STATE OF MINNESOTA
IN COURT OF APPEALS
A09-552

State of Minnesota,
Respondent,

vs.

Joe Lewis Nixon,
Appellant.

Filed December 22, 2009
Affirmed
Klaphake, Judge

Ramsey County District Court
File No. 62-K2-07-004476

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Blvd., Suite 315, St. Paul, MN 55102 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Joe Lewis Nixon appeals his conviction for first-degree criminal sexual conduct, Minn. Stat. § 609.342, subd. 1(a) (1994), arguing that the district court erred by admitting his confession, which he claims was involuntarily obtained.

Because a review of the record demonstrates that appellant's will was not overborne by police conduct or tactics and his confession was therefore not involuntary, we affirm.

D E C I S I O N

"A defendant is deprived of constitutional due process of law if he is convicted on the basis of an involuntary confession." *State v. Blom*, 682 N.W.2d 578, 614 (Minn. 2004). We review the district court's findings for clear error and its determination of whether a confession was voluntarily given de novo. *State v. Thaggard*, 527 N.W.2d 804, 807 (Minn. 1995).

The test for determining whether a confession is involuntary is a factual inquiry into whether the will of an innocent person would have been overborne by police conduct. *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999). The district court considers the voluntariness of a confession in light of the totality of the circumstances, weighing a number of factors in making this inquiry, including the defendant's age, maturity, intelligence, education, and previous criminal justice system experience, as well as the nature of the interrogation, including the length of the interview and where it took place,

whether the defendant was permitted to contact family or friends, and whether the defendant was deprived of any physical needs. *Id.* at 808.

Part of the inquiry focuses on police conduct and the "use of promises, trickery, deceit, and stress-inducing techniques in obtaining confessions." *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991). Such tactics have been condemned in certain situations. *Id.* But,

> [t]he judicial inquiry . . . is not concerned with whether the police actions contributed to the utterance of inculpatory statements. Rather, in a subjective factual inquiry, the court examines the effect that the totality of the circumstances had upon the will of the defendant and whether the defendant's will was overborne when he confessed.

Id.

The supreme court has refused to condemn the "empathic approach," which the officers employed here, absent other circumstances. *State v. Farnsworth*, 738 N.W.2d 364, 374 (Minn. 2007); *see also State v. Clark*, 738 N.W.2d 316, 333 (Minn. 2007) ("Courts look with disfavor on implied and express promises made by the police during interrogation, but such promises do not automatically render a statement involuntary"). Again, the supreme court has distinguished between promises that guarantee lenient treatment, *State v. Biron*, 266 Minn. 272, 282-83, 123 N.W.2d 392, 399 (1963) (concluding statement was involuntary when suspect was promised juvenile court treatment if he cooperated), and promises in which the police agree to recommend treatment or psychiatric help, *Farnsworth*, 738 N.W.2d at 374, or in which police appeal to conscience or personal integrity, *Clark*, 738 N.W.2d at 335.

Here, appellant was 48 years old and of normal intelligence. He has had extensive contact with the criminal justice system, with a criminal history score of at least 8 at the time of the interview. The interview took place in a room in the halfway house where appellant was staying. He was told that he was not under arrest and could leave at any time, although no Miranda warning was given and he was not aware that the conversation was being taped. The interview lasted a little over one hour. The officers appealed to appellant's love for his family and desire to be able to see them, offered sympathy for abuse in appellant's childhood, suggested that he would be able to get treatment, and that they would recommend that he should get treatment. They made no explicit promise that he would avoid prison by cooperating and specifically told him at the close of the interview that he would be held accountable for his actions. Appellant made no explicitly inculpatory statements during the interview, although he did admit to being in the victim's bed. He denied improper sexual contact.

Based on the totality of these circumstances, we conclude that appellant's will was not overborne during the police interview. Appellant was of an age and experience level to tread warily in the criminal justice system; he did not directly implicate himself, and he was not promised a specific judicial outcome. The district court did not err by concluding that his statement was voluntarily given.

Affirmed.