NO. COA05-511

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

STATE OF NORTH CAROLINA

v. New Hanover County
Nos. 03 CRS 60059
04 CRS 2365

TASHAWN FAZION WILSON,
Defendant.

Appeal by defendant from judgment entered 6 January 2005 by Judge Benjamin G. Alford in New Hanover County Superior Court. Heard in the Court of Appeals 22 May 2006.

Attorney General Roy Cooper, by Assistant Attorney General Iain M. Stauffer, for the State.

Lisa Skinner Lefler for defendant-appellant.

GEER, Judge.

Defendant Tashawn Fazion Wilson appeals from the judgment entered 6 January 2005 following his conviction for common law robbery and his subsequent admission of his habitual felon status. He argues primarily that the trial court erred in failing to suppress his confession. For the reasons stated below, we hold the trial court did not err.

On 16 February 2004, the New Hanover County grand jury indicted defendant on a charge of common law robbery and for being a habitual felon. Defendant filed a "motion to require State to honor plea agreement or supress [sic] statement" on 10 November

2004. After jury selection was completed on 4 January 2005, the trial court conducted an evidentiary hearing on defendant's motion.

During the hearing, the State presented evidence tending to show the following: On 19 May 2003, a Wilmington jewelry store was robbed by two men. Detective Eddie Eubanks of the Wilmington Police Department investigated the crime and entered information about the robbery into the NCIC (National Crime Index Center) database. After reading the details of the Wilmington robbery, Detective Vincent Frazer of the Sanford Police Department contacted Detective Eubanks about similarities between the Wilmington robbery and a robbery committed in Sanford on 23 August 2000. Detective Frazer had arrested defendant for the Sanford robbery on 8 May 2003, but defendant was released on bond on 11 May 2003.

Detective Frazer contacted Detective Eubanks after defendant was arrested again in August 2003. Detective Eubanks and Detective David Oyler of the Wilmington Police Department made arrangements with Detective Frazer to interview defendant on 12 August 2003. At the time of the first interview, Detective Eubanks had not checked defendant's prior criminal record and was only aware that defendant was wanted in several jurisdictions for similar robberies. Detective Eubanks also did not yet have any warrants for defendant's arrest.

During the interview, Detective Eubanks told defendant that he was going to be charged with armed robbery. Defendant said he did not want to talk to the Wilmington detectives, and he asked to step outside in order to smoke a cigarette and talk with Detective

Frazer. While outside, he admitted the Wilmington robbery to Detective Frazer, but denied using a gun. Defendant indicated to Detective Frazer that if the detectives charged him with common law robbery or felony larceny, he would confess to the Wilmington robbery.

Because the Wilmington detectives were unable to reach the Wilmington District Attorney's Office by telephone to discuss how defendant would be charged, the interview ended. Detective Eubanks told defendant that he would speak with the district attorney the next day and that he would return in a couple of days if the district attorney decided to proceed with a charge of common law robbery.

Following the first interview, Detective Eubanks spoke with the district attorney's office and was informed that common law robbery was the proper charge. Detective Eubanks subsequently obtained a warrant on 15 August 2003, charging defendant with common law robbery. He made arrangements to interview defendant again on 18 August 2003. Detective Eubanks and Detective Brad Overman of the Wilmington Police Department were present for the second interview. Detective Frazer of Sanford was present for portions of that interview.

On 18 August 2003, when Detective Eubanks brought a warrant for common law robbery to the second interview, defendant confessed in an oral statement to robbing the Wilmington jewelry store. On the same day, defendant reviewed and signed a written statement prepared by Detective Eubanks. Detectives Frazer, Eubanks, and

Oyler each testified that no mention of defendant's habitual felon status occurred during the two interviews. Each of the detectives recalled defendant stating during the first interview that he would confess to either common law robbery or felony larceny. They each indicated that, at no point, had defendant requested that he not be charged as a habitual felon.

During the hearing, defendant testified that he did not want to talk to the detectives at all during the first interview and that he had asked to see his attorney. He said Detective Eubanks showed him, at that first meeting, a warrant that charged him with armed robbery or robbery with a dangerous weapon. Defendant testified that, during the interview, "[w]e all spoke about the habitual, me, him and my man right there." After asking defendant if he would work with the detectives if they worked with him, defendant said Detective Frazer told him that the detectives were trying to help him out and were "not trying to get [him] habitual felon." Defendant and Detective Frazer stepped outside during the first interview to smoke a cigarette, and when defendant returned to the interview room he told the detectives "[i]f you come back without the habitual and without the armed robbery, I'll talk."

According to defendant, Detectives Eubanks and Frazer interviewed him again on 18 August 2003. Detective Overman rather than Detective Oyler was the third officer present during the second interview. Detective Eubanks informed defendant that he had spoken with the district attorney, and he "told me specifically they wasn't going to charge me with habitual felon." Defendant

stated that he implicated himself during the second interview because the detectives "promised me no habitual felon, and they promised me no armed robbery." When asked about the three detectives' denial that there was ever a conversation about being charged as an habitual felon, defendant said "they're telling a lie."

At the conclusion of the hearing, the trial court denied defendant's motion to require the State to honor the plea agreement or to suppress his statement. After the jury was impaneled, the State presented evidence tending to show that defendant and another man robbed Kingoff's Jewelers in Wilmington, North Carolina on 19 May 2003. At the close of the State's evidence, defendant made motions to dismiss the charge due to invalidity of the indictment and to insufficiency of the evidence. After the trial court denied both motions, defendant presented no evidence and renewed his motion to dismiss. The trial court denied the motion, and the jury subsequently found defendant to be guilty of common law robbery. Defendant then admitted his habitual felon status, and the trial court imposed a sentence of 131 to 167 months imprisonment. Defendant has appealed from the trial court's judgment.

On appeal, defendant contends the trial court erred by denying his motion to require the State to honor the plea agreement or suppress his confession because (1) it was the result of false promises by police officers that he would not be indicted as a habitual felon, and (2) a detective wrote the confession out for defendant. Defendant has not assigned error to the trial court's

oral findings of fact and has not argued that those findings of fact fail to support the decision to deny defendant's motion. *See State v. Barden*, 356 N.C. 316, 340, 572 S.E.2d 108, 125 (2002) (holding that appellate review of a denial of a motion to suppress is limited to (1) a determination whether the trial court's findings of fact are supported by competent evidence, in which event the findings are binding on appeal, and (2) whether those findings in turn support the conclusions of law), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074, 123 S. Ct. 2087 (2003). Instead, defendant on appeal simply reargues the evidence.

Although the trial court's findings are not entirely clear, it is apparent that the court found that the detectives did not make any promise not to indict defendant as a habitual felon. Since the detectives' testimony supports such a finding, we cannot revisit the trial court's determination on appeal.

It is undisputed, as defendant contends, that he did not physically write out his confession. At defendant's request, Detective Eubanks wrote the statement, and defendant then reviewed it and signed it. Defendant cites no authority supporting his contention that these circumstances, standing alone, render the confession involuntary.

The sole case cited by defendant on this point, *Blackburn v. Alabama*, 361 U.S. 199, 207, 4 L. Ed. 2d 242, 248, 80 S. Ct. 274, 280 (1960), addressed whether a confession was involuntary because the defendant was insane at the time of the confession. The Court referenced the fact that the deputy sheriff had composed the

confession rather than the defendant as one circumstance out of many, including "compelling" evidence of insanity, making remote the possibility that the confession was the result of rational intellect and free will. *Id.* at 207-08, 4 L. Ed. 2d at 249, 80 S. Ct. at 280-81. Nothing in *Blackburn* suggests that the circumstances in this case rendered the confession involuntary.[1] We hold, therefore, that the trial court did not err in denying defendant's motion.

Although defendant has also argued in his brief that the trial court erred by admitting evidence of other robberies pursuant to N.C.R. Evid. 404(b), this argument is not supported by any of his assignments of error. Because "the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal," N.C.R. App. P. 10(a), this argument is not properly before this Court. Defendant also failed to set out his two remaining assignments of error in his brief. Because he has neither cited any authority nor stated any reason or argument in support of those assignments of error, they are deemed abandoned. N.C.R. App. P. 28(b)(6).

No error.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).

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[1]We note that *Blackburn*'s standard for ruling on involuntary confessions was modified in the case of *Colorado v. Connelly*, 479 U.S. 157, 164-65, 93 L. Ed. 2d 473, 483, 107 S. Ct. 515, 520-21 (1986). Defendant presents no arguments under *Connelly*, and we have, in any event, found no independent reason as to how *Connelly*'s restatement of the test would affect the outcome in this case.