

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-1508

NORTH CAROLINA COURT OF APPEALS

Filed: 05 July 2006

STATE OF NORTH CAROLINA

v.

Gaston County
No. 05CRS11459-68
04CRS63415-36

SCOTTIE D. FRANKUM

Appeal by defendant from judgments entered 13 July 2005 by Judge James W. Morgan in Gaston County Superior Court. Heard in the Court of Appeals 19 June 2006.

Attorney General Roy Cooper, by Assistant Attorney General Amy C. Kunstling, for the State.

Larry G. Hoyle, for defendant-appellant.

STEELMAN, Judge.

Preserving his right to appeal from an order denying a motion to suppress his statement, defendant pled guilty to ten counts of attempted statutory rape, eleven counts of attempted statutory sexual offense and eleven counts of taking indecent liberties with a child. Pursuant to a plea bargain, the trial court entered three judgments. The first judgment imposed an active sentence of 120 months to 153 months, and the other two judgments imposed consecutive suspended sentences of sixteen to twenty months to run at the expiration of the active sentence.

The trial court entered an order on defendant's motion to

suppress which contained the following findings of fact:

5. That on or about June 22nd, 2004, Detective R. S. Lewis received reports of an [sic] alleged sexual relations between defendant and [victim]¹, a minor.

6. Detective Lewis interviewed the alleged victim and her mother and other witnesses regarding the allegations of sexual relations between defendant and [victim].

7. Detective Lewis telephoned defendant on July 29, 2004, informed defendant he would like to speak with him about a case he was investigating. Defendant agreed to come speak with Detective Lewis.

8. Defendant and his wife arrived at the Gastonia Police Department between 7:15 and 7:30 p.m. on July 29, 2004.

9. Detective Lewis asked the defendant to come back to the interview room to speak with him, and the defendant agreed to do so.

10. During the interview, Detective Lewis informed defendant he was not under arrest and no warrants had been issued for him. Detective Lewis told defendant of the allegations that had been made.

11. The defendant initially firmly denied the allegations.

12. Detective Lewis informed the defendant of allegations other witnesses had made.

13. Defendant's demeanor, upon hearing this additional - or hearing these additional allegations, his demeanor changed and his denial was not as firmly made.

14. Detective Lewis told the defendant he wanted to know if any sex between he and [victim] was consensual or nonconsensual. He also asked him to write a statement; that the statement would be given to the District

¹To protect her identity, the name of the minor is omitted and hereinafter the minor is referred to as "victim."

Attorney.

15. Defendant then wrote a statement. Defendant spent approximately one hour writing said statement.

16. After defendant completed the statement, Detective Lewis reviewed the statement with defendant, and defendant placed his signature upon the statement.

17. Detective Lewis offered no promises to defendant regarding prosecution or any other concessions in exchange for the statement.

Based upon these findings of fact, the court concluded that the statement made by defendant to Detective Lewis was voluntary and that defendant's constitutional rights were not violated. The court denied defendant's motion to suppress.

In his sole assignment of error, defendant contends the trial court "committed reversible error in its denial of Defendant-Appellant's pre-trial Motion to Suppress evidence of statements and/or responses made by Defendant-Appellant pursuant to police interrogation." By not assigning error to any of the court's findings of fact, defendant has limited this Court's review to determining whether the findings of fact support the conclusions of law and thus its order. *State v. Steen*, 352 N.C. 227, 238, 536 S.E.2d 1, 8 (2000), *cert. denied*, 531 U.S. 1167, 148 L. Ed. 2d 997 (2001).

"The ultimate test of the admissibility of a confession is whether the statement was in fact voluntarily and understandingly made." *State v. Davis*, 305 N.C. 400, 419, 290 S.E.2d 574, 586 (1982). Whether a defendant's confession is voluntary "is a

question of law and is fully reviewable on appeal." *State v. Greene*, 332 N.C. 565, 579-80, 422 S.E.2d 730, 738 (1992). The court must examine the totality of the circumstances of the case in determining whether the confession was voluntary. *State v. Barden*, 356 N.C. 316, 339, 572 S.E.2d 108, 124, (2002), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074 (2003). Factors to consider include whether defendant was in custody, whether he was deceived, whether his Miranda rights were honored, whether he was held incommunicado, whether the interrogation was lengthy in duration, whether there were physical threats or shows of violence, whether promises were made to obtain the confession, whether the defendant was familiar with the criminal justice system, and whether the defendant was mentally stable. *State v. Hardy*, 339 N.C. 207, 222, 451 S.E.2d 600, 608 (1994).

The court's findings reflect that defendant came voluntarily to the police station, he was free to leave, and he was not under arrest or otherwise in custody. Detective Lewis made no promises to defendant regarding prosecution or any other concessions in exchange for the statement. Detective Lewis used no subterfuge or trickery to induce defendant to give the statement. Under these circumstances, we hold the court properly concluded that defendant's statement was voluntary and that his constitutional rights were not violated.

The order denying defendant's motion to suppress is therefore affirmed.

AFFIRMED.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).