SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1088-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VAN SALTER a/k/a, DAVID SALTER,

Defendant-Appellant.

Submitted December 18, 2017 – Decided January 23, 2018

Before Judges Messano and O'Connor.

On appeal from Superior Court of New Jersey, Law Division, Union County, Indictment Nos. 06-07-0696 and 06-07-0697.

Joseph E. Krakora, Public Defender, attorney for appellant (Monique Moyse, Designated Counsel, on the brief).

Thomas K. Isenhour, Acting Union County Prosecutor, attorney for respondent (Izabella M. Wozniak, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Van Salter appeals from an order denying his motion to suppress statements he provided to the police. Defendant claims he failed to render a knowing waiver of his Miranda[1] rights, warranting the suppression of those statements. We affirm.

I

This matter was the subject of two previous appeals. See State v. Salter, No. A-2489-13 (App. Div. October 26, 2015), and State v. Salter, No. A-2687-07 (App. Div. June 3, 2009). In the second appeal, our opinion detailed the substantive and somewhat unusual procedural history of this matter.[2] State v. Salter, No. A-2489-13 (App. Div. October 26, 2015). We do not repeat that history here, except to the extent necessary to put the current appeal into context.

In 2007, defendant pled guilty to second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); and second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7. During the plea colloquy, defendant admitted he got into a

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[1] Miranda v. Arizona, 384 U.S. 436 (1966).

[2] The first appeal, State v. Salter, No. A-2687-07 (App. Div. June 3, 2009), pertained solely to defendant's challenge of his sentence before the excessive sentencing panel.

verbal argument with the victim and subsequently shot him in the face. In the aggregate defendant was sentenced to twelve years in prison, subject to an eighty-five percent period of parole ineligibility.

Before he pled guilty, defendant filed the subject motion to suppress the statements he gave during the police interrogation. He claimed he was either under the influence of heroin or experiencing the effects of its withdrawal, which precluded him from rendering a knowing waiver of his Miranda rights.

During the suppression hearing, the detective who interviewed defendant testified and the videotaped statement was played. During the forty-minute interview, defendant did not confess to shooting the victim. In fact, defendant claimed the victim's associate fired a gun toward him. However, he placed himself at the scene of the crime and indicated there was a conflict between him and the victim, as well as the victim's associate.

Based upon its review of the video recording and, to a limited extent, the detective's testimony, the trial court denied defendant's motion. The court determined there was no indication defendant was impaired during the interview, and

found he had knowingly and voluntarily waived his Miranda rights. The court's specific findings were as follows.

Approximately six hours after his arrest at 9:20 a.m., defendant entered an interview room at the police station. Defendant stumbled just before he sat in his chair, but regained his composure. He appeared to understand the Miranda warnings provided to him at the outset of the interview and waived his right to remain silent. The court characterized defendant's demeanor during the interview as calm and cooperative. The court noted defendant was responsive to each question, articulately expressing himself in a "knowing and willing and intelligent manner."

The court also observed that, but for momentarily losing his balance when he first entered the interview room, defendant did not exhibit any indicia of being under the influence of any substance and, in fact, "look[ed] like that of a very normal person." The court also noted the detective, who had training in the field of narcotics, testified defendant did not appear to be under the influence of drugs.

At one point during the interview, the detective asked defendant if he used drugs. Defendant replied he had a five-bag-a-day heroin habit. When asked when he last "did dope," defendant stated he had done so yesterday. The detective asked

defendant if he were "ok now," to which defendant replied, "I'm alright." Defendant added he planned to go to "Bergen Pines" the following day, but did not identify the kind of facility this was or why he planned to go there.

At another point defendant asked if he could have a cigarette. The detective noted smoking was not permitted in the building, to which defendant merely replied, "Oh." At the end of the interview, defendant asked if he could have the cigarette butt he spotted in an ashtray in the interview room. The detective stated he could not, to which defendant stated, "Come on man." The detective replied, "I don't know why someone let someone smoke" and then ended the interview.

II

On appeal, defendant asserts the following point for our consideration:

> POINT I — THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS MR. SALTER'S STATEMENT BECAUSE THE TOTALITY OF CIRCUMSTANCES ESTABLISHES THAT HE WAS UNDER THE INFLUENCE OF NARCOTICS, OR WITHDRAWING FROM NARCOTICS, AND WAS UNABLE TO KNOWINGLY AND VOLUNTARILY WAIVE HIS RIGHTS. (U.S. Const. amends. V, VI, and XIV; N.J. Const. art. I, ¶ 1).

"A confession or incriminating statement obtained during a custodial interrogation may not be admitted in evidence unless a defendant has been advised of his or her constitutional rights."

State v. Hubbard, 222 N.J. 249, 265 (2015) (citing Miranda, 384 U.S. at 492). "Once a defendant has been so advised, the defendant may waive his or her Miranda rights and confess, but that waiver must be 'voluntary, knowing, and intelligent.'" State v. Hreha, 217 N.J. 368, 382 (2014) (citing Miranda, 384 U.S. at 444). "[T]he State shoulders the burden of proving beyond a reasonable doubt that a defendant's confession was [voluntary]." Id. at 383 (citing State v. Galloway, 133 N.J. 631, 654 (1993)).

Our review of a trial court's factual findings in support of granting or denying a motion to suppress is deferential; specifically, our review is limited to determining whether such "findings are supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014). That deference includes findings based upon a video recording of a police interrogation, live testimony, or a combination of the two. State v. S.S., 229 N.J. 360, 379 (2017). We may not reverse a court's findings of fact unless they are clearly erroneous or mistaken. Id. at 381. However, we review issues of law de novo. Id. at 380.

The determination of whether the State has satisfied its burden of proving beyond a reasonable doubt a defendant's statement was voluntary requires "a court to assess 'the

totality of the circumstances, including both the characteristics of the defendant and the nature of the interrogation.'" Hreha, 217 N.J. at 383 (citing Galloway, 133 N.J. at 654). Here, having examined the record, including the video recording of the interview, we are satisfied the trial court's conclusion defendant's statements were conveyed knowingly and voluntarily after waiving his Miranda rights is amply supported by the evidence.

As the trial court found, defendant was composed and alert throughout the interview, providing clear and coherent responses to all questions and exhibiting no indication his prior use of heroin affected his ability to understand and answer the detective's questions. In fact, when asked if he were "ok" in light of the fact he had used "dope" the day before, defendant responded, "I'm alright."

Although he briefly stumbled when he first entered the room, defendant's actions appeared to be nothing more than a clumsy misstep, rather than conclusive evidence he was under the influence of or suffering the effects of withdrawing from heroin. In fact, at one point during the interview defendant stood up to demonstrate the layout of the crime scene and did not exhibit any unsteadiness or lack of coordination. Defendant did ask for a cigarette during the interview, but he was

satisfied with the answer he could not smoke in the building and did not indicate his inability to smoke would be a distraction. Although the detective did not let him have the cigarette butt in the ashtray, by then the interview had all but concluded.

The fact a suspect makes a statement while under the influence of an intoxicant does not render the statement automatically inadmissible. See State v. Wade, 40 N.J. 27, 35 (1963) (holding that "[a] confession made by a person while under the influence of drugs is not per se involuntary"). In State v. Warmbrun, 277 N.J. Super. 51, 61 (App. Div. 1994), the defendant argued the trial court erred in failing to exclude statements he made when he was too intoxicated to have knowingly and voluntarily waived his Miranda rights. We rejected his argument, finding that because defendant was "capable of communicating[,] . . . was responsive in answering questions[,] and could answer correctly questions such as his name, age, etc.[,]" his statement was properly admitted. Id. at 64.

Here, there is no evidence defendant was under the influence of heroin or suffering from the effects of its withdrawal. Even if he were, there is sufficient credible evidence defendant understood his rights, comprehended the questions posed by the detective, was capable of communicating,

and provided responsive answers. In our view, the suppression motion was correctly denied.

Affirmed.