IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1029

Filed: 3 December 2019

Columbus County, No. 13 CRS 946-47, 13 CRS 53110-11

STATE OF NORTH CAROLINA

v.

DEMONCRICK HUNTER, Defendant.

Appeal by Defendant from judgments entered 8 December 2017 by Judge Douglas B. Sasser in Columbus County Superior Court. Heard in the Court of Appeals 24 April 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Steven Armstrong, for the State.

Kimberly P. Hoppin for defendant-appellant.

MURPHY, Judge.

BACKGROUND

On 6 November 2013, four indictments were issued against Defendant, Demoncrick Hunter, for his actions during a violent robbery that resulted in the death of Lee Travis Wright ("Wright"). Specifically, the four indictments charged Defendant with Wright's murder, conspiracy to commit robbery with a dangerous

weapon, attempted robbery with a dangerous weapon, and the attempted murder of Jonathan Elgin Long ("Long"). That same day, an order was issued for Defendant's arrest. The events that led to Defendant's indictment—and later conviction—occurred about a month earlier.

On the morning of 8 October 2013, Defendant drove to Long's home for the purpose of buying "pills." Accompanying Defendant were his friend Chris Frione ("Frione"), Frione's girlfriend, Amanda Calhoun ("Calhoun"), and Defendant's brother, Darrius Hunter ("Darrius"). The party rode in Calhoun's van with Calhoun behind the wheel. Defendant and Frione went inside Long's house and returned about 15 to 30 minutes later, at which time Defendant told the others he wanted more pills. Later that day, Charles Little joined the group and the five returned to Long's house.

Once back at Long's house, Defendant and Frione went inside "[f]or pills." After the two had been inside for a few minutes, Calhoun "hear[d] gunshots" from inside Long's house. The evidence shows at least two gunshots hit Long's front door and that Long was shot a total of four times, twice in the shoulder, once in the back, and once in the ribs after he fell to the ground. Wright was shot once, but the bullet ricocheted through his arm, between two ribs, his heart, both lungs, his esophagus, and his liver. Wright died from the gunshot, and Long spent months in a hospital recovering from the wounds he suffered.

In the chaotic minute or so after Calhoun heard gunshots, Defendant and Frione ran back to the van, and Defendant told Calhoun "to go, drive[.]" As Calhoun fled the scene, she asked Defendant what happened inside. According to Calhoun's testimony at trial, Defendant responded, "I shot him. It was either [Wright] shoot [Frione] or me shoot him, so I shot him."

At the crime scene police collected shell casings, took photos, and reviewed surveillance footage from cameras installed outside Long's home. One of the officers, Lieutenant Jeff Nealey ("Lt. Nealey"), recognized Darrius as one of the people in the surveillance video. As a search warrant was being prepared, the decision was made to bring in both Darrius and Defendant for interviews at the sheriff's office. Neither Defendant nor Darrius was handcuffed or otherwise restrained at that time, nor were they placed under arrest.

Once Darrius and Defendant were at the sheriff's office, Lt. Nealey first interviewed Darrius for about "an hour and a half, hour and 45 minutes." Meanwhile, Defendant waited in another deputy's office. After completing his interview with Darrius, at about 2:45 PM, Lt. Nealey interviewed Defendant, which was recorded in two parts. Before the interview, Lt. Nealey read Defendant his *Miranda* rights. During the interview, Defendant did not ask for a lawyer or cease to voluntarily participate. Defendant identified both himself and the object in his hand (a firearm) in the surveillance video of the crime scene, and also told Lt. Nealey why he and the

others went to Long's house for a second time on the date in question. After Defendant's interview with police, he was placed under arrest.

In January 2016, the trial court found Defendant incapable of proceeding to trial and ordered him to attend restorative therapy at Cherry Hospital. In September 2016, Defendant was returned to the custody of the Columbus County Sheriff's Office after one of the hospital's doctors reported that Defendant's capacity had been restored. In April 2017, a hearing was held to determine whether Defendant was capable of proceeding to trial.

During the April 2017 hearing, the State called Holly Manley, MA, LPA ("Manley"), who treated Defendant in her capacity as a forensic services coordinator at Cherry Hospital, as an expert in the field of "capacity restoration and evaluations for capacity to proceed and non-restorability." Next, the State called Dr. Steven Peters ("Dr. Peters"), the Director of Psychology and Forensic Services at Cherry Hospital, as an expert in the field of forensic psychology. Dr. Peters specifically opined that Defendant was capable of proceeding to trial. Defendant called Dr. James Hilkey ("Dr. Hilkey") to testify as an expert witness, although counsel did not specifically state the field in which Dr. Hilkey was being tendered as an expert. Dr. Hilkey testified that Defendant had mild intellectual disabilities and lacked the capacity to proceed. After the hearing, the trial court ruled Defendant was capable of proceeding based on the experts' testimony and reports.

Before the jury was selected for Defendant's trial, Defendant filed a *Motion to Suppress Defendant's Statement*. In this motion, Defendant argued the recording of his interview with Lt. Nealey should be suppressed because "his statements were obtained in violation of his rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution." The trial court held a hearing on Defendant's motion in which it heard the testimony of Lt. Nealey, a second officer who was involved in Defendant and Darrius's interviews, and Dr. Hilkey. The trial court also considered an affidavit by Dr. Hilkey documenting his opinion regarding Defendant's probable mental state at the time of his interview with Lt. Nealey. On 7 December 2017, the trial court signed a written order denying Defendant's motion to suppress.

On 8 December 2017, the jury found Defendant guilty of first degree murder, conspiracy to commit robbery with a dangerous weapon, robbery with a firearm, and attempted murder. Defendant was sentenced to life imprisonment without parole for the first degree murder conviction and a consolidated active sentence of 420 to 516 months on the remaining charges. Defendant gave timely notice of appeal.

ANALYSIS

A. Capacity to Proceed to Trial

Defendant's first argument on appeal is that the trial court erred in finding him capable of proceeding to trial. We will not reverse a trial court's conclusion that

a defendant is competent to stand trial absent an abuse of discretion. *State v. McClain*, 169 N.C. App. 657, 664-65, 610 S.E.2d 783, 788 (2005). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). Here, we cannot conclude the trial court abused its discretion in finding Defendant had the capacity to proceed to trial.

Our General Statutes provide:

> No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

N.C.G.S. § 15A-1001 (2017). Defendant argues he lacked the capacity to proceed to trial because he was incapable of assisting his defense in a rational or reasonable manner, and he specifically challenges the trial court's Findings of Fact 19-21. Defendant argues those findings of fact are not supported by competent evidence and, without them, Conclusion of Law 1 is erroneous.

Findings of Fact 19-21 are supported by competent evidence and, in turn, support Conclusion of Law 1, that Defendant was capable of proceeding to trial. Consequently, the trial court did not abuse its discretion in concluding Defendant was capable of proceeding to trial.

First, Finding of Fact 19 states "[t]hat the Defendant was able to discuss the relative strengths of possible evidence and demonstrated an ability to analyze and weigh various types of evidence." Second, Finding of Fact 20 states "[t]hat the Defendant was able to rationally discuss his legal situation and has a good understanding of the process." Third, Finding of Fact 21 is "[t]hat the Defendant has an adequate understanding of his charges, demonstrates sufficient knowledge and comprehension of the court system, and should be expected to work effectively with his defense counsel." We analyze these findings together because they are interrelated.

During the competency hearing the person who treated Defendant at Cherry Hospital, Manley, was accepted as an expert in forensic psychology and testified that the hospital teaches patients about the legal system and their individual cases during the restoration program. Manley testified that Defendant was always motivated to learn and attended every class and session available to him throughout his time at Cherry Hospital. Furthermore, according to Manley, Defendant made "good progress" learning about the legal system and "it was evident that he learned a great deal of knowledge about the legal system and was able to apply that to his own case." Manley explained that she personally observed Defendant gain an ability to:

> identify his charges, identify his attorney, understanding that his charges are felonies; therefore, they carry more time. And he's able to talk about examples of things that could be evidence in his case, such as, you know, if there

> were fingerprints somewhere or the idea that codefendants could testify against him; so a good understanding of what were some examples of evidence in his case.

Without objection, Manley also testified Defendant was "able to talk about his case . . . about the idea of having these codefendants and that some were inside, some were outside[.]" Based on his understanding of the witnesses against him, Defendant "was able to kind of weigh that out and think about that as in how it would apply to his case in his trial." During cross-examination, Manley testified that much of the one-on-one training her patients undergo "is designed to help with that ability to assist your defense," and it had that impact on Defendant. Manley stated Defendant "was very participative" during these sessions and it was clear he was learning.

Manley's testimony alone provides competent evidence to support all three of the challenged Findings of Fact: (19) Defendant was able to discuss the relative strengths of possible evidence and analyze various types of evidence; (20) he was able to rationally discuss his legal situation and had a good understanding of the process; and (21) he had an adequate understanding of his charges, demonstrated sufficient knowledge and comprehension of the court system, and could be expected to work effectively with his defense counsel. These Findings of Fact are also supported by the testimony of Dr. Steven Peters, Director of Psychology and Forensic Services at Cherry Hospital.

Dr. Peters testified as an expert in forensic psychology and from his personal experience working with Defendant. According to Dr. Peters, Defendant went over

the evidence in his case with Dr. Peters and described the impact various pieces of evidence might have on his trial. Dr. Peters also testified that he believed Defendant had a good understanding of the legal process and facts of his case and would be able to relate those facts to his attorney.

The testimony of Manley and Dr. Peters directly supports Findings of Fact 19-21, which support the trial court's conclusion that Defendant had the ability to assist his attorney in a rational and reasonable manner at trial. Given that competency is a discretionary ruling and that the challenged findings are supported by competent evidence, we hold the trial court did not abuse its discretion in concluding Defendant was capable of proceeding to trial.

B. Motion to Suppress

Defendant's second argument on appeal is that the trial court erred in denying his motion to suppress certain "statements and responses made by Defendant pursuant to an invalid interrogation . . . ." This argument is unavailing and does not warrant a new trial.

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. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). In this case,

Defendant's argument is premised upon his contention that the statements in question were made to police during an interview that violated his constitutional right against self-incrimination under *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d. 694 (1966). Properly preserved constitutional questions, like challenged conclusions of law, are fully reviewable under a de novo standard of review. *Piedmont Triad Reg'l Water Auth. v. Sumner Hills Inc.*, 353 N.C. 343, 348, 543 S.E.2d 844, 848 (2001); *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

Defendant challenges two of the trial court's findings of fact that he argues "could more appropriately be characterized as conclusions of law—[Findings of Fact #26 and #33.]" Finding of Fact 26 states, "Defendant never asked for an attorney nor ceased to voluntarily participate in the interview." Finding of Fact 33 states, "Defendant's *Miranda* rights or warnings were not violated by the interview conducted by Lt. Nealey." Later in this section of his brief, Defendant challenges the trial court's Conclusions of Law 1-3: (1) "Defendant's interview does not fall within *Miranda* analysis[;]" (2) Defendant lacked "other personal characteristics that make him vulnerable to pressure . . . and that [Defendant] was not held incommunicado . . . [;]" and (3) "despite [Defendant's] intellectual disability, under the totality of the circumstances, [Defendant's] waiver of his *Miranda* rights was made voluntarily, knowingly and intelligently, and his statements were not obtained in violation of his [Constitutional] rights . . . ." We address each in turn.

Although Defendant attempts to frame Finding of Fact 26 as a conclusion of law, he provides no reason why this might be the case. "The classification of a determination as either a finding of fact or a conclusion of law is admittedly difficult. As a general rule, however, any determination requiring the exercise of judgment, or the application of legal principles, is more properly classified as a conclusion of law." *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (internal citations omitted). Finding of Fact 26 amounts to two distinct propositions: (1) Defendant never asked for an attorney and (2) he never ceased to voluntarily participate[1] in the interview. Both propositions amount to findings of fact—Defendant either asked for an attorney or he did not and either voluntarily participated or did not—and competent evidence in the testimony of Officer Nealey supports both propositions. When asked if Defendant asked for a lawyer "at any point during [his] interview," Lt. Nealey testified, "No, sir." Lt. Nealey also testified that, although Defendant did take

[1] Our appellate courts have no caselaw specifically addressing whether an individual's voluntary participation in an interview should be determined as a matter of fact or law. However, this is not a determination that requires the application of legal principles or the exercise of judgment beyond asking whether the individual was or was not a voluntary participant throughout the interview. Indeed, the only case we could find that addresses this issue concludes "the [trial] court's findings of fact, based upon competent evidence, indicated that defendant began the interrogation as a voluntary participant and at no time became a non-voluntary participant." *State v. Cass*, 55 N.C. App. 291, 297, 285 S.E.2d 337, 341 (1982). This stands in contrast to the over-arching analysis of the voluntariness of a participant's confession, which we determine "in light of the totality of the circumstances surrounding the confession." *State v. Barlow*, 330 N.C. 133, 140-41, 409 S.E.2d 906, 911 (1991). An individual's voluntary participation is but one circumstance we factor into that analysis. A "voluntary confession" requires proof of a number of factors, including "whether the defendant was in custody when he made the statement; the mental capacity of the defendant; and the presence of psychological coercion, physical torture, threats, or promises." *Id.* at 140, 409 S.E.2d at 911. While that determination requires the application of legal principles, the determination of whether an interviewee's *participation* is voluntary is a question of fact.

a break during his interview, he never indicated that he wished to stop voluntarily participating. Finding of Fact 26 is supported by competent evidence and binding on appeal.

In contrast to Finding of Fact 26, Finding of Fact 33 is more accurately classified as a conclusion of law. Again, Finding of Fact 33 states: "Defendant's *Miranda* rights or warnings were not violated by the interview conducted by Lt. Nealey." The determination of whether an interaction is a custodial interrogation, and therefore whether *Miranda* applies, requires the application of legal principles and is a question of law that we review de novo. *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (citing *State v. Greene*, 332 N.C. 565, 577, 422 S.E.2d 730, 737 (1992)). We address Finding of Fact 33 and Conclusions of Law 1-3 together by asking whether *Miranda* applied to Defendant's interview with police, and if so, whether the interview violated Defendant's *Miranda* rights.

Our Supreme Court

> has consistently held that the rule of *Miranda* applies only where a defendant is subjected to custodial interrogation. *See, e.g.*, *State v. Phipps*, 331 N.C. 427, 442, 418 S.E.2d 178, 185 (1992). . . . Custodial interrogation "'means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" *Id.* at 441, 418 S.E.2d at 185 (quoting *Miranda*, 384 U.S. at 444, 16 L. Ed. 2d at 706). To determine whether a person is in custody, the test is whether a reasonable person in the suspect's position would feel free to

> leave. *State v. Rose*, 335 N.C. 301, 334, 439 S.E.2d 518, 536, *cert. denied*, 512 U.S. 1246, 129 L. Ed. 2d 883 (1994).

State v. Gaines, 345 N.C. 647, 661-62, 483 S.E.2d 396, 404-05 (1997). The fact that questioning takes place in a police station does not, by itself, transform every interaction into a custodial interrogation. *Buchanan*, 353 N.C. at 337, 543 S.E.2d at 827. For example, we have held a defendant "was not in custody when he chose, by his own volition, to go to the police station and give a statement without any promises being made to him, even if he did not know he was a suspect at the time." *State v. Linton*, 145 N.C. App. 639, 643, 551 S.E.2d 572, 575 (2001). Similarly, in *Linton*, we reasoned, "The record discloses no evidence of defendant being handcuffed or affirmatively placed in custody, neither is there evidence of any officer telling defendant he was not free to go." *Id.* Nevertheless, we conclude Defendant's interview with Lt. Nealey was a custodial interrogation to which *Miranda*'s protections apply.

Although there is no evidence in the record showing Defendant was handcuffed or affirmatively placed into custody, there is also no evidence that he went to the police station voluntarily. Once at the police station, Defendant was kept for over an hour waiting for his brother to finish interviewing with police. Additionally, Lt. Nealey made Defendant aware of his *Miranda* rights before the interview began; this fact makes it unlikely Defendant, or a reasonable person in his position, would have

felt free to leave the interview with Lt. Nealey. Consequently, Conclusion of Law 1 is incorrect. Defendant's interview does fall within *Miranda*.

Conclusions of Law 2 and 3 address Defendant's mental capacity to waive his *Miranda* rights. "A defendant may waive his *Miranda* rights, but the State bears the burden of proving that the defendant made a knowing and intelligent waiver." *State v. Brown*, 112 N.C. App. 390, 396, 436 S.E.2d 163, 167 (1993). This is a fact-specific inquiry in which we consider "the defendant's background, experience, and conduct." *Edwards v. Arizona*, 451 U.S. 477, 482, 68 L. Ed. 2d 378, 385 (1981). Specifically, some factors we look at are: (1) the defendant's familiarity with the criminal justice system; (2) the length of the defendant's interrogation; (3) the amount of time the defendant was without sleep; (4) whether the defendant was held incommunicado; (5) whether threats of violence were made against the defendant; (6) whether promises were made to the defendant to obtain a statement; (7) whether the defendant was deprived of food; and (8) the defendant's age and mental condition. *State v. Ortez*, 178 N.C. App. 236, 246-47, 631 S.E.2d. 188, 196 (2006). The presence or absence of any one of these factors is not determinative. *Id.* "A defendant's subnormal mental capacity is a factor to be considered, but such lack of intelligence, standing alone, does not render an in-custody statement incompetent if it is in all other respects voluntary and understandingly made." *State v. Jenkins*, 300 N.C. 578, 585, 268 S.E.2d 458, 463 (1980).

Here, the binding findings of fact show:

> 18. Lt. Nealey read [Defendant] his *Miranda* warnings, which Defendant said he understood and waived. [Defendant] was not handcuffed or restrained during the entirety of the interview.
>
> . . .
>
> 20. The interview lasted approximately an hour and 12 minutes in total.
>
> 21. The Defendant was 23 years of age and appeared to be coherent at the time of the interview.
>
> 22. [Defendant's] answers appeared to be appropriate to the questions asked.
>
> 23. [Defendant] was not threatened, nor was abusive language or tone used during the interview. [Defendant] was not coerced or deceived in any way during the [interview].
>
> 24. During the interview no promises were made to obtain [Defendant's] statement.
>
> 25. [Defendant] in the audio recording indicated familiarity with the criminal justice process by indicating that he was on probation at the time of the statement and provided information on possible co-defendant's [sic] by referring to their mutual time in jail.
>
> 26. [Defendant] never asked for an attorney nor ceased to voluntarily participate in the interview.
>
> 27. That after [Defendant] was advised of his *Miranda* rights, he was informed by law enforcement that there was video evidence and before answering any questions from law enforcement [Defendant] repeatedly requested to view the video evidence.

> 28. During the interview process [Defendant] also was able to view the video recording and photos of possible co-defendants.
>
> 29. Defendant was able to use the restroom during the interview process . . . . [Defendant] was allowed to leave the office and use the restroom by himself . . . .

These findings of fact support Conclusions of Law 2 and 3[2] as well as the trial court's ultimate conclusion that the interview in question did not violate *Miranda*.

The trial court's findings of fact show Defendant was familiar with the criminal justice system, he was only interviewed for about an hour, there were no threats of violence and no promises made to Defendant to induce his statement, and Defendant was not deprived of his basic human needs like sleep or food. Although Defendant's "subnormal mental capacity" does weigh against his ability to knowingly and willfully waive his *Miranda* rights, we are satisfied he had the intellectual capacity to understand his rights and voluntarily waive them before speaking with Lt. Nealey.

We need not address whether the State proved the admission of the recording of Defendant's interview was harmless beyond a reasonable doubt. As Defendant correctly notes in his brief, N.C.G.S. § 15A-1443(b) provides: "A violation of the defendant's rights under the Constitution of the United States is prejudicial unless

[2] Conclusions 2-3, again, were that Defendant lacked "other personal characteristics that make him vulnerable to pressure . . . and that [Defendant] was not held incommunicado . . . [;]" and "despite [Defendant's] intellectual disability, under the totality of the circumstances, [Defendant's] waiver of his *Miranda* rights was made voluntarily, knowingly and intelligently, and his statements were not obtained in violation of his [Constitutional] rights . . . ."

the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless." N.C.G.S. § 15A-1443(b) (2017). Because we hold the admission of the interview was not erroneous, we need not reach the question of prejudice.

The trial court did not err in concluding Defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights in speaking with Lt. Nealey, and did not err in denying his motion to suppress.

CONCLUSION

The trial court's conclusion that Defendant was capable of proceeding to trial was supported by findings of fact grounded in competent evidence. Additionally, the trial court did not err in concluding, based upon the totality of circumstances, that Defendant voluntarily, knowingly, and intelligently waived his *Miranda* rights. The trial court did not err in denying Defendant's motion to suppress.

NO ERROR.

Judges DILLON and HAMPSON concur.

Report per Rule 30(e).