told K.W. to take a shower. The two men watched as she showered. K.W. eventually asked if she could get out the shower. Keita told K.W. to scrub her vagina again and then let her out of the shower.

Keita threatened to kill K.W. and her family if she told L.P. what had happened. Keita took K.W.'s cell phone and wrote down the address of K.W.'s parents from the information listed on K.W.'s driver's license. Keita put the phone into K.W.'s mailbox and told her that if she did not wait twenty minutes before retrieving the phone, Keita and Madison would kill her.

K.W. went to where L.P. worked and told her that she had been raped, but she would not say by whom. L.P. began listing names. When she said Keita's name, K.W. began crying. L.P. called their friend F.T., who had been at the gathering earlier in the day, for help. F.T. met L.P. and K.W. at the duplex. After K.W. told F.T. and L.P. that her other assailant's name began with "D" and that he had been sitting in the chair in the bedroom during the gathering earlier that day, F.T. said "Deangelo" and K.W. recognized "Deangelo" as the assailant's name. L.P. called the police to report the rape because K.W. was too upset to make the call.

After K.W. described to the responding police officers what had happened, they took her to a hospital for a sexual-assault examination. The sexual-assault nurse reported several bruises and scratches all over K.W.'s body. The nurse also obtained a semen sample from K.W.'s body. During interviews with Minneapolis Police Department Sergeant Melissa Banham, K.W. identified Keita and Madison as the assailants from their photographs. The Minnesota Bureau of Criminal Apprehension (BCA) later compared the DNA profile of the semen sample taken from K.W.'s body to Keita's and Madison's DNA profiles. Keita was a match, Madison was not.

On April 21, 2009, Sergeant Banham conducted a custodial interrogation of Madison. During the interrogation, Madison waived his *Miranda* rights and eventually admitted that he was at K.W.'s home on April 1, 2009, and that he and Keita sexually assaulted K.W. that day. Madison described the rape in detail to Sergeant Banham.

On April 23, 2009, Madison was charged with two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(e)(i), (f)(i) (2008). Madison moved the district court to suppress his confession on the grounds that it was involuntary. The district court found that Madison's confession was voluntary and denied the motion to suppress. Following a jury trial, during which the audio and video recordings of the interrogation and confession were received into evidence, Madison was found guilty and convicted of both counts.

Madison now appeals, arguing that the district court erred by concluding that his confession was voluntary.

D E C I S I O N

Standard of Review

Madison concedes that he waived his *Miranda* rights but argues that his confession was nevertheless involuntary and therefore should have been suppressed by the district court in order to protect his constitutional rights.

To be admissible, a confession must be voluntarily and freely given. *State v. Merrill*, 274 N.W.2d 99, 106 (Minn. 1978). "The test of voluntariness is whether the actions of the police, together with other circumstances surrounding the interrogation 'were so coercive, so manipulative, so overpowering that [the defendant] was deprived of his ability to make an unconstrained and wholly autonomous decision to speak as he did.'" *State v. Jones*, 566 N.W.2d 317, 326 (Minn. 1997) (quoting *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991)). "[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 522 (1986).

"The voluntariness of a statement depends on the totality of the circumstances." *State v. Bailey*, 677 N.W.2d 380, 407 (Minn. 2004). "[T]he entire course of police conduct" must be examined to determine the voluntariness of the suspect's statements. *Id*. (citing *Oregon v. Elstad*, 470 U.S. 298, 318, 105 S. Ct. 1285, 1298 (1985)). The same factors used to identify a knowing, intelligent, and voluntary waiver of *Miranda* rights are used to determine voluntariness of post-waiver statements. *State v. Williams*, 535 N.W.2d 277, 287 (Minn. 1995).

> Relevant factors include the defendant's age, maturity, intelligence, education, and experience; the ability of the defendant to comprehend; the lack of adequacy of warnings; the length and legality of the detention; the nature of the interrogation; whether the defendant was deprived of any physical needs; and whether the defendant was denied access to friends.

State v. Farnsworth, 738 N.W.2d 364, 373 (Minn. 2007) (quotation omitted).

We review de novo a district court's legal conclusion as to the voluntariness of a statement, based on all of its factual findings that are not clearly erroneous. *State v. Clark*, 738 N.W.2d 316, 333 (Minn. 2007). The state must show the voluntariness of a confession by a preponderance of the evidence. *Pilcher*, 472 N.W.2d at 333.

Susceptibility to psychological coercion

Madison asserts that he was particularly susceptible to psychological coercion, leading him to confess involuntarily. We disagree.

The district court found that Madison, who was 21 years old at the time of the interrogation, is a man of average intelligence who has a high-school education and some vocational training. The district court found that Madison validly waived his *Miranda* rights, understood Sergeant Banham's questions, and knew what the interrogation was about. The district court found that Madison has experience with the criminal-justice system, noting that since 2007, Madison has been convicted of felony possession of a short-barreled shotgun, arrested for misdemeanor domestic assault, and issued a citation for misdemeanor theft. The district court found that Madison was interrogated during the afternoon hours (approximately 3:30 p.m.–5:00 p.m.) by only one officer and that the interrogation did not last for an unreasonable length of time (approximately 90 minutes).

At the beginning of the interrogation, Madison was offered water, and he was not deprived in any way of his physical needs. The record supports all of these findings.

But Madison argues that the district court's implicit finding that he was not particularly vulnerable to psychological coercion is clearly erroneous. Madison points to statements he made during the interrogation that (1) he is "kind of slow"; (2) he did not know if he graduated from high school; (3) he has "ADD and some other s***"; and (4) he needs to undergo psychological testing to determine whether he has any other psychological problems, as evidence of his vulnerability. He argues that the district court erred by failing to specifically address these assertions.

The district court's order, which extensively recounts the custodial interrogation and states that the court had "reviewed the complete audio and video recording of [Madison]'s confession," makes it clear that the district court considered all of Madison's statements, including those to which Madison now refers. And the results of the rule 20.01 examination demonstrate that Madison is a man of average intelligence who lacks any mental or psychological conditions that would make him particularly vulnerable to coercion in an interrogation setting. The rule 20.01 examiner diagnosed Madison as having Attention Deficit-Hyperactivity Disorder–Inattentive Type, but noted that Madison showed "no evidence [of] inattention or impulsivity in the interview situation." The examiner opined that "[a]lthough [Madison] has a history of significant learning disabilities, his intellectual level has been assessed in high school as being broadly in the average range. There was no evidence of significant intellectual deficits in this evaluation."

Madison criticizes the district court's failure to explicitly address his comment to Sergeant Banham that he was in the process of applying for Supplemental Security Income (SSI). But there is no evidence in the record that Madison was applying for SSI based on any mental-health disability, as Madison's argument implies.

Madison argues that the district court should have explicitly addressed instances during the interrogation when Madison "went on . . . tangent[s]," which, Madison claims, demonstrated his immaturity and the fact that he "was easily distracted from the serious matter at hand." But Madison's sufficient level of maturity and understanding for purposes of the custodial interrogation is supported by record evidence of (1) Madison's prior experience with the criminal justice system; (2) Madison's understanding of Sergeant Banham's questions and what the interrogation was about; and (3) the rule 20.01 examiner's observation that Madison showed "no evidence [of] inattention or impulsivity in the interview situation."

Madison argues that, during the interview, he displayed his overly trusting and unsophisticated nature by indicating to Sergeant Banham that he thought Keita was being nice when he told K.W. to shower after the rape. But Madison displayed some sophistication about the evidentiary issues involved in this case when he told Sergeant Banham that he had not ejaculated, therefore none of his sperm would be found in K.W.'s house. And Madison said that Keita had ejaculated on K.W.'s stomach, that Madison's shirt made contact with K.W.'s stomach during the rape, and that, therefore, Keita's sperm could be found on the shirt Madison was wearing on April 1, which was located at Madison's dad's house and was likely unwashed at the time of the interrogation.

Madison claims that his naiveté was displayed when he indicated that he thought he could simply apologize to K.W. and help the police find Keita, as if this would relieve him of responsibility for the rape. Although, during the interview, Madison exhibited remorse and a desire to apologize to K.W. and to help the police bring Keita to justice, there is no evidence that Madison was promised that an apology would relieve him of responsibility for the rape or that he believed that to be the case.

Madison also argues that he showed his naiveté by being preoccupied with going home during the interrogation. Before confessing to raping K.W., Madison asked Sergeant Banham, "Can I go home . . . if I can help you?" Sergeant Banham eventually responded that she could release him at any time, but that she needed to know the truth first. Madison then described the events of April 1 in detail to Sergeant Banham, indicating that he felt remorseful and wanted to "get it off his shoulders." But, in describing the rape, Madison minimized his involvement, describing himself as a very "passive" person and as being afraid of what Keita would do to him if he did not participate in the rape (e.g., "[T]he s*** he does . . . scares me. . . . I had to do it."). Following the confession, Madison again indicated that he wanted to go home and asked whether he could at least avoid being "book[ed] . . . through" or having to stay in jail overnight. When he realized that none of this would be possible, he asked whether he could be handcuffed with his hands in front of him. And Sergeant Banham agreed to this.

As the state argues and the district court found, Madison's repeated references to wanting to "go home" throughout the interrogation appear, in context, to be a part of his effort to negotiate with Sergeant Banham to let him go home in exchange for providing

information about what happened to K.W. Notably, Madison had some experience in mitigating the consequences of his previous criminal conduct through negotiation. In August 2008, Madison's then-pending misdemeanor domestic-assault charge was dismissed as a result of a negotiation involving his felony probation.[1] Madison's negotiations with Sergeant Banham, therefore, demonstrate that Madison had a relatively high level of sophistication regarding the possible outcomes of his criminal conduct and understood that the consequences of his actions might be mitigated with some effort on his part.

Police coercion

Madison next contends that his confession was involuntary because Sergeant Banham coerced him into confessing by leading him to believe that he would not be prosecuted if he gave a statement.

Sergeant Banham indicated to Madison that if he told her the truth, she would release him from custody. This did not happen, and the district court found this untruthful promise to be the only factor weighing against finding the confession voluntary. But "offers of help do not make a statement involuntary as long as the police have not implied that a confession may be given in lieu of criminal prosecution." *Farnsworth*, 738 N.W.2d at 374. "[C]ourts do not mechanically hold confessions involuntary just because a promise has been involved. Rather, the approach courts have taken is to look to the totality of the circumstances, considering all the factors bearing on

[1] In August 2008, Madison was on probation for his September 2007 conviction for felony possession of a short-barreled shotgun.

voluntariness." *State v. Thaggard*, 527 N.W.2d 804, 811 (Minn. 1995) (quotations omitted). Applying this approach, we agree with the district court's conclusion that Sergeant Banham did not coerce Madison into confessing.

The record supports the district court's finding that Madison was anxious to tell the truth to Sergeant Banham and that Sergeant Banham never implied that Madison could confess and avoid prosecution. Before detailing the rape, Madison clearly stated that he wanted to "get it off [his] shoulders." Although Sergeant Banham told Madison that K.W. did not want "anything done to" him and that she was also sympathetic to Madison and would release him from custody if he told the truth, she also indicated that the police were in control of the rape investigation and that her questioning Madison and obtaining a warrant to gather DNA evidence from him was part of the investigation because K.W. had told the police that Madison was involved in the incident. Sergeant Banham, therefore, made it clear to Madison that he was a suspect in the rape investigation. And Sergeant Banham never told Madison that he would not be prosecuted if he confessed. *See Thaggard*, 527 N.W.2d at 812 (distinguishing promises that there will be no charge and no prosecution from other promises and offers of help by the police). The totality of circumstances in this case support the conclusion that Sergeant Banham was not "so coercive, so manipulative, so overpowering" as to deprive Madison of his "ability to make an unconstrained and wholly autonomous decision to speak as he did." *Pilcher*, 472 N.W.2d at 333. Therefore, the district court did not err in denying Madison's motion to suppress his confession.

Affirmed.