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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-267

Filed 07 March 2023

Davidson County, Nos. 19CRS1558, 19CRS1559, 19CRS54397

STATE OF NORTH CAROLINA

v.

JAMES EDWARD MANESS, Defendant.

Appeal by defendant from judgments entered 16 July 2021 and 26 July 2021 by Judge V. Bradford Long in Davidson County Superior Court. Heard in the Court of Appeals 24 January 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Tracy Nayer, for the State-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellant Defender Nicholas C. Woomer-Deters, for defendant-appellant.

GORE, Judge.

Defendant James Edward Maness was convicted of two counts of statutory sexual offense with a child 15 years of age or younger, one count of sexual offense with a child by an adult, two counts of indecent liberties with a child, and one count of statutory rape of a child 15 years of age or younger. This resulted in three judgments entered against defendant and three consecutive sentences. On appeal,

defendant claims the trial court erred by denying the motion to suppress defendant's statements made during the custodial interview. Defendant claims the statements were involuntary. Upon review of the parties' briefs and the record, we discern no error.

I.

The victim in this case, a juvenile, is the granddaughter of defendant. The juvenile exhibited troublesome behavior starting in kindergarten, and this behavior turned into explosive anger such that she was moved to multiple schools due to the disruptive behavior. The juvenile confessed to a friend via Snapchat that she was raped by her grandfather, and this message was relayed to the juvenile's parents who then told law enforcement.

The juvenile was interviewed at an advocacy center for child abuse investigations in which she disclosed an extensive history of sexual abuse by defendant. The juvenile communicated in her interview and later testified at court that her first memory of sexual abuse was in kindergarten when she was spending the night at her grandparents' house. Defendant began "spooning" the juvenile, touching her vaginal area and then placing her hand on his penis. The sexual abuse continued into her elementary school years, with a two-year gap, but started again at the end of seventh grade and continued into high school. The juvenile gave extensive details of defendant committing multiple acts of sexual touching, foreplay, cunnilingus, oral sex, the use of vibrators, placing his finger in the juvenile's vagina,

and ultimately having vaginal intercourse with her. The majority of these events occurred in defendant's pool house, which was nicknamed the "little house."

After the juvenile's interview, police obtained warrants and officers arrested defendant at his work in a neighboring county, transferred him to police at the Davidson County line, and then took defendant to the Davidson County Sheriff's office for a custodial interview. Defendant's interview with the detectives was admitted into evidence after a pre-trial suppression hearing and over defendant's objections. During the interview, the detectives read defendant his *Miranda* rights and discussed what these rights meant and whether defendant understood these rights. Defendant, after obtaining clarification, asserted he understood his rights, claimed he had not committed the allegations but stated he would talk to the detectives. Defendant signed the *Miranda* rights form, and one detective proceeded to question defendant about the sexual acts committed against the juvenile.

Once questioning began, defendant denied the allegations for forty-five minutes prior to making a confession. During those forty-five minutes, the detective stated multiple times his belief defendant was lying, communicated the juvenile was more believable than defendant, discussed defendant's extramarital affair many years prior, and that he had information defendant recently cheated on his wife. At one point, defendant stated he knew a lawyer would tell him what to say and not to say and would "protect [his] own benefits."

Defendant also consented to a search of his cell phone, at which point one of the detectives obtained a consent form. The detective also told defendant he could stop this if defendant told them to. The detective also suggested he could “help” defendant if he gave him information to work with depending on the severity of the information and explained inappropriate touchings were less severe of a crime than vaginal intercourse; the detective communicated if defendant told the truth, it could be helpful. The detective testified during trial that he used different interview tactics such as blame shifting, which he learned through his various trainings and experience. Defendant then made multiple confessions admitting to sexual acts with the juvenile, but claimed the juvenile initiated the sexual acts. Defendant gave timely oral notice of appeal.

II.

This Court has jurisdiction through defendant’s timely oral appeal pursuant to Sections 7A-27(b)(1) and 15A-1444(a). *See* N.C. Gen. Stat. § 7A-27(b)(1) (2021); N.C. Gen. Stat. § 15A-1444(a) (2021). Defendant argues the trial court erred in denying his motion to suppress because his confession during the custodial interview was involuntary. We disagree.

When a defendant appeals the denial of a motion to suppress, we “employ[] a two-part standard of review on appeal: . . . whether competent evidence supports the trial court’s findings of fact and whether the findings of fact support the conclusions of law.” *State v. Jackson*, 368 N.C. 75, 78, 772 S.E.2d 847, 849 (2015). When the

defendant does not challenge the findings of fact on appeal, “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). “[T]he trial court’s findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *State v. Hammonds*, 370 N.C. 158, 161, 804 S.E.2d 438, 441 (2017) (alteration in original) (internal quotation marks and citations omitted). We review the conclusions of law de novo and may “freely substitute[] [our] own judgment for that of the lower [court].” *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (internal quotation marks and citations omitted).

A.

In support of defendant’s argument against voluntariness, he challenges the following portions of the trial court’s findings of fact as unsupported by competent evidence: “the officer made no promises to the defendant”; “the defendant never, . . . prior to making inculpatory statements, gave any indication that he wished to terminate the interview or that he wished to avail himself of counsel or gave any indication that he felt pressured”; “Detective Todd explained to the defendant either his right to stop the interview or his right to stop the search of [defendant’s] telephone”; and that the detective “made no attempt to overbear the defendant’s will.” Aside from these portions of the findings of fact, the trial court’s remaining unchallenged findings of fact “are binding on appeal.” *Baker*, 312 N.C. at 37, 320 S.E.2d at 673.

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The trial court made the following unchallenged findings of fact that support “the officer made no promises to defendant.” The trial court stated:

Next. Officer Todd informed the defendant that in telling the truth, it could be possible that defendant had performed, again, parenthetical, the Court is here paraphrasing, A and B, but not C, and that the defendant could, parenthetical, the Court is again here paraphrasing, be called into account for A and B, but not C if he did not perform C.

The officer did on one occasion use the term “help” as he described to the defendant, “If there's some reason for this conduct, if you will tell me the truth, we will see if we can get you help to make sure this conduct does not reoccur.” The officer also used “help” on at least one other occasion in some type of undefined method, in an undefined way.

The Court finds that the overall tenor of the interview was an attempt by the officer to reach the matter of truth.

The officer informed the defendant as to the severity of the charge. The officer did ask the defendant if there were alternate explanations for the statement of his granddaughter, including such hypotheticals as some type of accidental touching of her vaginal area or her breasts.

...

In contrast, those offenses, from vaginal intercourse and the seriousness of vaginal intercourse with the defendant, as the detective attempted to elicit information from -- as the detective attempted to elicit information from the defendant. Detective Todd further informed the defendant that he would advocate for the defendant with the district attorney. Again, the Court, reading the -- considering this statement in the context of the statements immediately --immediate previously -- immediately previously made, if the defendant's conduct was conduct less than the conduct described by [the juvenile].

These findings give context to the challenged finding regarding any promises made.

This evidence is not equivalent with a promise made, but rather demonstrates how the detective utilized negotiation tactics to obtain defendant’s confession. This

competent evidence supported the trial court's finding "the officer made no promises to defendant."

Defendant challenges the trial court's finding that he did not attempt to obtain counsel, end the interview, nor communicate "he felt pressured." He also challenges the finding the detectives never made any "attempt to overbear defendant's will." Defendant points to the record evidence when defendant stated his belief the detectives already had an opinion about him, and that he stated, "a lawyer would tell him what, and what not, to say 'to protect [his] own benefits.'" Defendant argues the statement regarding the lawyer was enough to indicate his desire to have counsel. Further he argues he denied the accusations for about forty-five minutes before his confession, and that until the confession the detective told defendant he was "lying" "not believable" and that the victim was "very believable."

The following unchallenged findings of fact correlate with the challenged findings:

Next: Upon being placed in an interview room of the Davidson county sheriff's office department, the defendant was uncuffed.

Two: The Court finds that the interview room was well lit, spacious, and that the defendant had a comfortable chair in which to sit.

Next number. There is no evidence in the record and the interview did not establish any type of physical infirmity, mental or emotional infirmity of the defendant.

Officer Todd read each *Miranda* warning to the defendant. After reading each individual warning to the defendant. After reading each individual warning to the defendant, Officer Todd stopped and asked the defendant

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if he understood that warning. The defendant answered yes to each *Miranda* warning. After answering yes, Officer Todd then placed a checkmark by that warning.

Next number. At the conclusion of the interview, the defendant was asked by Officer Todd if he understood each of these rights and the defendant's answer was something to the effect of "I'm not sure." Officer Todd did not ask any questions related to the merit of the case, but began asking the defendant what uncertainty he had about his rights.

Next number. After further discussion, the defendant stated that he understood his rights. Officer Todd and Officer Blake then informed the defendant that prior to him making any statement to them or prior to his questioning, he must inform them that he wished to speak with them.

Next number. The defendant informed the officers that while he had -- was not responsible for these crimes, parenthetical, this is the paraphrasing of the Court, that the defendant would speak with the officers concerning the charges.

Next number. The Court finds that Officer Todd emphasized to the defendant that he may stop speaking with Officer Todd at any time during the interview if he elected to speak with him. Period. Officer Todd informed the defendant that he could talk to the officers for five minutes or five hours, to which the defendant acknowledged -- and the defendant acknowledged understanding this concept.

Next. The defendant was further informed that the interview would be stopped at any point if he desired to speak to a lawyer, which the defendant acknowledged understanding.

Next number. The Court finds that the officer did state to the defendant on at least one occasion that he did not believe the defendant. The Court finds that was done by the officer stating to the defendant in a calm measured voice, "No disrespect intended, but I don't believe you."

The Court further finds based upon the observation of the interaction between Officer Todd and Mr. Maness that the atmosphere in the interview room was nonthreatening and calm. The Court finds that the officer did not speak to the defendant in a loud or harsh tone

Next number: Detective Todd was the primary interview – the primary interview of the defendant. The Court finds that for most of the time that Detective Blake remained in the interview room, he was silent. Detective Blake did, the Court specifically finds, challenge the defendant by calling him a liar on one occasion. And on this occasion that he called the defendant a liar two or three times and that he did so aggressively. The Court finds that this instance happened only a few seconds. And that following this incident, Detective Blake, when he appeared in the hearing, did so in a very calm and nonconfrontational manner.

The Court finds that during the interview, the defendant gave consent to Detective Blake to search his telephone.

These findings give an extensive picture of the environment during the custodial interview. No custodial interview is pleasant, but there is a wide spectrum between the tensions involved in a custodial interview compared to involuntary coercive and unconstitutional confessions. Current precedent under North Carolina law and Federal law makes plain that requests for counsel must be unambiguous and clear with no exceptions. *See Davis v. United States*, 512 U.S. 452, 459, 129 L. Ed. 2d 362, 371 (1994) (“[T]he suspect must unambiguously request counsel,” which, “requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.”); *State v. Hyatt*, 355 N.C. 642, 655, 566 S.E.2d 61, 70 (2002) (“Unless the in-custody suspect ‘actually requests’ an attorney, lawful questioning may continue.”) (citation omitted). The trial court provided sufficient competent evidence to support these challenged findings that the detectives

did not overbear defendant's will, that defendant was not contextually pressured, and that defendant did not request counsel nor attempt to end the interview.

Defendant also challenges the trial court's finding that "Detective Todd explained to the defendant either his right to stop the interview or his right to stop the search of [defendant's] telephone." Defendant takes exception to the trial court's finding suggesting the trial court contextually refers to only the moment when the cell phone consent form was retrieved and that this was inaccurate. However, given the court's other findings of fact referring to the acknowledgement by defendant of his right to seek counsel and stop the custodial interview, such an argument lacks the support it needs to determine the finding was incompetent. This evidence was competent to support the trial court's finding that defendant had the opportunity throughout the forty-five minutes of the custodial interview to assert his constitutional rights.

To the extent defendant broadly challenges the trial court's findings of fact, those challenges are inadequate for preservation of appellate review. *See State v. Phillips*, 151 N.C. App. 185, 190, 565 S.E.2d 697, 701 (2002) (stating that a general challenge of the trial courts findings of fact is insufficient for preservation of "appellate review of all the court's findings"). Further, in portions of defendant's argument, he challenges the weight of the evidence rather than the existence of the evidence. Such challenges are in effect questions of credibility and this Court has stated previously that credibility and weight are within the purview of the trial court.

See State v. Sutton, 232 N.C. App. 667, 673, 754 S.E.2d 464, 468 (“This Court reviews findings of fact only to determine if there was competent evidence to support them, not whether all of the evidence supported them.”), *writ denied, rev. denied*, 367 N.C. 507, 759 S.E.2d 91 (2014). Accordingly, the specific challenged findings of fact are supported by competent evidence, thus we discern no error.

B.

Defendant also argues the findings of fact and evidence on the record do not support the trial court’s conclusion that defendant’s statements were voluntary. We consider the “totality of the circumstances” when considering the voluntariness of a defendant’s statement to determine whether “‘the confession [is] the product of an essentially free and unconstrained choice by its maker,’ in which event it is admissible, or instead whether a defendant’s ‘will has been overborne and his capacity for self-determination critically impaired,’ in which event ‘the use of his confession offends due process.’” *State v. McNeill*, 371 N.C. 198, 256, 813 S.E.2d 797, 834 (2018) (alteration in original) (quoting *Culombe v. Connecticut*, 367 U.S. 568, 602, 6 L. Ed. 2d 1037, 1057–58 (1961)). Our Supreme Court noted multiple factors to consider for the totality of the circumstances once defendant is Mirandized—none of which are dispositive alone. *State v. Johnson*, 371 N.C. 870, 879, 821 S.E.2d 822, 829 (2018) (citations omitted). These include:

- (1) circumstances under which the interrogation was conducted, for example the location, the presence or absence of restraints, and the suspect’s opportunity to communicate with family or an attorney; (2)

treatment of the suspect, for example the duration of the session or consecutive sessions, availability of food and drink, opportunity to take breaks or use restroom facilities, and the use of actual physical violence or psychologically strenuous interrogation tactics; (3) appearance and demeanor of the officers, for example whether they were uniformed, whether weapons were displayed, and whether they used raised voices or made shows of violence; (4) statements made by the officers, including threats or promises or attempts to coerce a confession through trickery or deception; and (5) characteristics of the defendant himself, including his age, mental condition, familiarity with the criminal justice system, and demeanor during questioning.

Id. at 878–79, 821 S.E.2d at 829 (citations omitted).

Defendant contends the findings of fact “weigh heavily” against the conclusion his statements were voluntary. In support, he argues he was in custody, he had no prior arrests, the detectives “repeated accusations,” he repeatedly denied guilt for forty-five minutes, and detectives inquired about his wife’s knowledge of defendant’s infidelity when she was in bad health. Defendant claims these facts weighed against the voluntariness of his statements. We disagree.

As previously stated, our determination is based upon whether the findings of fact support the conclusions of law. Yet, defendant instead challenges the findings of fact and then compares the evidence he extrapolates from the State’s exhibit with the conclusions of law. It appears defendant is attempting another broadside attack on the findings of fact, rather than making an argument against the conclusions of law through the trial court’s factual findings. According to the trial court’s findings, defendant was arrested at the time of the custodial interview, the room was seemingly comfortable, defendant was provided with water, his handcuffs were

removed, the detectives communicated multiple times his right to access counsel, the detectives' persona was calm and controlled the majority of the custodial interview (other than the finding one of the detectives communicated aggressively at one point), the length of the interview was forty-five minutes before defendant made a confession, no deceptive practices or promises were made by the detectives, and defendant appeared mentally and physical able-bodied and unpressured given the context of the serious charges against him. Further, familiarity or a lack thereof is not a direct inference from the fact an accused has no prior criminal history.

Despite defendant's differing perspective of the conflicting evidence, his perspective is not sufficient to overcome the conclusive unchallenged findings, which support the trial court's conclusion. Afterall, "[t]he question is not simply whether the officers made a promise or made a threat, . . . but whether any such statements made by the officers resulted in defendant's will being overborne such that his capacity for self-determination was so impaired that the giving of his confession cannot be thought to be voluntary." *Johnson*, 371 N.C. at 882, 821 S.E.2d at 831. The trial court's extensive findings of fact consider the totality of the circumstances through the factors recognized by our Supreme Court and ultimately support its conclusion of law that defendant's statements were voluntarily made.

The brief moment in which one detective aggressively called the defendant a liar and the questions about the wife's knowledge of defendant's infidelity were not dispositive since the presence of one factor does not establish the totality of the

circumstances. *See State v. Greene*, 332 N.C. 565, 579, 422 S.E.2d 730, 738 (1992) (“The presence or absence of one or more of these factors is not determinative.”). These actions appeared to be the exception to the custodial interview as a whole. The totality of the circumstances instead pointed to a voluntary confession. After reviewing the findings of fact and the conclusions of law, we determine the trial court did not err in denying the motion to suppress defendant’s statements as involuntary. Considering our conclusion, it is unnecessary to consider prejudice.

III.

For the foregoing reasons, we conclude the trial court did not err by denying defendant’s motion to suppress because its findings of fact were supported by competent evidence and those findings supported its conclusions of law.

NO ERROR.

Judges STADING and RIGGS concur.

Report per Rule 30(e).