2024 IL App (3d) 240129

Opinion filed December 20, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. FYANCE D. DAWSON, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois, Appeal No. 3-24-0129 Circuit No. 21-CF-49 Honorable William S. Dickenson, Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court, with opinion.
Presiding Justice McDade and Justice Anderson concurred in the judgment and opinion.

OPINION

¶ 1 The State appeals from the Kankakee County circuit court's order granting the motion to suppress inculpatory statements given during a police interrogation filed by defendant, Fyance D. Dawson. The State argues that the court erred because defendant's statements to police were voluntary under the totality of the circumstances. We affirm.

¶ 2 I. BACKGROUND

¶ 3 In January 2021, the State charged defendant with three counts of attempted first degree murder (720 ILCS 5/8-4, 9-1(a)(1) (West 2020)), three counts of aggravated battery with a firearm

(*id.* § 12-3.05(e)(1)), two counts of unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)), and one count of unlawful possession of firearm ammunition by a felon (*id.*). Defendant filed a motion to suppress inculpatory statements he gave to officers during an interrogation, alleging they were involuntary due to delayed medical attention and improper promises. The matter proceeded to a hearing where the following evidence was presented.

¶ 4 Kankakee police officer Levi Peters testified that, at approximately 10 p.m., on January 18, 2021, he was in the police station's parking lot when he heard gunshots. He drove toward the gunshots and noticed a vehicle traveling away from that area with its headlights off. Peters initiated a traffic stop on the vehicle. Defendant, the front seat passenger, exited the vehicle and ran. Peters pursued defendant on foot, and another officer apprehended defendant.

¶ 5 Kankakee police officer Dalton Suprenant testified that he transported defendant to the police station. Defendant complained that his heart was racing and told Suprenant he had heart problems. Suprenant asked defendant two or three times if he wanted emergency medical services (EMS) before going to the station. Defendant declined but requested water. Once they arrived at the police station, defendant was secured in an interview room and given water.

¶ 6 A video recording of defendant's police interview was admitted into evidence. The video began at 11:02 p.m., with defendant lying on the ground when Officer Kristopher Lombardi entered the room. Defendant's ankle was handcuffed to the floor. Lombardi informed defendant they were contacting EMS. Lombardi told defendant to get into the chair, and defendant responded it was not his first "merry-go-round." As defendant stood up to sit in the chair, he stated his heart did not work right and grabbed his side. Defendant then sat in the chair. Lombardi read defendant the *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436 (1966)) from a document, which defendant signed. Lombardi asked defendant who he was with and where he was going. Defendant

was initially evasive. Lombardi asked defendant about the firearms he used. Defendant asked Lombardi who had told him about that, and Lombardi responded, the woman defendant was with all night, Talisha Wade. The following discussion then occurred:

> "DEFENDANT: Alright, look. Clear her. Okay?
>
> LOMBARDI: Okay.
>
> DEFENDANT: Please.
>
> LOMBARDI: Yep.
>
> DEFENDANT: Will you?
>
> LOMBARDI: Yeah.
>
> DEFENDANT: Promise?
>
> LOMBARDI: Yeah."

Defendant reached his hand out to shake hands with Lombardi. Lombardi took his hand and, while shaking it, said, "You just got to tell me the truth. If she's not involved, she's not involved. She gets to go." Defendant started to tell Lombardi details of the evening but then expressed hesitation. Lombardi said, "Tell me what happened" and "You just had me make a deal with ya, and you're already breaking that deal." Lombardi continued to ask questions. Defendant spoke at a low volume, making his statements difficult to discern, but mentioned clearing Wade. Lombardi responded, "Okay," and nodded his head. Defendant reached his hand out again, and Lombardi said, "We already shook once." Defendant answered his questions. At 11:13 p.m., the door to the interview room opened, and Lombardi immediately waved the person away as defendant continued to give details. Lombardi asked defendant how many firearms he had on him and defendant asked why they needed that information. Lombardi said, "No, they don't need it. But I just want to know from you. We made a deal here." Defendant responded, "We did."

¶ 7 Defendant explained he was in the vehicle with Wade when they saw a vehicle belonging to the Saulsberry family. He told Wade to follow the vehicle. Defendant had an issue with the Saulsberrys because they had done something to defendant's relative at a party. Defendant said he had two firearms on him and admitted to firing shots. At 11:24 p.m., while defendant was divulging more information, he said "Damn" and grabbed his left side. Lombardi said, "They're coming." Lombardi offered to get defendant more water. Defendant's response is inaudible, but he explained it felt like a knife was coming from the inside out. Defendant continued to talk and said he was not in denial that his statements could be used against him. Defendant said he attended college twice.

¶ 8 At 11:33 p.m., Lombardi told defendant he would return and exited the interview room. Defendant asked for water and if EMS was coming. At 11:34 p.m., EMS personnel entered the interview room and defendant casually greeted them, "What's up guys?" Defendant described a pain on his left side and said he had two heart pumps. EMS personnel asked defendant if he had a history of anxiety. Defendant responded that he did because of the events that night and added that he did not have his medicine. EMS personnel asked defendant if he had tingling in his fingers, which defendant said he did when he was in the back of the squad car. EMS personnel said his symptoms were likely anxiety, and defendant agreed. Defendant said his leg was shaking and blamed it on his heart. EMS personnel asked defendant if he was feeling fine now, and he said a little bit, he just had the sharp pain, and he was waiting for more water. EMS personnel told defendant there was not much that would be done for him at the hospital, and he would probably be sent back to the police station. Defendant explained his medical history and asked them to listen to his heart. EMS personnel asked defendant if he wanted to go to the hospital but noted it would delay what was happening at the station. Defendant said he would go if he felt worse. At 11:38 p.m., EMS personnel exited the interview room.

¶ 9 Defendant was left in the interview room alone for several minutes. He grabbed his chest and stated he needed water. He stood up, while grabbing his chest, and balanced himself against the wall and table. He asked for water again and knocked on the table. He sat back down, hunched over, held his left side, and yelled out for Lombardi. He used a chair in the room to knock against the door while again yelling for Lombardi. At 11:52 p.m., defendant appeared to hear Wade. He yelled, "They haven't let you go yet?" and "I told them to let you go!" He said to himself, "I know they got this s*** on camera." Lombardi then reentered the room. Defendant asked for more water, and Lombardi responded he would bring more water, but he needed a buccal swab. Defendant and Lombardi had the following conversation:

> "DEFENDANT: Is you letting her go?
>
> LOMBARDI: Here's how this works.
>
> DEFENDANT: Aw, s***.
>
> LOMBARDI: Nope. She has to spend one night because *** of who was shot. We can't just release her.
>
> * * *
>
> DEFENDANT: But why she got to do a night?
>
> LOMBARDI: *** The state's attorney has to let her out. I'm not f*** with you. Okay? But all the reports and everything will reflect she'll be fine."

Lombardi presented defendant with a consent form for the buccal swab. Defendant stated he was already told Wade was going to leave; now Lombardi wanted him to sign this consent, and yet Wade was still there. Lombardi acknowledged he had made a mistake and stated Wade would not be going home that night. Defendant suggested Lombardi was not a man of his word. Lombardi

said he would follow up with Wade's situation in the morning. Defendant signed the consent form. At 12 a.m., the interview concluded.

¶ 10 Lombardi testified that his understanding of his exchange with defendant was merely that if Wade was not involved, she would not be arrested. Lombardi stated, though defendant called this exchange a promise, it did not mean anything to him and neither did a handshake. Defense counsel questioned Lombardi:

> "Q. What were you referring to when you informed [defendant] that we have a deal here?
>
> A. I was just referring back to what he was referring to. See, when you're doing an interview, if I could put somebody at *** ease and they can talk, I'm okay with that.
>
> Q. So—
>
> A. So he—he has what he thinks is a deal in his head which wasn't a deal at all. All I said was if she's not involved she's not going to be arrested. He wanted to shake on all that and do all this other stuff, fine whatever. I'll do it if it makes him feel better.
>
> Q. So you do acknowledge that you told him we have a deal here?
>
> A. Sure.
>
> Q. Okay. And why did you tell him that we have a deal here?
>
> A. Because I knew that he had two guns and I just wanted him to tell the truth.
>
> Q. What deal were you referring to?
>
> A. Whatever deal he had in his head.

Q. So even though you tell him that—that you have a deal here or I know you think you have a deal here, you actually told him we have a deal here, but yet you don't really believe that you all had a deal?

A. Well, the deal was if she's not involved she won't be arrested. That was the deal. If she's not involved she won't be arrested.

Q. Do you recall [defendant] telling you because you gave me your word as a man, I'll give you my word as a man?

A. That's possible, yes."

¶ 11 Lombardi stated he was not allowed to make deals with suspects and no deal was made with defendant. He could tell suspects things that he could do to possibly make a release happen, but it would still have to be discussed with his supervisors and the state's attorney. When Lombardi told defendant that he was already breaking the deal, he was telling defendant what he wanted to hear and making him comfortable so he would be truthful. Lombardi referred to it as a deal because defendant did. Lombardi testified, "I'm sure there's case law where officers can lie to people." Regarding his statement to defendant that he made a mistake, he was "probably referring to the fact that [Wade] was involved and that's why we're taking her to jail." Lombardi said the decision to keep Wade overnight was made by a supervisor, and she was not charged in connection with this case.

¶ 12 Lombardi did not believe defendant displayed signs of being in physical distress, although defendant complained of chest pain. Lombardi could not recall who opened the interview room door at 11:13 p.m., and he did not know EMS arrived until he exited the interview room.

¶ 13 Kankakee firefighter paramedic Rob Robilotta testified he responded to a call from the police department at 11:04 p.m. for a person with an injured leg. He arrived at the police station at

11:07 p.m. and was told to stand by, as an interview was being conducted. Approximately 20 minutes later, an officer exited the interview room, and Robilotta and another paramedic checked on defendant. Defendant held onto his side but did not appear to be in medical distress. Defendant said he was having some heart pain and mentioned something about a heart pump. Robilotta asked defendant if he had tingling fingers and whether he thought he might be having anxiety. Defendant answered it could be. Defendant declined transport to the hospital. Ribilotta did not check defendant's heart with a stethoscope, as defendant requested, because he was not trained to do so.

¶ 14 The circuit court discussed various factors in reaching its decision as to whether defendant's statements were voluntary. It found the way defendant spoke seemed to indicate he was of at least reasonable intelligence. The video demonstrated defendant's physical condition at the time of the interview, specifically his complaints of chest pain and discomfort. The court was unsure whether Lombardi was being truthful when he stated he did not know EMS was outside the interview room waiting to see defendant. It was also unsure whether defendant was malingering or faking his symptoms. The court noted the duration of the interview was approximately 30 minutes and, although that was brief, perhaps it was a long time if defendant was experiencing a medical event. The court also found defendant was given his *Miranda* warnings.

¶ 15 The court explained its decision ultimately came down to whether a deal was made between defendant and Lombardi. The court found Lombardi "summoned all of the righteous indignation he could find to indicate that there was no deal and no promise made in this case." The court noted that Lombardi testified there was no deal with defendant, despite referring to the deal several times. The court found there were two ways of looking at the evidence: either Lombardi made a promise while knowing he was not going to keep it, or he led defendant to believe there was a deal and exploited that belief to obtain a confession. The court found none of the inculpatory statements

were made until after the deal was made. The court granted defendant's motion to suppress, finding his statements were not voluntary. The court also suppressed defendant's DNA from the buccal swab.[1]

¶ 16 The State filed a motion to reconsider, which the court denied. In addition to the reasons indicated in its initial suppression ruling, the trial court noted that the totality of the circumstances underlying its finding of involuntariness included its "concerns with the medical issues." The State filed a certificate of impairment, and this appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, the State argues that the circuit court erred when it granted defendant's motion to suppress statements after an evidentiary hearing because the statements were voluntary. A custodial statement may be admitted into evidence where the statement was voluntary. *People v. Richardson*, 234 Ill. 2d 233, 252 (2009). A motion to suppress evidence presents a mixed question of fact and law. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). A court of review considers whether the circuit court's findings of fact are against the manifest weight of the evidence. *People v. Bonilla*, 2018 IL 122484, ¶ 8. This deferential standard of review recognizes that the circuit court is in a superior position to observe witnesses, assess witness credibility, and give appropriate weight to the evidence. *People v. Slater*, 228 Ill. 2d 137, 151 (2008). "However, a reviewing court remains free to undertake its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted." *Pitman*, 211 Ill. 2d at 512. We review *de novo* whether the evidence should be suppressed. *Bonilla*, 2018 IL 122484, ¶ 8.

[1] The State makes no argument particular to the suppression of the DNA from the buccal swab.

¶ 19 "[T]he test of voluntariness is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed." *People v. Gilliam*, 172 Ill. 2d 484, 500 (1996). The court considers the following factors: the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the interrogation; the presence of *Miranda* warnings; and the presence of any mental or physical abuse by the police, including the existence of threats or promises. *Richardson*, 234 Ill. 2d at 253-54. "[N]o single fact is dispositive." *Gilliam*, 172 Ill. 2d at 500. When determining the voluntariness of a statement, a court must consider the totality of the circumstances of the particular case. *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005). The question, ultimately, is whether the defendant's will was overcome at the time he confessed. *People v. Veal*, 149 Ill. App. 3d 619, 623 (1986).

¶ 20 Here, the trial court made the following findings after testimony that spanned several days. The court noted that it did not hear evidence regarding defendant's education and that it could not make a finding either way. It did find, based upon defendant's videotaped interview, that he "seemed to be of at least reasonable intelligence." The interview "wasn't very long," totalling just over 30 minutes. Regarding defendant's physical condition at the time of the interview, defendant was laying on the floor at the time Lombardi entered the room to conduct the interview. The court noted that defendant complained of pain several times during the interview, referenced chest pain, and asked for medical care at several points. It further indicated that no explanation was forthcoming as to why EMTs were present in the station for over 20 minutes before they were allowed to examine defendant only *after* the interview had concluded. The court indicated that it did not know whether defendant "was truly suffering from something and was in distress, whether he was malingering or faking, or whether, as the EMTs opined *** that [defendant] was suffering

some type of anxiety attack or some kind of anxiety related issues that were causing the chest pain or chest discomfort." Regarding promises, the court found either (1) that Lombardi made a promise while knowing he was not going to keep it or, alternatively, encouraged defendant to erroneously believe there was a deal and exploited that misapprehension to obtain a confession or (2) that defendant's inculpatory statement came after this occurred. These findings by the court were supported by the testimony elicited at the suppression hearing.

¶ 21 Initially, the State argues that there was no deal at all; rather, it contends that Lombardi essentially informed defendant, after defendant asked, that if Wade was not involved, "she gets to go." To the extent that Lombardi shook defendant's offered hand after making this statement, it represented no "deal," but rather amounted to a gesture Lombardi hoped would encourage defendant to tell the truth. The State further observes how defendant informed Lombardi at the outset of the interview that this was not his first "merry-go-round," suggesting that defendant had some sophistication with criminal procedure.

¶ 22 The State's position might have some merit if the first mention of Wade and the possibility of clearing her had been the end of the discussion. This, however, was not the case; several mentions of a "deal" ensued during the course of the interview. Some minutes after defendant first brought up his desire to clear Wade, he expressed reluctance about answering specific questions about the guns Lombardi believed he possessed. Confronted with defendant's reluctance, Lombardi encouraged defendant to make additional inculpatory statements, reminding defendant, "you just had me make a deal with you and you are already breaking the deal." This prompted defendant to provide highly inculpatory answers to questions about the two different types of guns he possessed and their specific purposes. Within the next several minutes, Lombardi again referenced shaking hands with defendant and later again stated, "we made a deal." Finally, at the

conclusion of the interview when defendant became upset after learning that Wade was being held overnight rather than being released pursuant to the "deal," Lombardi never suggested to defendant that they did not have a deal. Instead, Lombardi explained to defendant that he had made a "mistake" and that Wade had to stay in jail overnight. Considering the entirety of the interview, the trial court's factual determination that Lombardi made a deal with defendant or, in the alternative, led defendant to misapprehend that there was a deal, was not against the manifest weight of the evidence.

¶ 23 Of course, as the State observes, not every promise necessarily vitiates the voluntariness of a defendant's custodial statements under the totality of the circumstances. Specifically here, the State emphasizes that the promised "deal" concerned Wade and not the defendant. Wade was contemporaneously in custody at the same police station and, with what Lombardi and his fellow officers knew at the time Lombardi spoke with defendant, there was certainly probable cause to arrest Wade absent credible information as to her ignorance of defendant's intentions when she followed the victims' car. We acknowledge caselaw from other jurisdictions providing that, where a defendant and a loved one of that defendant are in custody supported by probable cause, and law enforcement is uncertain as to the nature and extent of the involvement of the other person, it is not necessarily coercive to tell a defendant that if he tells the truth about what happened and the other person is not involved, that person will not be charged. See *United States v. Hufstetler*, 782 F.3d 19, 24-25 (1st Cir. 2015) ("[W]here the referenced relative is both a family member and a co-suspect, probable cause for holding that individual helps to place the officers' statements in context. Without more, an officer's truthful description of the family member's predicament is permissible since it merely constitutes an attempt to both accurately depict the situation to the suspect and to elicit more information about the family member's culpability. [Citations.]");

People v. McWhorter, 212 P.3d 692, 721 (Cal. 2009) (promise to let the defendant's wife go if he gave a truthful and detailed confession was not coercive, in part because the wife was an important witness and "was herself being questioned as a possible accessory after the fact to defendant's crimes"); *People v. Thompson*, 785 P.2d 857, 875-76, 875 & n.13 (Cal. 1990) (officer's statement that he would not release the defendant's common law wife " 'unless something else comes forward that can show that she's totally uninvolved' " was not coercive, in part because the police had reasonable grounds to detain her as an accessory). The State argues that this is exactly what occurred here and, as such, defendant's statements should not be suppressed.

¶ 24 While the above line of cases might otherwise support the State's position, additional testimony by Lombardi renders it unavailing. In testifying before the trial court that he did not make a deal with defendant, and that he was instead essentially taking advantage of defendant's misapprehension that there was a deal, Lombardi explained that departmental policy precluded him from making any deal with defendant and that charging decisions must be made in conjunction with supervisors and state's attorneys. See *People v. Pankey*, 94 Ill. 2d 12, 19 (1983) (explaining the decision whether to bring charges and of what kind is within the exclusive discretion of the state's attorney). Lombardi justified taking advantage of defendant's misapprehension of a deal by stating that caselaw allows officers to lie to suspects in interviews.

¶ 25 To be sure, the use of deception and trickery in an interrogation does not automatically render the confession involuntary. See *People v. Melock*, 149 Ill. 2d 423, 450 (1992) (police deception is relevant to a voluntariness determination, but "[t]he fact that a confession was procured by deception or subterfuge does not invalidate the confession as a matter of law"). Our review of the caselaw, however, has disclosed no instance where permitted deception concerned a nonexistent "deal" that prompts a custodial defendant to make an inculpatory statement.

Considering false promises of leniency to custodial defendants, courts have instead suggested that "we treat a false promise differently than other somewhat deceptive police tactics (such as cajoling and duplicity) [because] a false promise has the unique potential to make a decision to speak irrational and the resulting confession unreliable." *United States v. Villalpando*, 588 F.3d 1124, 1128 (7th Cir. 2009). We can discern no reason that this logic should not equally apply to *false* promises of leniency concerning a custodial defendant's girlfriend.

¶ 26 The State's reliance on *People v. Rakin*, 2022 IL App (2d) 200712-U, which determined that promises concerning charges against a defendant's girlfriend did not vitiate consent, is also unavailing. As in this case, the *Rakin* defendant initiated the offer by law enforcement, apparently seeking to negotiate some advantage for those he cared about in return for his confession. *Id.* ¶ 52. However, unlike this case, the interrogating officer's response was not a specific promise of leniency, but clarified the limited extent of his power, saying only that he would make recommendations to other police officers and the state's attorney on his girlfriend's behalf, not that she would " 'absolutely' " be released and any charges against her dropped. *Id.*; see *People v. Hubbard*, 55 Ill. 2d 142, 152 (1973) (promise to tell the prosecutor of the defendant's cooperation was not a promise of leniency); *People v. Eckles*, 128 Ill. App. 3d 276, 278 (1984) (police promises to tell the prosecutor and judge of the defendant's cooperation were not specific promises of leniency, as would be required to raise an issue about voluntariness of the defendant's confession). This is unlike the deal suggested by Lombardi, who never explained that departmental policy prohibited the deal he suggested or that his powers *vis-à-vis* Wade were limited to making a recommendation to his supervisors or the state's attorney.

¶ 27 Ultimately, we agree with the trial court that the circumstances surrounding the false promises made by Lombardi to defendant to encourage his inculpatory statements rendered them

involuntary. This conclusion is further buttressed by defendant's medical circumstances and the trial court's "concerns with the way that defendant's medical condition, whether real chest pains, whether malingering, or whether some type of anxiety or panick attacked (*sic*) as opined by the EMT who testified, *** how come that wasn't addressed in any significant way." We understand the trial court being "perplexed" about how the EMTs were kept waiting in the station for some 20 minutes while Lombardi extracted defendant's confession. Notwithstanding that defendant was properly *Mirandized* and that some of the factors for determining voluntariness weigh in the State's favor, under the totality of the circumstances, we agree with the trial court that defendant's statements were involuntary.

¶ 28 Accordingly, we affirm the court's judgment granting defendant's motion to suppress.

¶ 29 III. CONCLUSION

¶ 30 The judgment of the circuit court of Kankakee County is affirmed.

¶ 31 Affirmed.

***People v. Dawson*, 2024 IL App (3d) 240129**

Decision Under Review:	Appeal from the Circuit Court of Kankakee County, No. 21-CF-49; the Hon. William S. Dickenson, Judge, presiding.
Attorneys for Appellant:	James Rowe, State's Attorney, of Kankakee (Patrick Delfino, Thomas D. Arado, and Laura Bialon, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Attorneys for Appellee:	James E. Chadd, Santiago A. Durango, and Sean Conley, of State Appellate Defender's Office, of Ottawa, for appellee.