NO. COA13-386
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

STATE OF NORTH CAROLINA

v. Carteret County
No. 12 CRS 50158—60

CHRISTOPHER WAYNE SALTER

Appeal by the State from order entered 14 September 2012 by Judge Jack W. Jenkins in Carteret County Superior Court. Heard in the Court of Appeals 26 September 2013.

Attorney General Roy Cooper, by Assistant Attorney General Joseph L. Hyde, for the State.

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Andrew DeSimone, for defendant-appellee.

HUNTER, JR., Robert N., Judge.

The State appeals from an order granting Defendant Christopher Wayne Salter's ("Defendant's") motion to suppress confessions made before and after his arrest. The trial court concluded that Defendant's confessions were not voluntary and were therefore obtained in violation of Defendant's due process rights under the Fourteenth Amendment of the United States

Constitution. The trial court also found that suppression of Defendant's statements was proper under N.C. Gen. Stat. § 15A-974(a)(2) (2011) because they were obtained as a result of a substantial violation of North Carolina's Criminal Procedure Act. The State contends that the trial court failed to apply the correct legal standard for "voluntariness" and that Defendant's confessions were not obtained in violation of his constitutional and statutory rights. We disagree and affirm the trial court's order.

I. Factual & Procedural History

On 13 February 2012, Defendant was indicted for three counts of felony cruelty to animals. Before trial, Defendant moved to suppress confessions he made before and after his arrest. The evidence at the hearing showed the following.

On 12 January 2012, Carteret County Animal Control Officer Brandon Corbett ("Officer Corbett") received an anonymous call indicating that Defendant had shot and killed multiple cats and had disposed of the carcasses by throwing them into a canal beside Defendant's residence. Upon receiving this tip, Officer Corbett contacted Deputy Mike Mull ("Deputy Mull") of the Carteret County Sheriff's Department asking him to join him an

investigation of the tip. Both proceeded separately to Defendant's residence.

After arriving, Officer Corbett knocked on the door where Defendant resided and was greeted by Cora Salter ("Ms. Salter"), Defendant's grandmother. Defendant also stepped out onto the front porch to speak with Officer Corbett. Officer Corbett asked Defendant about the anonymous tipster's allegations, which Defendant denied. Defendant then went back inside the house. Thereafter, Officer Corbett spoke with Ms. Salter about the tip. Ms. Salter did not seem surprised and said that she had been missing several of her cats. She also confirmed to Officer Corbett that she had seen a container of BB's on the kitchen counter earlier in the week. Ms. Salter then gave Officer Corbett permission to search her house.

Officer Corbett started his search in the backyard near the canal that the informant indicated was Defendant's dump site. As he was searching the bank of the canal, Officer Corbett heard Ms. Salter call out to him in an excited manner from a position on the canal closer to her home. Ms. Salter, along with another one of her grandsons, had found a white grocery bag under a bush with a cat carcass inside. Officer Corbett testified that the

cat appeared to have injuries consistent with a BB or pellet gun wound.

Upon discovering the carcass, Officer Corbett photographed the evidence and waited for Deputy Mull to arrive at the scene. When Deputy Mull arrived, he and Officer Corbett went back up to the front porch to question Defendant. Although both were uniformed law enforcement officials, only Deputy Mull was carrying a firearm. Neither Officer Corbett nor Deputy Mull ordered Defendant out onto the porch. Rather, Defendant came outside at Ms. Salter's request and sat down. Deputy Mull, who was standing next to Defendant, led the interrogation. Officer Corbett stood and observed the interrogation from the porch steps. Defendant's family members, who were considerably upset with Defendant, stood around the porch and observed the conversation.

Deputy Mull accused Defendant of killing the cats and demanded that Defendant tell him the truth about hurting the animals. Officer Corbett testified that Deputy Mull did not believe Defendant and wanted Defendant to confess to animal cruelty. Defendant denied the accusations repeatedly. When asked if he owned a gun, Defendant admitted to owning a BB gun,

but indicated he had returned the gun to the store because it was broken.

During the course of the interrogation, Defendant expressed concern to Officer Corbett and Deputy Mull that a felony on his record might impair his ability to secure gainful employment in the future. Deputy Mull testified that Defendant was belligerent, nervous, agitated, and smoked several cigarettes back to back.[1] Later, during the course of Deputy Mull's interrogation, Officer Corbett said:

> Christopher, isn't it a little funny that we have someone calling, saying that they saw you shooting cats in the head with a BB gun? I get out here; Ms. [Salter] believes me right off the bat. We find a dead cat inside a grocery bag with a hole in its skull. . . . The evidence is mounting against you, Christopher. If you tell us the truth, we might be able to help you out by doing misdemeanors instead of felonies.[2]

At that point, Defendant paused. Defendant then admitted to shooting the cats and throwing their carcasses in the canal.

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[1] Beyond Defendant's general demeanor, evidence presented at the suppression hearing further called into question Defendant's mental state. For example, in response to a question as to whether he had ever hurt any other animals, Defendant admitted to stabbing a goat but told Deputy Mull that he never beat the goat in the head with a hammer. Moreover, Ms. Salter testified at the hearing that Defendant was bipolar.

[2] There is no evidence that any member of law enforcement actually endeavored to have Defendant's charges reduced to misdemeanors.

Shortly after Defendant's initial confession, Deputy Mull placed Defendant under arrest and proceeded to take Defendant to the station for processing. During the drive to the station, Deputy Mull suggested that he would help to reduce Defendant's bail if Defendant cooperated. Defendant was read his *Miranda* rights and asked if he wished to speak. Defendant replied, "If it will help me." Deputy Mull told Defendant it was a yes/no question and asked again if Defendant wished to speak. Defendant told Deputy Mull that he wished to speak and subsequently confessed again to killing the cats.

At the suppression hearing, the trial court granted Defendant's motion on the record and adopted the transcript as its final ruling by means of a written order dated 14 September 2012. In making its ruling, the trial court determined that Defendant's confessions were not voluntary under a "totality of the circumstances" test. However, the court described the caselaw as being "fragmented" along two lines. Under the first line, which the trial court referred to as the "coercive line," the trial court considered nine factors announced in *State v. Hardy*, 339 N.C. 207, 222, 451 S.E.2d 600, 608 (1994) and concluded that Defendant's statements were voluntary. Nevertheless, under the second line, which the trial court

referred to as the "emotion of hope line," the trial court concluded that Defendant's statements were involuntary as a matter of law. Specifically, the trial court said that but for the emotion of hope experienced by Defendant when Officer Corbett and Deputy Mull suggested that they could help him, Defendant would not have spoken. Accordingly, the trial court concluded that Defendant's statements were involuntary under the due process clause.[3] Moreover, the trial court found that suppression was also warranted pursuant to N.C. Gen. Stat. § 15A-974(a)(2) (2011), stating that Defendant's confessions were obtained in a manner that represented a substantial violation of North Carolina's Criminal Procedure Act.

II. Jurisdiction & Standard of Review

"The State may appeal an order by the superior court granting a motion to suppress as provided in G.S. 15A-979." N.C. Gen. Stat. § 15A-1445(b) (2011). As the State has certified that this appeal has not been taken for the purpose of delay and that the evidence at issue is essential to the case,

[3] The trial court found that both of Defendant's confessions, before and after the *Miranda* warnings had been given, were involuntary. Although Defendant agreed to speak after being read his *Miranda* rights, the trial court concluded, pursuant to *Darwin v. Connecticut*, 391 U.S. 346 (1968) (per curiam), that the second confession was tainted by the first and therefore involuntary.

this Court has jurisdiction pursuant to N.C. Gen. Stat. § 15A-979(c) (2011).

Generally, on appeal from an order granting a defendant's motion to suppress, we review "whether the trial judge's underlying findings of fact are supported by competent evidence." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). However, "[i]f no exceptions are taken to findings of fact, 'such findings are presumed to be supported by competent evidence and are binding on appeal.'" *State v. Baker*, 312 N.C. 34, 37, 320 S.E.2d 670, 673 (1984) (quoting *Schloss v. Jamison*, 258 N.C. 271, 275, 128 S.E.2d 590, 593 (1962)). The State does not challenge the trial court's findings of fact in this case, so they are binding on this Court. Nevertheless, we review the trial court's determination that Defendant's confession was involuntary *de novo*. *State v. Wilkerson*, 363 N.C. 382, 430, 683 S.E.2d 174, 203 (2009); *see also State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000) ("The trial court's conclusions of law . . . are fully reviewable on appeal.").

"'Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632—33, 669

S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen, Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)). Accordingly, since the trial court's findings resolve all material factual issues arising on this record, the State's argument that a reversal is warranted because the trial court applied the wrong legal standard for involuntariness is meritless. Indeed, "[a] correct decision of a lower court will not be disturbed on review simply because an insufficient or superfluous reason is assigned. The question for review is whether the ruling of the trial court was correct and not whether the reason given therefor is sound or tenable." *State v. Austin*, 320 N.C. 276, 290, 357 S.E.2d 641, 650 (1987).

III. Analysis

The only question presented to this Court by the State's appeal is whether the trial court properly granted Defendant's motion to suppress. The State contends that Defendant's confession was voluntary under due process principles and that the trial court erred in finding a substantial violation of North Carolina's Criminal Procedure Act. For the reasons stated below, we disagree and affirm the trial court's order.

Pursuant to North Carolina's Criminal Procedure Act, "evidence must be suppressed if: (1) [i]ts exclusion is required

by the Constitution of the United States or the Constitution of the State of North Carolina; or (2) [i]t is obtained as a result of a substantial violation of the provisions of [the Criminal Procedure Act]." N.C. Gen. Stat. § 15A-974(a) (2011). Accordingly, we first address whether Defendant's confession was involuntary under the Due Process Clause of the Fourteenth Amendment, as well as Article I, §§ 19 and 23 of the North Carolina Constitution.

"The use in a state criminal trial of a defendant's confession obtained by coercion—whether physical or mental—is forbidden by the Fourteenth Amendment." *Leyra v. Denno*, 347 U.S. 556, 558 (1954); *see also Mincey v. Arizona*, 437 U.S. 385, 398 (1978) ("*[A]ny* criminal trial use against a defendant of his *involuntary* statement is a denial of due process of law."). In determining whether a confession is voluntary, a court must look to all relevant circumstances surrounding the giving of the confession. *Dickerson v. United States*, 530 U.S. 428, 434 (2000) ("The due process test takes into consideration the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." (quotation marks and citation omitted)).

North Carolina's test for determining the voluntariness of a confession is the same as the federal test. *See State v. Jackson*, 308 N.C. 549, 581, 304 S.E.2d 134, 152 (1983) ("The North Carolina rule and the federal rule for determining the admissibility of a confession is the same. It is a rule or test of voluntariness in which the court looks at the totality of the circumstances of the case in determining whether the confession was voluntary."); *State v. Fox*, 274 N.C. 277, 292, 163 S.E.2d 492, 502 (1968) ("It has been the law of this State from its beginning that an extrajudicial confession of guilt by an accused is admissible against him only when it is voluntary."). In deciding the voluntariness inquiry, our courts have looked to a non-exclusive set of factors, including:

> 1) whether the defendant was in custody at the time of the interrogation; 2) whether the defendant's *Miranda* rights were honored; 3) whether the interrogating officer made misrepresentations or deceived the defendant; 4) the interrogation's length; 5) whether the officer made promises to the defendant to induce the confession; 6) whether the defendant was held incommunicado; 7) the presence of physical threats or violence; 8) the defendant's familiarity with the criminal justice system; and 9) the mental condition of the defendant.

State v. Martin, ___ N.C. App. ___, ___, 746 S.E.2d 307, 310 (2013). Other factors have been considered as well. *See, e.g.*,

Arizona v. Fulminante, 499 U.S. 279, 286 n.2 (1991) (considering personal characteristics of the defendant); *State v. Edwards*, 78 N.C. App. 605, 608, 338 S.E.2d 126, 128 (1985) (considering repeated denials of guilt); *State v. Pruitt*, 286 N.C. 442, 458, 212 S.E.2d 92, 102 (1975) (considering accusations by the police that the defendant was lying); *State v. Stevenson*, 212 N.C. 648, 649—50, 194 S.E. 81, 81—82 (1937) (considering assertions by police that they had more than enough evidence to convict the defendant).

Moreover, our courts have looked disapprovingly on confessions obtained by the influence of hope or fear that has been implanted in the minds of defendants by law enforcement officials. *See, e.g.*, *Pruitt*, 286 N.C. at 454—59, 212 S.E.2d at 100—03 (stating that confessions obtained through the influence of hope or fear are inadmissible); *Fox*, 274 N.C. at 292—93, 163 S.E.2d at 502—03 (same); *Martin*, ___ N.C. App. at ___, 746 S.E.2d at 310—11 (same).[4] However, "any improper inducement

[4] While a statement by law enforcement inducing fear and hope in a criminal defendant is an important factor, we note that it remains only one factor in the totality of the circumstances test. *See Fulminante*, 499 U.S. at 285—86 (rejecting the bright-line rule that any direct or indirect promise of leniency renders a subsequent confession *per se* involuntary); *contra Bram v. United States*, 168 U.S. 532, 542—43 (1897) ("But a confession, in order to be admissible, must be free and voluntary; that is, must not be extracted by any sort of threats

generating hope must promise relief from the criminal charge to which the confession relates, not to any merely collateral advantage." *Pruitt*, 286 N.C. at 454—59, 212 S.E.2d at 100—03. For example, in *Fox*, the defendant's statements were held inadmissible under this theory after police told the defendant that it would be "better for him in court" and that he might be charged with a lesser offense if he confessed. *Fox*, 274 N.C. at 292—93, 163 S.E.2d at 502—03. Similarly, in *Martin*, the defendant's statements were held inadmissible since police procured the confession by saying, "we can maybe compromise or work something out with a—a plea arrangement or anything like that." *Martin*, ___ N.C. App. at ___, 746 S.E.2d at 311.

Here, the totality of the circumstances surrounding Defendant's initial confession to Officer Corbett and Deputy Mull renders his statements involuntary as a matter of law. Defendant, who was twenty-one at the time of his arrest, repeatedly denied committing the crime in the face of Deputy Mull's accusations. Deputy Mull, by demanding the truth from Defendant, made it known that he thought Defendant was lying.

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or violence, nor obtained by any direct or implied promises, however slight." (quotation marks and citation omitted)).

Moreover, after learning that Defendant was concerned about a possible felony conviction, Officer Corbett told Defendant that the "evidence is mounting against you" and said, "[i]f you tell us the truth, we might be able to help you out by doing misdemeanors instead of felonies." Similar to the factual circumstances of *Fox* and *Martin*, this statement by Officer Corbett was calculated to induce a confession through the influence of fear and hope—fear of a felony conviction and hope for a lesser misdemeanor charge. Plainly, such a suggestion does not relate to a collateral matter. Rather, it is directed at providing Defendant relief from a felony conviction.

The evidence also indicated that Deputy Mull believed he had enough evidence to arrest Defendant before the confession. Deputy Mull stated, "I felt at the time I had enough evidence against him already. Regardless of the fact that he helped himself out by telling the truth, or not, I was going to file charges on him. So that was going to happen." Thus, Deputy Mull, by continuing to interrogate Defendant in the face of Defendant's repeated denials of guilt, was primarily concerned with securing a statement from Defendant with which to convict him. *See Spano v. New York*, 360 U.S. 315, 323—24 (1959) (stating that when the intent of law enforcement is to extract a

confession, "the confession obtained must be examined with the most careful scrutiny").

Furthermore, while there was no credible evidence in terms of incapacity, Defendant's "belligerent" demeanor and description of hurting other animals in the past brings his mental status into question. These facts, when combined with a public interrogation in the presence of family members who were visibly upset with Defendant, calls into question the voluntariness of a statement adduced under these circumstances.

Accordingly, upon a review of the totality of the circumstances surrounding Defendant's confession, we hold that Defendant's initial confession to law enforcement was involuntary under the Due Process Clause of the Fourteenth Amendment and Article I, §§ 19 and 23 of the North Carolina Constitution.

Furthermore, we hold the Defendant's subsequent post-arrest confession was also involuntary. As we recently emphasized in *Martin*, "where the first confession is procured through promises or threats rendering it involuntary as a matter of law, these influences may continue to operate on the free will of the defendant in subsequent confessions." *Martin*, ___ N.C. App. at ___, 746 S.E.2d at 310. Thus, the rule in this State is that

> "where a confession has been obtained under circumstances rendering it involuntary, a presumption arises which imputes the same prior influence to any subsequent confession, and this presumption must be overcome before the subsequent confession can be received in evidence. The burden is upon the State to overcome this presumption by clear and convincing evidence."

Id. (quoting *State v. Siler*, 292 N.C. 543, 551, 234 S.E.2d 733, 739 (1977)). Here, the State's only argument to admit the post-arrest confession into evidence is that the original confession was made voluntarily. Thus, because we find that the initial confession was involuntary, the State has failed to submit any evidence sufficient to overcome the rebuttable presumption established in *Martin* and *Siler*. Accordingly, Defendant's second confession is also inadmissible as a matter of law.

Finally, in addition to finding that Defendant's confessions were inadmissible as a constitutional matter pursuant to N.C. Gen. Stat. § 15A-974(a)(1) (2011), the trial court went on to conclude that suppression was also appropriate under N.C. Gen. Stat. § 15A-974(a)(2) (2011). However, because we find that exclusion of Defendant's confession is required by the United States Constitution and the North Carolina Constitution, we decline to consider whether the law enforcement conduct in this case constituted a substantial violation of the

Criminal Procedure Act under N.C. Gen. Stat. § 15A-974(a)(2) (2011).

IV. Conclusion

For the foregoing reasons, we affirm the order of the trial court granting Defendant's motion to suppress.

Affirmed.

Judges ERVIN and DAVIS concur.

Report per rule 30(e).