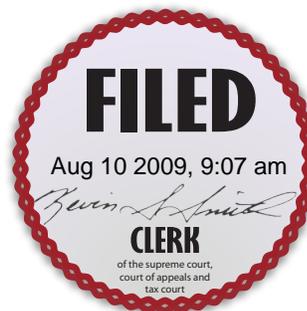


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**IN THE
COURT OF APPEALS OF INDIANA**

LOGAN LASALLE BROWN,)

Appellant-Defendant,)

vs.)

No. 27A05-0903-CR-146

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-0608-MR-154

August 10, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Logan Brown appeals from his conviction for Class B felony conspiracy to commit robbery resulting in bodily injury. On appeal, Brown contends that the trial court abused its discretion by admitting evidence of a confession he made to police. Brown argues that his confession was involuntary in light of his mental ability and a police officer's offer to give him a ride home. Concluding that the trial court did not abuse its discretion because the evidence demonstrates beyond a reasonable doubt that Brown's confession was voluntary and not improperly induced, we affirm.

Facts and Procedural History

On January 16, 2003, Brown, his brother, Alton Moss,¹ and two other men traveled to the home of Jamie and Valerie Smith in Marion, Indiana. Brown and the others planned to rob Jamie of three or four pounds of marijuana they believed to be in his possession. Meanwhile, Jamie, Valerie, their two children, ages seven and nine, Valerie's nephew, Jason Thompson, and a neighbor of the Smiths, Rick Miller, were all present at the Smith residence at that time. Jamie, Thompson, and Miller were upstairs smoking and talking, but when Thompson looked out a nearby window, he saw a man wearing black clothes walking toward the door of the home while rolling a black ski mask down over his face. Tr. p. 248-49. Thompson alerted the group, and he and Jamie ran downstairs. *Id.* at 249.

Jamie grabbed a hammer from a dresser (the couple was in the process of renovating their home) and told Valerie, who had been watching television in the living

¹ Our Court recently addressed an interlocutory appeal from the trial proceedings in Moss's case. *Moss v. State*, 900 N.E.2d 780 (Ind. Ct. App. 2009), *trans. denied*.

room, to stay put and not open the door. *Id.* at 219. Jamie and Thompson stood at the door. Brown, Moss, and one of the other men entered through the door. At that point, Jamie swung at the men with the hammer and began hitting and choking Brown. In response, Moss aimed a handgun at the side of Jamie's chest and fired. The intruders fled without obtaining money, marijuana, or anything else. Jamie died as a result of the gunshot wound about two hours later.

Moss's girlfriend later provided Howard County officials with information about the murder. *Id.* at 389. The information was relayed to officers with the Marion Police Department, who then interviewed Moss, who implicated Brown. *Id.* at 390. On August 12, 2006, Marion Police Department officers were seeking Brown for questioning. Officer Bill Alter of the Marion Police Department had been Brown's landlord for the past four years. *Id.* at 475. Officer Alter approached Brown, who was walking about a block from his home, and asked him if he would come to the police department for questioning. *Id.* at 476. Brown agreed, and he asked if Officer Alter would bring him home when they were done. *Id.* at 477. Officer Alter knew that Brown did not drive and agreed to do so. *Id.* Officer Alter knew about the allegations against Brown but believed that he was not involved with the murder. *Id.* at 51.

Detective Eric Randle and Corporal Robin Young interrogated Brown at the police department, starting at approximately 9:00 p.m. Detective Randle read Brown his *Miranda* warnings, and Brown asked if the detective would trick him. Def. Supp. Ex. B at 4.² Detective Randle responded that he would not. *Id.* Detective Randle questioned

² Defendant's Suppression Hearing Exhibit B, which begins at page 18 of the first volume of exhibits, consists of a transcript of Brown's first recorded interview with the police and was admitted into

Brown to ensure he understood his right to remain silent,³ and Brown had no questions for the officers. *Id.* Brown signed a *Miranda* waiver, Appellant's App. p. 34, and began speaking with the officers. This interview lasted about four hours and included breaks where the officers left the room.

During the interview, Brown told the officers that he had been "born slow" but was not "stupid." Def. Supp. Ex. B at 2, 110. Initially, Brown denied any involvement in Jamie's murder, but Brown eventually confessed that he had ridden to the Smith home with the group as a lookout. *Id.* at 107. He denied ever leaving the car. *Id.* During a break in the interview, Brown and Officer Alter had a second conversation about Officer Alter's offer to drive Brown home. Officer Alter told Brown that at the time he made the offer, he did not realize that Brown was involved in the crime. Officer Alter did not promise that Brown would not go to jail. Tr. p. 55.

About fifteen hours later, at 4:00 p.m. the next day, the officers gave Brown *Miranda* warnings once again, Brown signed a second waiver form, Appellant's App. p. 38, and the officers then began a second interview. During this second interview, Brown again asserted that he did not leave the car. However, he later admitted that he entered the Smith home with Moss and a third man. Brown then gave details about the events at the Smith home that had not been provided by either officer: that the men put the masks

evidence and incorporated into the jury trial record. The transcript is double-sided but is not paginated on both sides for purposes of the record on appeal. As a result, we will cite to the original pagination of the transcript when referring to this exhibit.

³ At one point in the interview, Detective Randle asks, "When it says you have the right to remain silent what does that mean?" Def. Supp. Ex. B at 5 (capitalization altered). Brown responds, "I guess be quiet while ya'll talk." *Id.* (capitalization altered). Detective Randle continues, "Ok. You understand that you don't have to talk right?" *Id.* (capitalization altered). Brown replies, "Guess so." *Id.* (capitalization altered).

on at the door, that Jamie had been waiting for them behind the door with a hammer, that there had been a struggle in the home, that one shot had been fired, that the bullet hit Jamie's side, and that a woman and two other men were in the home at the time. This interview lasted about one and one-half hours.

On August 14, 2006, the State charged Brown with murder, a felony,⁴ and Class B felony conspiracy to commit robbery resulting in bodily injury.⁵ On September 12, 2008, Brown filed a motion to suppress.⁶ At the hearing on Brown's motion, Brown argued that his confession was involuntary because he did not understand his *Miranda* rights before he waived them and because Officer Alter made a specific promise of leniency by offering Brown a ride home. At the suppression hearing, Officer Randle testified that he gave the *Miranda* warnings and Brown indicated that he understood them. Officer Alter testified that there was no doubt in his mind that Brown understood his rights, Tr. p. 53, and that he knew Brown to be a "street smart" individual who had no problems communicating with him in the context of their landlord/tenant relationship, *id.* at 54. A psychologist who had evaluated Brown, who was thirty-four years old at this point, testified that one of Brown's IQ tests demonstrated an IQ of seventy plus or minus six, which is the threshold for mild mental retardation. *Id.* at 107. Brown had completed special education classes up to the twelfth grade and had minimal reading and writing

⁴ Ind. Code § 35-42-1-1(2).

⁵ Ind. Code §§ 35-41-5-2; -42-5-1(1).

⁶ The record on appeal does not contain a copy of this motion or the trial court's order dismissing it.

abilities. After the suppression hearing, the trial court denied Brown's motion to suppress.

Brown's jury trial commenced on September 22, 2008. Brown's confession, among other evidence, was presented to the jury over Brown's objection. The jury found Brown not guilty of murder but guilty of conspiracy to commit robbery. At Brown's sentencing hearing, evidence was presented that Brown had a previous felony conviction for burglary and misdemeanor convictions for theft, unlawful possession of a firearm, and marijuana possession. Brown had also previously been arrested for murder and twice for battery. The trial court sentenced Brown to twenty years in the Department of Correction. Brown now appeals.

Discussion and Decision

On appeal, Brown contends that the trial court abused its discretion by admitting evidence of his confession at trial. Specifically, Brown argues that his confession was not voluntary because he is moderately to mildly retarded and Officer Alter promised him he could go home.

Because Brown appeals following a completed trial, the issue on appeal is whether the trial court abused its discretion by admitting the challenged evidence at trial. *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*. Our standard of review of a trial court's determination as to the admissibility of evidence is for an abuse of discretion. *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001). We will reverse only if a trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* We will consider any foundational evidence introduced at trial as well as evidence

from the suppression hearing that is not in direct conflict with the evidence at trial. *Kelley v. State*, 825 N.E.2d 420, 427 (Ind. Ct. App. 2005). We will also consider evidence from the motion to suppress hearing that is favorable to the defendant and has not been contradicted by foundational evidence offered at trial. *Id.* at 426.

If a defendant challenges the voluntariness of a confession, the State must prove beyond a reasonable doubt⁷ that the defendant voluntarily waived his rights and that the defendant's confession was voluntarily given. *Pruitt v. State*, 834 N.E.2d 90, 114-15 (Ind. 2002), *reh'g denied*. To evaluate a claim that a statement was not given voluntarily, the trial court is to consider the totality of the circumstances, including the following factors: the crucial element of police coercion; the length of the interrogation, its location, its continuity; and the defendant's maturity, education, physical condition, and mental health. *Id.* at 115. The totality of the circumstances test focuses on the entire interrogation, not on any single act by the police or condition of the suspect. *Washington v. State*, 808 N.E.2d 617, 622 (Ind. 2004). “[T]he court must conclude that inducement, threats, violence, or other improper influences did not overcome the defendant's free will.” *Clark v. State*, 808 N.E.2d 1183, 1191 (Ind. 2004).

Here, the evidence supports the trial court's finding that the State proved beyond a reasonable doubt that Brown was fully advised of and understood his *Miranda* rights and that his confession was voluntarily given. Before both interviews, the officers interrogating Brown reviewed his *Miranda* rights with him, and Brown twice signed a waiver of rights. Brown, who was known to be “street smart” and insisted that he was

⁷ Although the Federal Constitution requires the State to prove voluntariness under a preponderance of the evidence standard, the Indiana Constitution requires proof beyond a reasonable doubt. *Miller v. State*, 770 N.E.2d 763, 767 n.4 (Ind. 2002).

not “stupid” even though he was “slow” as a result of his mild mental retardation, had extensive experience with the justice system as a result of his previous arrests and convictions. Tr. p. 54; Def. Supp. Ex. B at 2, 110. The officers testified that they found no indication that Brown did not understand his rights, even if he expressed a little confusion at some points during the interviews. Brown asked no questions about his rights when given the opportunity.

Brown raises no challenge to the manner or length of the interviews themselves. Indeed, the officers gave Brown breaks where they would leave the room, and they offered Brown beverages and opportunities to use the restroom. Tr. p. 41. There is no evidence of threats, intimidation, or violence. There is no evidence that Brown was intoxicated or sleep-deprived. Nor is this a case where the defendant echoed a confession dictated by the police; rather, Brown independently provided details of the events at the Smith home that had not been revealed by the officers.

Brown claims that his statement was involuntary because of Officer Alter’s promise to give him a ride home in combination with his low IQ. But Officer Alter, who knew about the allegations against Brown but did not believe that he was involved, did not promise Brown that he was immune from arrest. Although a confession is inadmissible if it was obtained by promises of immunity or mitigation, “[i]mplied promises are too indefinite to constitute the type of inducement rendering appellant’s confession involuntary.” *Gary v. State*, 471 N.E.2d 695, 698 (Ind. 1984). Most importantly, Officer Alter’s offer does not rise to the level of direct promise, inducement, or impermissible trickery that would render a confession inadmissible. Further, Officer

Alter made the offer of a ride home only after Brown agreed to come with him to the police station.

Nor does evidence of Brown's mild mental retardation alter our conclusion that Officer Alter did not improperly induce Brown's confession by offering him a ride home. At the time in question, Brown did not appear to be incoherent or under the influence. Officer Alter knew Brown to be a street smart individual who was capable of communicating. Further, Brown's criminal history demonstrates his familiarity with the justice system. By signing a waiver, Brown acknowledged that he understood his rights. *See Miller v. State*, 770 N.E.2d 763, 769-70 (Ind. 2002). Although a defendant's education and mental ability are relevant to the issue of susceptibility to police coercion, these factors alone do not render a confession involuntary. *Jackson v. State*, 735 N.E.2d 1146, 1154 (Ind. 2000). The defendant must also allege some misconduct by the police to show a deprivation of due process. *Id.* As stated above, there was no police misconduct in this case. Therefore, based on the totality of the circumstances, we conclude that the evidence shows beyond a reasonable doubt that Brown voluntarily waived his rights and his confession was voluntarily given. The trial court did not abuse its discretion by admitting Brown's confession into evidence.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.