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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 16-249

Filed: 20 September 2016

Craven County, Nos. 11 CRS 054863; 14 CRS 000664

STATE OF NORTH CAROLINA

v.

ERIC ALAN SANCHEZ

Appeal by Defendant from judgments entered 7 August 2015 by Judge W. Douglas Parsons in Superior Court, Craven County. Heard in the Court of Appeals 22 August 2016.

Attorney General Roy Cooper, by Assistant Attorney General Josephine N. Tetteh, for the State.

Mark Montgomery for Defendant.

McGEE, Chief Judge.

Eric Alan Sanchez ("Defendant") appeals his conviction for taking indecent liberties with a child. Defendant contends the trial court erroneously denied his

motion to suppress an incriminating statement he made to a law enforcement officer during a noncustodial interview. We find no error.

I. Background

Danny Belote ("Belote") worked for Defendant's business, Alan Exteriors, for approximately four years. Belote reported directly to Defendant, and they developed a friendship. They occasionally socialized outside of work. Belote was a single father to his five-year-old daughter, Tina.[1] Defendant had known Tina for most of her life. Defendant sometimes saw Tina when she rode with Belote to drop off a work vehicle at Defendant's home, and Defendant once took Belote and Tina for a ride on Defendant's boat. Belote often worked weekend shifts. On a Saturday in September 2011, Belote needed someone to babysit Tina while he went to work. None of Belote's relatives were available. Defendant offered to babysit Tina, and Belote agreed as "a last resort." Belote dropped Tina off at Defendant's house around 8:00 a.m. and picked her up that afternoon between 4:30 p.m. and 5:00 p.m. Belote had packed a change of clothes for Tina that morning, and he noticed her shirt had been changed. Defendant told Belote that Tina had "spilled something [on] herself."

Defendant went to Belote's residence around dinner time on 6 October 2011 to ask about a company debit card Belote had misplaced. Belote told Defendant the card had been found at a gas station about a mile down the road and was being held for

[1] This Court adopts the pseudonym used by the parties to refer to the victim.

Belote to pick up. Defendant "insisted on hanging around" and offered to stay with Tina while Belote drove to pick up the debit card. Belote did not leave Tina alone with Defendant. Belote told Defendant he would "pick [the card] up later on." Belote and Tina ate dinner while Defendant was still there. After they ate, Tina began washing the dishes, but she was "getting the water everywhere" so Belote told her to stop. Tina "got out of the kitchen, walked to the living room, grabbed [Defendant] by the hand and kind of pulled him [down the hallway] to her bedroom." Belote trusted Defendant and "did[n't] think anything of [Defendant] going in [Tina's] room." The door to Tina's bedroom remained open.

Belote cleaned up the kitchen and then walked through the living room to pick up some socks on the floor. He noticed it had grown "really quiet." Belote walked down the hallway toward the washing machine, which was located "right past [Tina's] bedroom door." Belote looked in the doorway of Tina's bedroom as he walked by and saw Tina lying on her bed with "her legs . . . in the air, her underwear . . . up [by her knees] and [Defendant's] head . . . in her crotch." Defendant was kneeling in front of Tina with his hands placed on her thighs. Belote "threw the socks in the washing machine and turned back around" and entered Tina's bedroom. Defendant began walking away from Tina and "mumbled something about picking up toys or cleaning and . . . grabbed some stuff that was down by his knees." Belote "didn't know what to do." He got between Defendant and Tina and told Tina to put her underwear back

on. They all left the bedroom. Tina at first appeared "distraught . . . [and] scared," but once they left the bedroom "she was just like any other four or five-year-old. She was jumping around, singing, dancing." Defendant "kept saying, 'It's not like that. Don't think that. I wouldn't do that.'" Defendant left the house, but before getting in his truck he "came back and said, 'Are you gonna call the cops?'" Belote told Defendant he "[did]n't know what to do," and Defendant left.

After Defendant left, Belote asked Tina what she and Defendant had been doing in her bedroom. Tina said Defendant had "licked her butt." When Belote asked if Defendant bit her or kissed her, Tina said, "no, he licked – the middle." Belote believed that by "the middle," Tina meant her vagina. Defendant texted Belote "and kept saying 'it's not like that, whatever she said, it's not like that[.]'" Belote did not immediately report the incident to anyone.

The same night, after Defendant left, Belote and Tina drove to the gas station to pick up Defendant's debit card. As Belote and Tina were walking out of the gas station, Defendant walked into the store and asked Belote if he had the card. Belote gave Defendant the card and left the gas station. Defendant followed them back to Belote's house and, once there, "kept asking . . . if [Belote] was gonna go to the cops and – [saying] don't think that and he wouldn't do that[.]" Defendant eventually left.

The following morning, Friday, 7 October 2011, Belote took Tina to day care and returned home. Defendant picked Belote up in his personal truck to drive to a

worksite. Defendant dropped Belote off at the worksite and left. Belote met Defendant around lunch time because Defendant owed Belote a paycheck. After work, Belote picked Tina up from day care and went to stay at his mother's house. Belote left Tina with his mother on Saturday night and stayed at his own home alone. Belote called his brother at approximately 3:30 a.m. on Sunday, 9 October 2011, and his brother came over to his house. Belote told his brother what he had witnessed between Defendant and Tina. Belote's sister-in-law came over around 9:30 a.m., and they all agreed Belote should report the incident to law enforcement. A deputy officer met them at the home of Belote's brother. Belote told the officer about the incident between Defendant and Tina and the officer made an initial report.

At approximately 10:00 a.m. on Monday, 10 October 2011, Belote and Tina went to the Craven County Sheriff's Department to meet with Captain John Whitfield ("Capt. Whitfield"). Belote told Capt. Whitfield what he had observed Defendant doing to Tina, and Capt. Whitfield spoke with Tina privately. The following day, Belote took Tina to the Carolina East Medical Center Emergency Room to be examined by a sexual assault nurse. The nurse helped Belote arrange a follow-up appointment for Tina at Promise Place, a facility that provides counseling to child sexual assault victims.

Capt. Whitfield began "contact[ing] [Defendant] by phone [to] attempt to set up an interview with him." Capt. Whitfield contacted Belote on 12 October 2011

about "placing a phone call to [Defendant] . . . to confront [Defendant] with [the] accusations . . . [a]nd see if [Defendant] would admit to them[.]" Belote agreed to call Defendant from the home of Belote's brother. Before Belote placed the call, Capt. Whitfield "jotted down a few things he wanted [Belote] to get across [to Defendant]." Capt. Whitfield was present during the call and listened to Belote's conversation with Defendant, which was also recorded. Defendant denied the accusations.

Capt. Whitfield and Defendant exchanged a series of telephone calls over the next few days. When Capt. Whitfield "finally . . . made contact [with Defendant], [Defendant] agreed to come in [to be interviewed] . . . and [Defendant] picked [the] day and time." Capt. Whitfield told Defendant over the phone he had "a couple of things that [he] needed to discuss with [Defendant]," but did not mention Belote or Tina specifically. According to Defendant, Capt. Whitfield said he wanted to talk about an alleged incident of sexual assault involving another individual that occurred weeks earlier. Defendant drove to the sheriff's office on 17 October 2011 to meet with Capt. Whitfield. Defendant went in through the building's public entrance. Like all entrants to the sheriff's office, Defendant walked through metal detectors in the lobby. He was not patted down or searched. Capt. Whitfield took Defendant into a conference room that was "used almost daily for different functions," including investigative interviews. Although the conference room required a key fob for entry, the room had "multiple [unsecured] exits." Defendant was not placed in handcuffs or

otherwise restrained throughout the interview. Capt. Whitfield was not wearing a visible weapon. Defendant and Capt. Whitfield sat at "a long table with about 12 chairs." Capt. Whitfield testified that he offered Defendant something to drink before the interview began, which Defendant later disputed. Capt. Whitfield did not advise Defendant of his *Miranda* rights.

Capt. Whitfield and Defendant spent approximately thirty minutes discussing the unrelated incident of reported sexual assault that allegedly occurred several weeks earlier at Defendant's residence. According to Defendant, Defendant stood to leave when Capt. Whitfield indicated he had no further questions about that matter, but Capt. Whitfield said, "Hold on a minute. Sit down. I need to talk with you." Capt. Whitfield told Defendant he had interviewed Tina, who "detailed different sexual acts that [Defendant] had committed against her," and that Belote had given an eyewitness account. Defendant denied having any sexual contact with Tina. Capt. Whitfield "continued to explain to [Defendant] that . . . a five-year-old child . . . [had] given . . . details of sexual experiences that she should not know at that age." After approximately fifteen or twenty minutes, Defendant "began to come off of his denials and change to admission of what had happened and admission to what had happened also a prior time [with Tina] at his residence." Defendant testified that "after 30, 40 minutes of [Capt. Whitfield] grilling me and telling me that [Tina] had said . . . that I had touched her, . . . I said 'I want a lawyer, I need a lawyer present . . .' and [Capt.

Whitfield] said 'No, . . . we're just talking.'" Capt. Whitfield told Defendant he needed to draft a written statement summarizing the conversation, including Defendant's eventual admissions. Capt. Whitfield asked Defendant if Defendant wanted to write it himself, and Defendant said he did not. Capt. Whitfield wrote out the following statement:

> My name is Eric Sanchez. I am 40 years old. I live at 210 Gray Road, Number 36, Havelock. I quit school in the 12th grade. I received my adult high school diploma from Craven Community College in Havelock in 1989 or 1990. Danny [Belote] is my employee and has been for the last five or six years. His daughter's [Tina] and she is five years old.
>
> About a month ago, Danny was working and asked me if I could keep [Tina]. I kept her. I believe it was on a Saturday. She came into my room where I was laying in the bed and she got on my bed and we were watching cartoons. After we were there a while, she took out my penis and started stroking it. She stroked it for a while and I touched her vagina with my finger and then licked her vagina. She kissed my penis.
>
> On October 6, 2011 I was at Danny's house and [Tina] and I were playing in the living room. She touched my penis and then later we moved to her bedroom. I laid her on the bed and bit her on her butt. She pulled her underwear down and I touched her vagina with my finger and licked her vagina.
>
> I understand that I am not under arrest and no promises or threats have been made to me to cause me to give this statement. This statement is true to the best of my ability.

Capt. Whitfield "[went] over [the statement] line by line, reading it out loud with [Defendant] sitting beside [him] and . . . mak[ing] corrections to it[.]" Three corrections were made, and each correction was initialed by both Capt. Whitfield and Defendant.[2] Capt. Whitfield and Defendant signed the statement.

Defendant testified that "close to the end of the conversation," but before Defendant signed the written statement, Capt. Whitfield retrieved the *North Carolina Crimes* book and "[t]hrew it on the table in front of [Defendant]." According to Defendant, Capt. Whitfield "opened up [the book], started banging his fist and saying that this is what I'm accused of and then getting into the [aggravating and mitigating factors and sentencing ranges]." Defendant further testified that Capt. Whitfield "[said] he knew that I was guilty, that he was gonna talk to the [District Attorney] about letting the [District Attorney] know that I cooperated[.]" Defendant also testified that, other than the biographical information about Defendant, nothing in the written statement was true, but that he signed it because he was "[p]etrified[,]" "thought he was gonna [be] arrest[ed] . . . right then[,]" and he wanted to eat lunch. Defendant believed that if he signed the statement, Capt. Whitfield would allow him to leave. Defendant signed the statement, was not arrested, and left the sheriff's office unaccompanied.

[2] Capt. Whitfield testified that, in writing out Defendant's statement, he made at least one intentional mistake so Defendant would point out and initial the correction, an investigative tactic used to demonstrate that an accused reviewed and understood a written statement.

A warrant was issued for Defendant's arrest on 18 November 2011. In a series of indictments culminating in superseding indictments on 7 July 2014, Defendant was indicted on two charges of sex offense with a child and two charges of taking indecent liberties with a child. The charges were joined for trial. Prior to trial, Defendant filed a motion to suppress the statement obtained by Capt. Whitfield during the 17 October 2011 interview. The trial court held a pretrial hearing on Defendant's motion to suppress on 3 August 2015. After hearing testimony from Defendant and Capt. Whitfield, the trial court denied Defendant's motion to suppress. The trial court concluded, *inter alia*, that "there were no promises, offers of reward or inducements to . . . [D]efendant to make a statement" and "no threat or suggested violence or show of violence to persuade or induce . . . [D]efendant to make a statement."

A jury acquitted Defendant of sex offense with a child but found him guilty of both counts of taking indecent liberties with a child on 7 August 2015. It found as an aggravating factor on each count that the victim was very young. Defendant was sentenced as a Prior Record Level I offender to consecutive sentences of twenty to twenty-four months' imprisonment. The trial court further prohibited any contact between Defendant and Tina or Tina's family for the remainder of Defendant's natural life and ordered Defendant to register as a sex offender for a period of thirty years. Defendant gave notice of appeal in open court.

II. Denial of Defendant's Motion to Suppress

A. Standard of Review

In his sole argument on appeal, Defendant contends the trial court erroneously denied his motion to suppress the written statement from his 17 October 2011 interview with Capt. Whitfield. Specifically, Defendant argues his confession was improperly induced, and thus inadmissible, because "[Defendant] was kept in a secured room for several hours, repeatedly told that there was evidence of his guilt of a Class B1 felony, and told that his 'cooperation' would reduce his punishment[.]"

> Our review of a trial court's denial of a motion to suppress is strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law.

State v. Rollins, 226 N.C. App. 129, 144, 738 S.E.2d 440, 451 (2013) (citation and internal quotation marks omitted). "The trial court's conclusions of law, however, are fully reviewable on appeal." *State v. Martin*, 228 N.C. App. 687, 689, 746 S.E.2d 307, 310 (2013) (citation and quotation marks omitted). Defendant contends his confession to Capt. Whitfield was not "voluntarily and understandingly made," *see State v. Davis*, 305 N.C. 400, 419, 290 S.E.2d 574, 586 (1982), because it was "the product of improperly induced hope or fear." "The determination of whether a defendant's statements are voluntary and admissible is a question of law and is fully reviewable on appeal." *Martin*, 228 N.C. App. at 689, 746 S.E.2d at 310 (quoting *State*

v. Maniego, 163 N.C. App. 676, 682, 594 S.E.2d 242, 246 (2004)). Accordingly, we review *de novo* the trial court's conclusion that Defendant's inculpatory statement was not improperly induced[3] and was "made freely, voluntarily and understandingly."

B. Analysis

"The Fourteenth Amendment to the United States Constitution requires that a defendant's confession be voluntary for it to be admissible." *State v. Davis*, 237 N.C. App. 22, 32, 763 S.E.2d 585, 592 (2014) (citation omitted). If a defendant's

> confession is the product of an essentially free and unconstrained choice . . . it may be used against him; where, however, his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process.

Id. (citation and quotation marks omitted). It is well-established that "[t]he voluntariness of a defendant's confession is based upon the totality of the circumstances" in which the statement was made or obtained. *See State v. Flood*, 237 N.C. App. 287, 294, 765 S.E.2d 65, 71 (2014). A number of factors are considered in determining whether a declarant's inculpatory statement was voluntarily given, including but not limited to

> whether [the] defendant was in custody, whether he was deceived, whether his *Miranda* rights were honored, whether he was held incommunicado, the length of the interrogation, whether there were physical threats or

[3] The trial court determined that "no promises, offers of reward or inducement [were made to] Defendant to make a statement" as both a finding of fact and a conclusion of law.

> shows of violence, whether promises were made to obtain the confession, the familiarity of the declarant with the criminal justice system, and the mental condition of the declarant.

Id. (citation omitted). "In addition, the physical environment and the overall manner of the interrogation may be considered." *State v. Bailey*, 145 N.C. App. 13, 19, 548 S.E.2d 814, 818 (2001).

Defendant does not challenge the trial court's conclusion that he was not in custody for *Miranda* purposes during his interview with Capt. Whitfield. Indeed, Defendant calls this "a point not at issue" in the present appeal. Defendant likewise does not challenge the trial court's conclusion that "[t]here was no threat or suggested violence or show of violence to persuade or induce . . . Defendant to make a statement." Defendant testified he was not patted down, handcuffed, or otherwise physically restrained throughout the interview, and he did not notice Capt. Whitfield wearing any visible weapons. Further, Defendant does not dispute the trial court's findings that "Defendant did not appear to be impaired by any alcohol or controlled substances at the time of the interrogation," and that "Defendant appeared to be normal as far as any mental condition . . ., was always coherent, was not complaining and was understanding [of] the discussion between he [sic] and [Capt. Whitfield]." Defendant also acknowledged he had "been interviewed by [law enforcement] officers before about other crimes[.]" At trial, Defendant first testified the interrogation

lasted eight hours, but later conceded it was only about half that length.[4] On appeal, Defendant argues only that his inculpatory statement was improperly induced (and thus inadmissible) because Capt. Whitfield made comments suggesting that Defendant's "'cooperation' would be a mitigating circumstance." Defendant contends these comments amounted to a promise of leniency which rendered his subsequent confession involuntary as a matter of law. We disagree.

In applying the multi-factor, "totality of the circumstances" analysis to determine whether a confession was voluntarily given, a reviewing court "may not rely upon any one circumstance standing alone and in isolation." *State v. Richardson*, 316 N.C. 594, 601, 342 S.E.2d 823, 829 (1986) (citation and quotation marks omitted). Thus, even where "it is clear that the purpose of [a law enforcement officer's] statements to [a defendant] was to improperly induce . . . a belief that [the defendant] might obtain some kind of relief from criminal charges if he confessed[,]" we proceed to "the totality of the circumstances analysis to determine whether [a d]efendant was deceived thereby or had his will overborne and, therefore, was induced to make the incriminating statements involuntarily." *Flood*, 237 N.C. App. at 296-97, 765 S.E.2d at 72. This Court recently observed that

> [g]enerally, a suspect's confession can be rendered involuntary when induced by an officer's statements that it would be harder for the suspect if he did not cooperate or that the suspect might obtain some material advantage by

[4] Capt. Whitfield testified that the interview lasted no longer than an hour and a half.

> confessing. . . . However, such statements by law enforcement generally tend to render a suspect's confession involuntary *only when they are preceded by other circumstances which might provoke fright in the suspect or otherwise overbear his will*.

Id., 237 N.C. App. at 297, 765 S.E.2d at 72-73 (citations omitted) (emphasis added). Thus, in the present case, even if Capt. Whitfield's comments regarding Defendant's "cooperation" were intended to give Defendant the impression that he would receive some benefit in exchange for confessing, the other circumstances surrounding the interview remain relevant to the ultimate question of voluntariness.

Capt. Whitfield testified that, after Defendant "began to come off of his denials and change to admission of what had happened [with Tina],"[5] Capt. Whitfield pulled out the *North Carolina Crimes* book, showed Defendant the sentencing chart for a B1 felony, and explained

> [t]hat there are mitigating factors and aggravating factors . . . [and that Defendant] probably had an aggravating factor, but a mitigating factor would be in his favor, which could offset the aggravating factor. Which . . . could change which range he's in on the sentencing chart.

Capt. Whitfield told Defendant that "with aggravating factors you could get more time" and "with mitigating factors you could get less time[.]" Capt. Whitfield testified he told Defendant that "one of the mitigating factors is [a suspect's] cooperation early

[5] Capt. Whitfield was unsure "when exactly it was [during the interview]" that he brought the book out. He also did not recall "what exactly [Defendant had already] admitted to" at the time Capt. Whitfield showed him the sentencing chart.

on in the investigation." He also explained to Defendant that "[c]ooperation can be a confession and it can also mean other things." However, Capt. Whitfield denied having told Defendant that if Defendant confessed, Capt. Whitfield would "be able to talk to the DA to see if they [sic] . . . could charge [Defendant] with something less serious." Capt. Whitfield maintained that "[t]he only conversation [he] had with [Defendant] as regards to the sentencing chart [was] the mitigated range, and one of the mitigating factors is [Defendant's] cooperation[.]" The trial court concluded "[t]here were no promises, offers of reward or inducements to . . . Defendant to make a statement." In its findings of fact, the court found that

> prior to [Defendant's] statement being reduced to writing, corrected, and signed by Defendant, [Capt.] Whitfield had taken out the North Carolina Crimes book and explained to Defendant about mitigating and aggravating factors. [Capt. Whitfield] further explained to Defendant that in his opinion, the mitigating factor of cooperating with [Capt.] Whitfield could offset the aggravating factor that [Capt.] Whitfield informed . . . Defendant was present. [Capt.] Whitfield informed Defendant that it would be up to the judge to make this decision.

See State v. Shelly, 181 N.C. App. 196, 204, 638 S.E.2d 516, 523 (2007) (concluding competent evidence supported trial court's conclusion that no improper promises were made to defendant and defendant's confession was voluntary where law enforcement officer "did not promise [d]efendant any different or preferential treatment as a result of [d]efendant's cooperation. The officer merely offered an opinion based on his professional experience."); *cf. Martin*, 228 N.C. App. at 691, 746

S.E.2d at 311 (concluding defendant's confession was improperly induced where, among other things, law enforcement officer told defendant they could "maybe . . . work something out with . . . a plea arrangement[.]"). Defendant concedes Capt. Whitfield "noted that it would be [up] to the judge to make the final decision on sentencing[.]" *See*, *e.g.*, *Bailey*, 145 N.C. App. at 18, 548 S.E.2d at 817 (finding defendant's confession was not improperly induced where, *inter alia*, defendant was told "that ultimate decisions in the case would be made by the DA's office and not law enforcement.")

Our Supreme Court has long held that "any improper inducement generating hope must promise relief from the criminal charge to which the confession relates, not to any merely collateral advantage." *State v. Pruitt*, 286 N.C. 442, 458, 212 S.E.2d 92, 102 (1975). At the time of Defendant's 17 October 2011 interview with Capt. Whitfield, Defendant had not been formally charged with any crime, and there is no evidence Capt. Whitfield explicitly indicated Defendant *would be* charged with, or prosecuted and sentenced for, a specific offense.[6] *See Richardson*, 316 N.C. at 602, 342 S.E.2d at 829-30 (finding defendant's confession was not coerced where "defendant was only told that an habitual criminal prosecution was a possibility . . . [and] was not threatened with prosecution as an habitual criminal if he did not cooperate. Merely informing a defendant of the crimes for which he *might be* charged

[6] A warrant for Defendant's arrest was not issued until 18 November 2011, approximately one month after his interview with Capt. Whitfield.

and the range of punishment does not constitute a threat." (emphasis added)).

Defendant's testimony on this point was vague at best:

> DEFENSE COUNSEL: And – so [Capt. Whitfield] threw the [North Carolina Crimes] book on the table in front of you?
>
> DEFENDANT: Yeah. He said – threw it down right [in] front of me, opened up, started banging his fist and saying that this is what I'm accused of and then getting into the – I didn't understand the aggravated and the – the other word he said earlier.
>
> DEFENSE COUNSEL: But there was some discussion about those words?
>
> DEFENDANT: Yes.
>
> DEFENSE COUNSEL: At what point in the conversation did he bring the book out?
>
> DEFENDANT: It was – it was probably close to the end of the conversation.
>
> DEFENSE COUNSEL: Had you continued to deny doing anything [to Tina] up until the time the book came out?
>
> DEFENDANT: Yes, sir. All day.
>
> DEFENSE COUNSEL: What did [Capt. Whitfield] tell you about – about what was in that book?
>
> DEFENDANT: He told me B1 something-something life sentence. I really don't understand the book to this day.
>
> DEFENSE COUNSEL: Okay. Did he tell you what would happen if you admitted to [the alleged sexual assault]?
>
> DEFENDANT: He told me that he already – he knew that

> I was guilty, that he was gonna talk to the DA about letting the DA know that I cooperated, was what he was saying.
>
> DEFENSE COUNSEL: Did he indicate if that would be of benefit to you?
>
> DEFENDANT: I'm not exactly sure. I think he did. I thought it would have been of benefit to me.

We are not persuaded that Capt. Whitfield's alleged statements amounted to a promise of relief from a specific criminal charge. Defendant himself was unsure whether "[Capt. Whitfield] indicate[d] if [talking to the DA] would be of benefit to [him.]"

This Court has held that a

> suggestion of hope created by statements of law enforcement officers that they will talk to the District Attorney regarding a suspect's cooperation where there is no indication that preferential treatment might be given in exchange for cooperation does not render inculpatory statements involuntary.

State v. Bordeaux, 207 N.C. App. 645, 654, 701 S.E.2d 272, 278 (2010) (citations and quotation marks omitted). There is no evidence in the present case that Defendant was: (1) informed "he might be charged with a lesser offense" if he told the truth, *see State v. Fox*, 274 N.C. 277, 293, 163 S.E.2d 492, 503 (1968); (2) "promised a lesser sentence in return for his cooperation[,]" *see Bailey*, 145 N.C. App. at 19, 548 S.E.2d at 818; (3) told that Capt. Whitfield could secure a plea bargain if Defendant confessed, *see Martin*, 228 N.C. App. at 691, 746 S.E.2d at 311; or (4) led to believe

that Capt. Whitfield "would be able to testify that [Defendant] . . . was cooperative[,]" *see State v. Fuqua*, 269 N.C. 223, 225, 152 S.E.2d 68, 69 (1967). *See also State v. Greene*, 332 N.C. 565, 581-82, 422 S.E.2d 730, 739 (1992) (holding defendant's statement was voluntarily given because "[a]lthough the officers told the defendant that they . . . would help him with any problems he had, they did not intimate that by confessing he could avoid prosecution or that any sentence imposed would be lessened."); *Bailey*, 145 N.C. App. at 20, 548 S.E.2d at 818 (finding law enforcement officer's statements that if defendant confessed "'there was a good chance' he would be able to go on probation and go through sex offender treatment and otherwise be able to lead a normal life with his family did not render defendant's subsequent [inculpatory] statement involuntary.")

In *State v. Houston*, 169 N.C. App. 367, 610 S.E.2d 777 (2005), this Court held that a defendant's incriminating post-*Miranda* statement was not improperly induced by promises or hope of benefit where the evidence showed that

> the officers, in discussing defendant's situation in general: advised defendant of the charge, the possible sentence he could receive, the need for him to be truthful and help himself out by cooperating; and told defendant that if he cooperated his cooperation would be related to the District Attorney's Office and the judge. The officers did not discuss what the specific rewards or benefits of cooperation might be, nor did they tell defendant that his sentence would be reduced or [that] the amount of his release bond was dependent on his cooperation.

Id., 169 N.C. App. at 374, 610 S.E.2d at 783. The law enforcement officers' "general statements that they would advise the District Attorney and judge of the defendant's cooperation . . . did not make any representations regarding what, if any, benefit defendant's cooperation would bring." *Id.*, 169 N.C. App. at 375, 610 S.E.2d at 783. We conclude the same reasoning applies in the present case, bolstered by the fact that unlike the defendant in *Houston*, Defendant was not in custody at the time of his interview with Capt. Whitfield. "[C]ompetent evidence supports the trial court's findings that no improper promises were made to Defendant to induce an involuntary confession." *Shelly*, 181 N.C. App. at 204, 638 S.E.2d at 523.

Even assuming *arguendo* that Capt. Whitfield made an improper promise of benefit or reward to Defendant in exchange for confessing, "[e]very other relevant factor [in the totality of the circumstances analysis] weighs against a finding of improper inducement." *See Bailey*, 145 N.C. App. at 19, 548 S.E.2d at 818.

Defendant and Capt. Whitfield exchanged multiple phone calls in the week prior to the 17 October 2011 interview. Defendant testified he "kept calling and calling [Capt. Whitfield] and . . . couldn't get a hold of him[.]" On the morning of the meeting, Defendant "had called [Capt. Whitfield] on the phone . . . trying to get – set up an appointment." After speaking with Capt. Whitfield, Defendant went "straight [to the sheriff's department]." *See State v. Barnes*, 154 N.C. App. 111, 112-13, 572 S.E.2d 165, 167 (2002) (finding defendant's confession was voluntary where, *inter*

alia, defendant called sheriff's office to ask if any warrants had been issued for his arrest, and then "voluntarily came to the Sheriff's Department the following day and met with [a law enforcement officer].") Defendant was not interviewed in an interrogation room or a cell, but in a "much larger," multi-purpose conference room with multiple unsecured exits. Defendant and Capt. Whitfield were the only individuals present during the interview process. *Cf. Pruitt*, 286 N.C. at 458, 212 S.E.2d at 102 (concluding confession was involuntary where "the interrogation of defendant by three police officers took place in a police-dominated atmosphere."). Defendant concedes the interview was noncustodial, and thus did not require advisement of his *Miranda* rights. *See Davis*, 305 N.C. at 409, 290 S.E.2d at 580 (noting that "the warnings required by *Miranda* need only be given to an individual who is subjected to custodial police interrogation."); *State v. Graham*, 223 N.C. App. 150, 155, 733 S.E.2d 100, 104 (2012) (finding interview did not require *Miranda* warnings where "[d]efendant was not in custody, as he came to the [police] station voluntarily, he was not restrained, he was informed of his right to leave at any time, he was informed he was not under arrest, and he was informed that he would be going home after the interview, which he did."). Defendant concedes he was never searched, restrained physically, or threatened with physical violence.

There is no evidence Defendant "appear[ed] scared or intimidated during the interview . . . [or] asked for a break[.]" *See Houston*, 169 N.C. App. at 374, 610 S.E.2d

at 783. Capt. Whitfield testified that, before beginning the interview, he offered Defendant a drink, "pointed out that the bathrooms [were] right across from the conference room, . . . [a]nd . . . pointed out that [Defendant] was not under arrest and was free to leave any time." Defendant does not contend Capt. Whitfield actually told him he was not free to leave. Defendant argues only that he "felt restrained," "thought that he would be arrested if he tried to leave," and "doubt[ed] [Capt. Whitfield's] suggestion that he could leave the room and suffer no consequences." These facts are insufficient to support a conclusion that Defendant was "held incommunicado" or kept against his will. *See*, *e.g.*, *Greene*, 332 N.C. at 580, 422 S.E.2d at 739 (concluding defendant was not "held incommunicado" where "[t]here was no evidence that the defendant ever expressed a desire to talk with anyone other than the officers or that he would have been prevented from doing so. The defendant never indicated that he did not want to talk with the officers. Likewise, there was no evidence that the defendant ever requested food or drink or that [the] officers would have refused to honor such a request.").

Although Defendant contends he told Capt. Whitfield he wanted a lawyer, Capt. Whitfield testified there was "[n]o discussion whatsoever about a lawyer[.]" *See Shelly*, 181 N.C. App. at 201, 638 S.E.2d at 521 (noting that while "there are no magic words which must be uttered in order to invoke one's right to counsel, . . . a suspect must unambiguously request counsel to warrant the cessation of questions and must

articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." (citations and internal quotation marks omitted)).

Defendant emphasizes that Capt. Whitfield "repeatedly told [Defendant] what [Belote and Tina] [had] accused him of and told [Defendant] he was lying when [Defendant] denied the allegations[.]" However, "a defendant's confession is not rendered involuntary by [officers'] request for 'nothing but the truth.'" *Fox*, 274 N.C. at 292, 163 S.E.2d at 503 (citation omitted); *see also Pruitt*, 286 N.C. at 458, 212 S.E.2d at 102 (observing that "custodial admonitions to an accused by police officers to tell the truth, standing alone, do not render a confession inadmissible."). There is no evidence Capt. Whitfield deceived Defendant about the nature of the allegations against him or possible punishment. *See Barnes*, 154 N.C. App. at 115, 572 S.E.2d at 168 (2002). *See also State v. Borders*, 236 N.C. App. 149, 169, 762 S.E.2d 490, 506 (2014) ("Standing alone, deception does not render a defendant's confession or relinquishment of evidence inadmissible."); *cf. Martin*, 228 N.C. App. at 691, 746 S.E.2d at 310 (finding defendant's confession was improperly induced based on a number of factors, including a law enforcement officer's "deceptive statement . . . [that] implied [the officer] had irrefutable evidence against defendant.").

Defendant testified Capt. Whitfield read the inculpatory statement aloud in Defendant's presence. Defendant does not contest the trial court's finding that he

"did not appear to be impaired by any alcohol or controlled substances" and "appeared to be normal as far as any mental condition" during the interview. Defendant not only signed the written statement, but also made numerous corrections, each of which he initialed. We also find it worth noting that Defendant's written confession included details about a separate incident involving Tina, which was not the focus of Capt. Whitfield's investigation and about which Capt. Whitfield presumably had no prior knowledge. Defendant testified he signed the statement because he was "scared to death" and because he believed that if he signed it, Capt. Whitfield "[would] let me leave after being there all day. A big man like me, I don't like missing lunch." However, "[t]he evidence in the record does not show an oppressive environment," such as would provoke

> the type of fear that justifies suppression of a confession [which] involves threats of violence or harsh treatment by law enforcement, especially if better treatment is offered in exchange for a confession.

Barnes, 154 N.C. App. at 115, 572 S.E.2d at 168. As in *Barnes*,

> Defendant was not tricked about the nature of the crime involved or possible punishment. [Capt. Whitfield] did not subject [D]efendant to threats of harm, rewards for confession, or deprivation of freedom of action. In fact, [D]efendant exercised his freedom of action by leaving the Sheriff's Department at the end of the interview.

Id. We conclude that, under the totality of the circumstances, Defendant's incriminating statements during his interview with Capt. Whitfield were not involuntary as a matter of law.

NO ERROR.

Judges STROUD and INMAN concur.

Report per Rule 30(e).