

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-KA-01051-COA

KADERIUS HAMER A/K/A KEDARIUS HAMER

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 06/07/2019
TRIAL JUDGE: HON. JOHN KELLY LUTHER
COURT FROM WHICH APPEALED: TIPPDAH COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: OFFICE OF STATE PUBLIC DEFENDER
BY: GEORGE T. HOLMES
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: ALLISON ELIZABETH HORNE
DISTRICT ATTORNEY: BENJAMIN F. CREEKMORE
NATURE OF THE CASE: CRIMINAL - FELONY
DISPOSITION: AFFIRMED - 12/15/2020
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

EN BANC.

GREENLEE, J., FOR THE COURT:

¶1. A Tippah County Circuit Court jury found Kaderius Hamer guilty of two counts of capital murder. Hamer was sentenced to serve two life sentences without eligibility for parole. On appeal, Hamer claims the circuit court erred by denying his motion to suppress his confession. Finding that the circuit court did not err in denying Hamer's motion to suppress, we affirm Hamer's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2. On July 6, 2017, Paul Koster and his girlfriend, Ayla Hopper, were shot to death at Koster's residence in Tippah County. Earlier that morning, Tippah County 911 dispatch

received a call from Koster, who stated that there were armed men outside his home. Based upon the recorded 911 call, Koster said he could see the armed men from the live feed on his surveillance system. Kaderius Hamer (“Hamer”), along with his brother, Nakero Hamer (“Nakero”), and his cousins, T. J. Hamer (“T.J.”) and Terrenz Mason knocked and announced that they were with the FBI. Koster opened the door and was immediately shot to death. Koster’s girlfriend, Hopper, was shot multiple times, resulting in her death.

¶3. A Tippah County sheriff’s investigator named Jeremy Rainey was assigned to the case. Investigator Rainey listened to the 911 recording. After listening to the recording, Rainey reached out to the FBI. He was informed that Koster was facing charges for purchasing narcotics from Keith Hamer (“Keith”), Kaderius’s father. Investigator Rainey and the FBI believed that Koster and Hopper’s deaths were connected to the pending federal narcotics case against Keith. It was undisputed that Koster bought drugs from Kaderius’s father.

¶4. The FBI arrested Keith for narcotics trafficking. Law enforcement spoke with Keith about Koster’s death, and he agreed to call his son, Nakero. Keith agreed to see if he could gather any information about the murders, but he also wanted to prove that his son was not involved in their deaths. During the phone call, Nakero confessed that “[he] did it,” and a warrant was issued for his arrest.

¶5. Nakero was arrested and questioned by law enforcement. His interview led to the arrests of Mason and T.J. An interview with Mason resulted in his confessing to being in the car with T.J., Nakero, and Kaderius, but not to shooting Koster and Hopper or knowing that

they were at the residence to kill Koster. Mason's statement led to the arrest of Kaderius.

¶6. On July 11, 2017, Hamer was arrested and interviewed by Investigator Rainey and FBI agent Lawson for two hours. Prior to questioning, Agent Lawson explained to Hamer that he was charged with two counts of murder. Agent Lawson began his initial conversation with Hamer by stating that if he cooperated, they would inform the prosecutor of his cooperation. Agent Lawson explained the charges against Hamer in detail, including that capital offenses could result in the death penalty. Agent Lawson drew a linear scale on a piece of paper illustrating the potential outcomes for the charges. At the end of the scale was the death penalty, and on the other end was very little jail time or better. Agent Lawson twice read Hamer his *Miranda*¹ rights. Investigators then asked Hamer to read the rights and waiver himself to make sure that he clearly understood them. Hamer began contemplating waiving his Fifth Amendment rights. Just before signing the waiver, Hamer explained that he had nothing to do with the situation and that he should be at home. He was informed that the officers could not hear his side of the story without his signing the waiver. Hamer then waived his Fifth Amendment rights, and the interrogation began.

¶7. Hamer was advised of the details and evidence linking him to the crimes. Agent Lawson played the 911 recording of Koster telling the dispatcher of armed men walking up to his back door. After playing the recording, Agent Lawson explained that "everyone who been in the game knows the way to see the light at the end of the tunnel is by helping us." Agent Lawson referenced the "scale" during the interrogation. It was explained to Hamer

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

how his cooperation in discussing his role and the details of the murders would give them something to tell the district attorney.

¶8. More specifically, Agent Lawson told Hamer that “the first one to talk and cooperate gets the best deal.” Agent Lawson explained that he would inform the prosecutor who was the first person to talk, and that person would get the lighter sentence. Agent Lawson advised Hamer that the others would be looking at something “real terrible—the death penalty.”

¶9. Hamer denied being at Koster’s home initially and stated that he was with his girlfriend before going to his grandfather’s house later that night on July 5, 2017. Hamer was informed about the evidence against him, and he questioned what the charges were. Hamer was again advised in detail of the nature of the charges and how coming clean with them would allow him to tell his side. Hamer was told that the district attorney would be told who cooperated and that the first person to cooperate would get the best deal. Agent Lawson then told Hamer that if he stuck with his story, he would die in prison or be executed in the “electric chair.”

¶10. After Hamer continued to deny involvement, Investigator Rainey again reminded him of the evidence and informed Hamer that he could die in prison if he did not begin telling the truth. It was explained that the more he said, the more they have to show the district attorney. As Hamer began talking and implicating himself in the murders, reference was made to the scale originally drawn. Hamer was told that if he cooperated, he would be allowed a visit with his girlfriend. Eventually, Hamer confessed to his involvement in the murders. A grand jury indicted him, and the case was set for trial.

¶11. Hamer filed a pre-trial motion to suppress the confession on May 28, 2019, stating that the confession resulted from threats, coercion, and promises of leniency. At the suppression hearing, the circuit court denied the motion to exclude Hamer’s confession. The circuit court reasoned that Hamer decided to give his statement based on his belief of the proof against him, not because of promises of leniency.

¶12. Following the suppression hearing, Hamer proceeded to trial on June 3, 2019. At trial, Investigator Rainey and Agent Lawson, the officers present during Hamer’s interrogation, and Hamer’s close friend, Justin Martin, testified for the State. Hamer’s interrogation video and signed *Miranda* waiver were admitted into evidence and published to the jury, who returned a verdict of guilty on both counts of capital murder. On June 6, 2019, the circuit court sentenced Hamer to serve two life sentences without eligibility for parole and ordered the sentences to run concurrently. The circuit court also denied Hamer’s motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, a new trial. Now, Hamer appeals the circuit court’s admission of his confession.

STANDARD OF REVIEW

¶13. Whether a confession is admissible is a finding of fact. *Hunt v. State*, 687 So. 2d 1154, 1159 (Miss. 1996) (citing *Lee v. State*, 631 So. 2d 824, 826 (Miss. 1994)). “[U]nless the [circuit court] applied an incorrect legal standard, committed manifest error, or the decision was contrary to the overwhelming weight of evidence,” the circuit court’s determination will not be disturbed. *Id.* “Once a [circuit court] determines admissibility, the defendant faces a heavy burden in trying to reverse on appeal.” *Ruffin v. State*, 992 So. 2d 1165, 1169 (¶8)

(Miss. 2008) (citing *Greenlee v. State*, 725 So. 2d 816, 826 (¶26) (Miss. 1998)).

DISCUSSION

¶14. Hamer challenges the denial of his motion to suppress his statements given to investigators during a custodial interrogation. He asserts that without police inducement and promises of leniency, he would have never given a statement. Without that statement, Hamer maintains that no reasonable juror could have found that sufficient evidence existed to convict him of capital murder.

¶15. The burden rests with the State to prove the voluntariness of the confession. *Scott v. State*, 8 So. 3d 855, 861 (¶24) (Miss. 2008). The burden is met “by the testimony of an officer, or other person having knowledge of the facts, that the confession was voluntarily made without any threats, coercion, or offer of reward.” *Id.* (citing *Bell v. State*, 963 So. 2d 1124, 1134 (¶26) (Miss. 2007)). “This makes out a prima facie case for the State on the question of voluntariness.” *Id.* “The accused is entitled to offer testimony to the contrary, at which point the State must offer the testimony of the officers who witnessed the confession.” *Scott*, 8 So. 3d at 861 (¶24) (citing *Agee v. State*, 185 So. 2d 671, 673 (Miss. 1966)). The circuit court must find beyond a reasonable doubt that a confession was knowingly, intelligently, and voluntarily given and that before a defendant’s custodial interrogation, he was administered his *Miranda* rights. *Id.* at (¶23).

¶16. The record indicates that the officers present during the confession testified at both the suppression hearing and Hamer’s trial. Their testimony “left the decision of whether the confession was voluntary to the [circuit court’s] discretion.” *Scott*, 8 So. 3d at 861 (¶25). Our

supreme court has held that it “will not reverse [the] [circuit] court on conflicting testimony as to whether coercion [was] used to obtain [a] confession.” *Id.* (citing *Bell*, 963 So. 2d at 1134). Further, when determining whether a defendant waived his *Miranda* rights intelligently, knowingly, and voluntarily, the circuit judge must consider the totality of the circumstances. *Martin v. State*, 854 So. 2d 1004, 1007 (¶4) (Miss. 2003). The totality of the circumstances includes “the defendant’s experience and familiarity with the criminal justice system, intellectual capacity, educational background, degree of literacy, emotional state [,] and any mental disease or other defect. *Singleton v. State*, 151 So. 3d 1046, 1052 (¶33) (Miss. Ct. App. 2014). The circuit judge heard testimony that Hamer was in the national guard, attended Mississippi State University, had no criminal history, communicated with ease, and did not demonstrate a lack of understanding during his interactions with law enforcement.

¶17. Furthermore, before the police may question an accused during a custodial interrogation, the accused must be advised of his rights, specifically, the rights to remain silent and to counsel. *Miranda*, 384 U.S. at 444. Upon being informed of these rights, an accused, if he so chooses, may waive them and answer any police questioning. *Jordan v. State*, 995 So. 2d 94, 106 (¶30) (Miss. 2008). However, “[w]aiver of the constitutional rights to remain silent and to counsel must be knowing, [intelligent,] and [voluntary].” *Moore v. State*, 287 So. 3d 905, 912 (¶21) (Miss. 2019). Our supreme court has held that if an accused is fully aware of both “the nature of the right being abandoned and the consequences of the decision to abandon it,” a waiver is knowingly and intelligently made. *Brown v. State*, 130 So. 3d 1074, 1079 (¶11) (Miss. 2013) (citing *Coverson v. State*, 617 So. 2d 642, 646 (Miss.

1993)). “Waiver is considered voluntary if it is the result of a free and deliberate choice rather than intimidation, coercion, or deception.” *Roberts v. State*, 234 So. 3d 1251, 1260 (¶22) (Miss. 2017). A suppression hearing was held during which Hamer argues that promises of leniency induced his confession. Agent Lawson testified that Hamer understood his rights and that Hamer made the decision to waive those rights.

¶18. The record reflects that Hamer was read his *Miranda* rights twice by Agent Lawson. Investigators then asked Hamer to read the rights and waiver himself to make sure that he clearly understood them. By signing the waiver, Hamer voluntarily waived those rights, and he represented that the investigators had not promised him anything or coerced or threatened him.

¶19. Hamer asserts that his confession was involuntary because it was induced by Agent Lawson’s statements that he was facing the death penalty and was currently at the wrong end of the scale. Hamer claims that he waived his Fifth Amendment rights after those statements and eventually confessed his involvement in the double murder.

¶20. While law enforcement did mention the death penalty, made questionable statements, and accompanied those statements with a “best case-worse case scenario scale,” Hamer did not confess until after hearing all the “evidence” the police had against him. Investigators misrepresenting evidence in their possession to a defendant “is a factor to be considered when reviewing the voluntariness of the confession.” *Davis v. State*, 551 So. 2d 165, 169 (Miss. 1989). That factor “should be viewed in the ‘totality of the circumstances.’” *Id.* Upon considering the totality of the circumstances, a confession is voluntary if the accused freely

and rationally decided to give the statement. *Porter v. State*, 616 So. 2d 899, 907-08 (Miss. 1993) (citing *U.S. v. Rogers*, 906 F.2d 190 (5th Cir. 1990)).

¶21. Agent Lawson and Investigator Scott misrepresented several matters to Hamer, including having video of him at the gas station and at Koster’s home. Once informed of these video recordings, Hamer, who initially denied all allegations, admitted to being at both places. The investigators used techniques that have been sanctioned as constitutionally acceptable by both the United States Supreme Court and the Mississippi Supreme Court. *See, e.g., Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (holding that police misrepresentations to suspect did not render voluntary confession inadmissible); *Howell v. State*, 989 So. 2d 372, 385 (¶37) (Miss. 2008). In *Howell*, the Mississippi Supreme Court reiterated the United States Supreme Court’s ruling validating certain “[p]loys to mislead a suspect or lull him into a false sense of security’ are permissible during police questioning as long as they do not ‘rise to the level of compulsion or coercion.’” *Id.* (quoting *Illinois v. Perkins*, 496 U.S. 292, 297 (1990)). In this case, the circuit court found that the investigators’ actions here did not rise to that level.

¶22. Further, “[w]hen reviewing a circuit court’s denial of a motion to suppress a confession, we give great deference to the circuit court’s decision to admit such incriminating statements. This is because the circuit court sits as the fact-finder in these matters.” *Gillett v. State*, 56 So. 3d 469, 484-85 (¶29) (Miss. 2010). “We will not disturb the circuit court’s decision regarding the admissibility of a confession unless the court applied an incorrect legal standard, committed manifest error, or the decision was contrary to the overwhelming weight

of the evidence.” *Keller v. State*, 138 So. 3d 817, 835 (¶16) (Miss. 2014) (internal quotation marks omitted).

¶23. Although the circuit court acknowledged that certain statements made by investigators may, at first blush, appear troublesome as to voluntariness, after watching the entire videotaped statement, he determined Hamer’s confession was made voluntarily and not in response to promises, threats, or coercion. Specifically, the circuit court found:

It’s the court’s opinion that Mr. Hamer decided to give this statement not based on the promise of leniency but based on his belief as to what the proof was against him . . . [a]nd all I can do is rely on what I saw in the video is my opinion that this statement is not the result of coercion or threats

¶24. Here, the circuit court considered the investigators’ testimony, the signed *Miranda* waiver, and “every word” of the videotaped confession. Ultimately, it decided, as the fact-finder, that Hamer’s confession was voluntary. After watching the entire videotaped statement, the circuit court found that Hamer’s incriminatory statement was in response to his belief as to the proof presented by the investigators and not as a result of promises, threats, or coercion. There is substantial evidence to support that finding; therefore, we should not impose our own fact findings in substitution of the circuit court.

¶25. Furthermore, the entire video interrogation was admitted into evidence and heard by the jury, including the investigators’ representations. Although not dispositive, the jury was able to weigh the investigators’ conduct balanced by Hamer’s admissions.

CONCLUSION

¶26. Considering the totality of the circumstances and giving the appropriate appellate deference to findings of fact made by the circuit court, we conclude that the circuit court did

not err in its decision to deny Hamer's motion to suppress his confession to the police.

Therefore, we affirm Hamer's convictions and sentences.

¶27. **AFFIRMED.**

CARLTON AND WILSON, P.JJ., AND LAWRENCE, J., CONCUR. McDONALD, J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION. WESTBROOKS, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY BARNES, C.J., McDONALD AND McCARTY, JJ.

WESTBROOKS, J., DISSENTING:

¶28. Finding Hamer's confession to have been obtained by way of promises, inducements, and coercion, I dissent from the lead opinion. On appeal, Hamer argues that his confession was involuntary and that the circuit court erred in admitting his confession. While being interrogated by Rainey and Lawson, Lawson informed Hamer that he had some rights, but before discussing those rights, he wanted to show him a scale. Lawson then drew a scale on a piece of paper and stated:

On this side is zero which means you're not charged with sh*t. On a first degree murder charge, on this side is the electric chair. When you're charged with first degree murder, you're starting over here. [(Lawson points to the end of the scale referencing the electric chair.)] That's where this whole game starts. Now there's a bottom side to this scale. The bottom side of this scale is what you are in a position to do to start getting away from this right here [(referring to the electric chair end)]. So the first thing comes back to is just talking to me. [You] making this a little bit easier on us, that brings you back a little bit and what brings your back a little bit more is telling me about other people's roles in this. Finally, what brings you back more is telling us about where all of this sh*t is after the fact.

Lawson then proceeded to say, "Just like in the movies, these are your rights," and informed Hamer of his *Miranda* rights. Hamer was then told that the investigators could not talk to him until he signed the *Miranda* waiver.

¶29. After signing the waiver, the interrogation continued, but coerced statements were continuously made. Hamer was told:

Saying what you're saying right now, you're going to die in prison, This is your time to help yourself because once we leave you get what you get from the judge - more than likely the death penalty. . . . The more you tell us stuff about it and recover guns, that's when you get down the scale and closer to here. . . . Every piece of evidence that we get will get you further and further down this line. . . . So now we're doing a whole lot better and now you're here. . . . You want to go as far as you can this way. Last thing a prosecutor wants to hear is that he was seventy-five percent helpful.

Eventually, Hamer confessed to his involvement in the murders.

¶30. Involuntary confessions are inadmissible. *Neal v. State*, 451 So. 2d 743, 750 (Miss. 1984). It must be determined beyond a reasonable doubt that a confession was knowing, intelligent, and voluntary and that *Miranda* rights were given prior to custodial interrogation. *Williams v. State*, 177 So. 3d 836, 839 (¶¶13-16) (Miss. Ct. App. 2015). The State has the burden to prove that a confession was voluntary beyond a reasonable doubt. *Kleckner v. State*, 109 So. 3d 1072, 1081 (¶18) (Miss. Ct. App. 2012). To determine whether a confession was voluntary, the court must consider “the defendant’s experience and familiarity with the criminal justice system, intellectual capacity, educational background, degree of literacy, emotional state and any mental disease or other defect.” *Williams*, 177 So. 3d at 839-40 (¶16). “A confession is voluntary when, taking into consideration the totality of the circumstances, the statement is the product of the accused’s free and rational choice.” *Wilson v. State*, 936 So. 2d 357, 361-62 (¶8) (Miss. 2006).

¶31. “[A] confession must be voluntary and not the result of promises, threats, or inducements to be deemed admissible.” *Greer v. State*, 818 So. 2d 352, 355 (¶9) (Miss. Ct.

App. 2002). Statements to an accused to “tell the truth” and “come clean” are not alone promises of leniency, and statements about informing the district attorney of a defendant’s cooperation without other coercive tactics are not implied promises of leniency. *Divine v. State*, 947 So. 2d 1017, 1020 (¶5) (Miss. Ct. App. 2007).

¶32. But Mississippi precedent is clear that coercion or promises of leniency made to a suspect that give the impression that “cooperation by the suspect might be of some benefit” will render a confession involuntary. *Johnson v. State*, 721 So. 2d 650, 659 (¶30) (Miss. Ct. App. 1998). “A confession made after the accused has been offered some hope of reward if he will confess or tell the truth cannot be said to be voluntary.” *Id.* Our courts have condemned “the practice whereby law enforcement interrogators, or related third parties, convey to suspects the impression, however slight, that cooperation by the suspect might be of some benefit.” *Harper v. State*, 722 So. 2d 1267, 1272 (¶19) (Miss. Ct. App. 1998) (emphasis omitted) (quoting *Abram v. State*, 606 So. 2d 1015, 1031 (Miss. 1992) (negative history on other grounds omitted)). In *Moore v. State*, 493 So. 2d 1301, 1303 (Miss. 1986), our Supreme Court explained that a statement such as “it would be ‘easier on him if he told the truth’” may be “over the line” and involuntary. Therefore, one could easily draw the connection that a scale noting that on one end is execution is more than over the line and a drastic distance from the line.

¶33. It has long been established that “[t]here are practical and institutional limitations upon this Court’s ability to find facts; consequently, much deference is placed upon the trial judge’s full discharge of his responsibility to make findings of fact” concerning *Miranda*

rights and the voluntariness of admissions. *McCarty v. State*, 554 So. 2d 909, 912 (Miss. 1989). Reversals occur when a trial judge fails to make “extensive findings of fact.” *Id.* Our Supreme Court further explained its holding in *McCarty*, by holding that “in the absence of any specific or detailed findings of fact by the trial court as to how it determined that the statement by Johnson was voluntary, we are not bound by the clearly erroneous standard.” *Johnson*, 721 So. 2d at 659 (¶31) (internal quotation marks omitted).

¶34. In the case sub judice, the trial judge’s ruling did not include a factual finding that promises or inducements were not made. The ruling did not make specific reference to controlling caselaw or authority. Nor did the ruling make specific reference to consideration of the totality of the circumstances. Instead, the trial judge acknowledged that this case would be appealed and could result in a different outcome entirely. Conversely, Hamer testified at the hearing that he only confessed because of the promises he was made and the fear of being put to death if he did not confess. Lawson and Rainey both testified and did not deny the content and conduct seen and heard on the video.

¶35. Additionally, as the lead opinion states, before the police may question an accused during a custodial interrogation, the accused must be advised of his rights, specifically, the rights to remain silent and to counsel. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). However, before he was made aware of his rights, he was given a depiction of a scale containing execution on one end and little to no jail time on the other. “Waiver is considered voluntary if it is the result of a free and deliberate choice rather than intimidation, coercion, or deception.” *Roberts v. State*, 234 So. 3d 1251, 1260 (¶22) (Miss. 2017) (internal quotation

marks omitted). Here, Hamer’s confession was clearly not free of intimidation, coercion, and deception.

¶36. Investigators misrepresenting evidence in their possession to a defendant “is a factor to be considered when reviewing the voluntariness of the confession.” *Davis v. State*, 551 So. 2d 165, 169 (Miss. 1989). That factor “should be viewing in the ‘totality of the circumstances.’” *Id.* As the lead opinion has indicated, questionable statements were made, and investigators misrepresented evidence by stating that they had a video of Hamer at the gas station and at Koster’s home. Viewing this evidence in the totality of the circumstances, Hamer had no prior experience with the criminal system, he was in the national guard, and attended Mississippi State University; but he was misled and given inaccurate information in attempts to solicit a confession.

¶37. The record is clear that Lawson and Rainey not only implied that cooperation would be beneficial, they repeatedly conveyed to Kaderius that his cooperation would save his life. Before and while Kaderius incriminated himself, Lawson referenced the scale he had drawn. Lawson can be seen moving Kaderius down the scale toward leniency and back toward harsher punishments based upon what Kaderius said. Such a technique, combined with actual promises of leniency, cannot result in a voluntary confession.

¶38. Kaderius’s confession to his involvement in the subject homicides was obtained by way of promises, inducements, and coercion. A “confession elicited as a result of promises, threats, or inducements is not voluntary.” *Tardy v. State*, 132 So. 3d 550, 552 (¶9) (Miss. 2014) (quoting *Harden v. State*, 59 So. 3d 594, 605 (Miss. 2011)). For the reasons discussed

above, Kaderius's confession was not voluntary and should have been suppressed.

BARNES, C.J., McDONALD AND McCARTY, JJ., JOIN THIS OPINION.