

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20050298-CA	
v.)		
)	F I L E D	
Franklin E. Woodrick,)	(July 19, 2007)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2007 UT App 248</td></tr></table>	2007 UT App 248
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Second District, Ogden Department, 021905299
The Honorable Parley R. Baldwin

Attorneys: Dee W. Smith, Ogden, for Appellant
Mark L. Shurtleff and Christopher D. Ballard, Salt
Lake City, for Appellee

Before Judges Davis, McHugh, and Orme.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under existing law.

"Neither the United States Constitution nor the Utah Constitution provides a right to a certain number of peremptory challenges, or indeed to any at all." State v. Baker, 935 P.2d 503, 505 (Utah 1997). Moreover, the United States Supreme Court has "reject[ed] the notion that the loss of a peremptory challenge constitutes a violation of the constitutional right to an impartial jury." Ross v. Oklahoma, 487 U.S. 81, 88 (1988). Instead, "[s]o long as the jury that sits is impartial, the fact that the defendant had to use a peremptory challenge to achieve that result does not mean the Sixth Amendment was violated." Id. Because Defendant has not presented any evidence to the contrary, we conclude that no biased juror sat on the jury and that Defendant was not prejudiced by having to use a peremptory challenge to remove juror number three. See Baker, 935 P.2d at 506 ("[T]o prevail on a claim of error based on the failure to

remove a juror for cause, a defendant must demonstrate prejudice [by] show[ing] that a member of the jury [that sat] was partial or incompetent.'" (quoting State v. Menzies, 889 P.2d 393, 398 (Utah 1994)).

Turning to the second issue, we recognize that the Fifth Amendment "protects individuals from being compelled to give evidence against themselves." State v. Rettenberger, 1999 UT 80, ¶11, 984 P.2d 1009 (emphasis in original) (citation and internal quotation marks omitted). And under the Due Process Clause of the Fourteenth Amendment, "certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned." Colorado v. Connelly, 479 U.S. 157, 163 (1986) (citation and internal quotation marks omitted). "Accordingly, analysis of whether admission of a [defendant's] confession into evidence violates the Fifth or Fourteenth Amendment does not turn solely on the 'voluntariness' of the confession." Rettenberger, 1999 UT 80 at ¶11. Instead, we "must [also] examine the totality of [the] circumstances to determine whether a confession had been made freely, voluntarily and without compulsion or inducement of any sort." Id. at ¶14 (citation and internal quotation marks omitted).

We conclude that Officer Zaccardi did not use coercive tactics and that Defendant's confession was indeed voluntary. In terms of objective factors, while Defendant did not have counsel or a family member with him, Officer Zaccardi promptly responded to Defendant's medical concerns. Although Defendant was not provided with food or drink, he never requested it prior to his confession. Furthermore, the interview was conducted in bits and pieces over a period of approximately three and a half hours, and the evidence at the suppression hearing included no suggestion that either interrogator made any threats or promises to Defendant that induced his confession. Even though Officer Zaccardi initially exaggerated the co-defendant's level of cooperation with police, this exaggeration did not cause Defendant to confess. Instead, Defendant confessed only after Officer Zaccardi truthfully told him that his co-defendant was giving a confession to Detective Gent. See id. (noting that "external factors" to be considered are "the duration of the interrogation, the persistence of the officers, police trickery, absence of family and counsel, and threats and promises made to the defendant"). See also State v. Galli, 967 P.2d 930, 936 (Utah 1998) ("[A] defendant's will is not overborne simply because he is led to believe that the government's knowledge of his guilt is greater than it actually is[.]") (citation and internal quotation marks omitted). In terms of subjective

factors, Defendant had no noted emotional instability or mental illness; Detective Gent and Officer Zaccardi testified that he did not appear to be in diabetic shock, intoxicated, or high; he is an adult; and he was given his Miranda warnings. Although the evidence presented at the suppression hearing did not include information about Defendant's education, he had a good working knowledge of his rights in the criminal justice system due to his long criminal history. See Rettenberger, 1999 UT 80 at ¶15 (noting that subjective factors include "the defendant's mental health, mental deficiency, emotional instability, education, age, and familiarity with the judicial system").

The totality of the circumstances show that the trial court did not err in determining that Defendant's confession was voluntary. Affirmed.

Gregory K. Orme, Judge

WE CONCUR:

James Z. Davis, Judge

Carolyn B. McHugh, Judge