IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-539

Filed: 15 January 2019

Wake County, No. 15CRS210198

STATE OF NORTH CAROLINA,

v.

UBER FIGUEROA MORALES, Defendant.

Appeal by defendant from judgment entered 13 April 2017 by Judge James K. Roberson in Wake County Superior Court. Heard in the Court of Appeals 28 November 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Terence D. Friedman, for the State.

Charlotte Gail Blake for defendant-appellant.

BERGER, Judge.

On April 13, 2017, Uber Figueroa Morales ("Defendant") was convicted of felonious hit and run with injury and driving while impaired. On appeal, Defendant argues that the trial court erred by denying his motion to suppress an incriminating statement Defendant had made to an investigator. Because Defendant's spontaneous inculpatory statement was admissible at trial, we find no error.

Factual and Procedural Background

Just after midnight on May 6, 2015, Officer Adam Tucker ("Officer Tucker") of the Raleigh Police Department was dispatched to the scene of a hit and run, in which two men had been struck by a passing car while fixing their car on the side of the road. The driver who had hit the men abandoned his car nearby and fled the scene on foot. When Officer Tucker arrived, he coordinated a search for the suspect. He also searched the abandoned car and found a cell phone. Defendant was soon found by K-9 officers in nearby woods, about forty yards from the crime scene. The K-9 officers handcuffed Defendant and escorted him back to Officer Tucker.

Officer Tucker approached Defendant and placed the cell phone found in the abandoned car near Defendant, but did not ask him any questions. When Defendant saw the cell phone, he immediately pointed to it and stated that it belonged to him. Defendant also informed Officer Tucker that he could understand English if Officer Tucker spoke slowly. When Defendant was then asked why he had been in the woods, he responded that his friend had dropped him off on the side of the road. Officer Tucker then noticed Defendant's red eyes and unsteadiness, and asked Defendant how much he had to drink that night. Defendant stated that he had been "drinking a little bit" and had "about 10 drinks."

Defendant was then placed under arrest for felony hit and run. Officer Tucker testified that, due to safety concerns, he was unable to investigate whether Defendant

had been driving under the influence of alcohol until they arrived at the jail, as the crime scene was on the side of the highway and Defendant was significantly impaired. When Officer Tucker and Defendant arrived at the jail, Officer Tucker advised Defendant of his *Miranda* rights. Defendant stated that he understood his rights and agreed to speak with Officer Tucker without a lawyer present. Defendant then completed a series of field sobriety tests and a chemical analysis, which yielded a blood alcohol concentration ("BAC") of 0.19.

On February 8, 2016, Defendant was indicted for felony hit and run with injury, driving while impaired, and driving without a license. On April 29, 2016, Defendant moved to suppress statements he had made to Officer Tucker at the crime scene. The statement, relevant to this appeal, that he had sought to suppress was that the confiscated cell phone had belonged to him. After a hearing, Defendant's motion was denied.

Defendant was convicted of felony hit and run and impaired driving on April 13, 2017. Defendant timely appeals. In his appeal, Defendant argues that the trial court erred when it did not suppress his statement claiming ownership of the cell phone found in the abandoned car. Defendant asserts that because he had been subject to custodial interrogation without being advised of his *Miranda* rights, the statement should not have been allowed into evidence at trial. We disagree.

Analysis

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). "The trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

"*Miranda* warnings need only be given before an individual is subjected to custodial interrogation." *State v. Lipford*, 81 N.C. App. 464, 468, 344 S.E.2d 307, 310 (1986) (citations omitted). "Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence." *Miranda v. Arizona*, 384 U.S. 436, 478 (1966). "Volunteered statements of any kind are not barred by the Fifth Amendment." *Id.* "Volunteered and spontaneous statements made by a defendant to a police officer without any interrogation on the part of the officer are not barred by any theory of our law." *State v. Parker*, 59 N.C. App. 600, 607, 297 S.E.2d 766, 770 (1982) (citations omitted).

"The *Miranda* warnings and waiver of counsel are required only when an individual is being subjected to custodial interrogation. '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." *State v. Kincaid*, 147 N.C. App. 94, 101, 555 S.E.2d 294, 300 (2001) (citations and quotation marks omitted). "Neither *Miranda* warnings nor waiver of counsel is required when police activity is limited to general on-the-scene investigation." *Id.* at 102, 555 S.E.2d at 300 (citation and quotation marks omitted). Furthermore, "[s]pontaneous statements made by an individual while in custody are admissible despite the absence of *Miranda* warnings." *State v. Stover*, 200 N.C. App. 506, 515, 685 S.E.2d 127, 134 (2009) (citation and quotation marks omitted).

If a suspect is questioned by police at a crime scene, then he or she is not automatically considered to be under interrogation since "general on the scene questioning is a well-accepted police practice" and it would be "difficult to imagine the police warning every person they encounter of his *Miranda* rights." *State v. Sykes*, 285 N.C. 202, 206, 203 S.E.2d 849, 852 (1974) (citation and quotation marks omitted). Moreover, "[t]he fact that an investigating officer confronts a person in custody with evidence of his implication in a crime or evidence from the crime scene does not amount to 'interrogation' within the meaning of *Miranda*." *State v. Williams*, 308 N.C. 47, 61, 301 S.E.2d 335, 344 (1983) (citations omitted). Thus, "[t]he mere fact that a confession is made after a defendant is confronted with circumstances normally calling for an explanation is insufficient to render the confession incompetent." *State v. Temple*, 302 N.C. 1, 8, 273 S.E.2d 273, 278 (1981) (citations omitted). The question to consider is whether "an objective observer would have believed that such action by

the officer was designed to elicit an incriminating response." *State v. Washington*, 102 N.C. App. 535, 539, 402 S.E.2d 851, 854 (Greene, J., dissenting), *reversed per curiam for reasons stated in dissenting opinion*, *State v. Washington*, 330 N.C. 188, 188, 410 S.E.2d 55, 56 (1991).

Here, Officer Tucker had found a cell phone while searching an abandoned vehicle that had been involved in a hit-and-run. K-9 officers had located Defendant about forty yards from the abandoned vehicle and had escorted him back to Officer Tucker. When Officer Tucker approached Defendant, he placed the confiscated cell phone near Defendant. Upon seeing the cell phone, Defendant immediately pointed and stated that the cell phone belonged to him. The trial court denied Defendant's motion to suppress his statement identifying the cell phone and rejected Defendant's argument that this statement should be excluded because it was made when Defendant was subjected to custodial interrogation without being advised of his *Miranda* rights.

However, Defendant here made a spontaneous statement that he was the owner of the cell phone, and there is no evidence that indicates Officer Tucker intentionally placed the cell phone near Defendant to elicit an incriminating response. Officer Tucker did not point out or otherwise call Defendant's attention to the cell phone. Defendant immediately stated that the cell phone belonged to him without any prompting from Officer Tucker. Officer Tucker's conduct did not amount

to the functional equivalent of an express interrogation, so *Miranda* warnings were not required under these circumstances.

Conclusion

The trial court did not err when it denied Defendant's motion to suppress Defendant's statement claiming ownership of the cell phone because Defendant's statement was spontaneous, voluntary, and not the result of custodial interrogation. The trial court did not err.

NO ERROR.

Judges HUNTER and DAVIS concur.

Report per Rule 30(e).