



Police Law Bulletin



City Attorneys' Office

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In this issue:

Ambiguous Statement by Juvenile Implicating Right to Have Parent Present During Custodial Interrogation Requires Law Enforcement to Clarify Statement Before Continuing Questioning – Pgs. 1-2
Defendant's Incriminating Statements Deemed Voluntary Despite Law Enforcement Officer's Improper Promises – Pgs. 2-4
Defendant Properly Charged with RDO When He Refused to Provide Identification So Officer Could Issue Citation for Infraction - Pgs. 4-5



NORTH CAROLINA COURT OF APPEALS



Ambiguous Statement By Juvenile Implicating Right to Have a Parent Present During Custodial Interrogation Requires Law Enforcement to Clarify Statement Before Continuing Questioning

State v Saldierna, ___N.C.App.____, ___S.E.2d ___ (July 21, 2015).

On December 17 and 18, 2012, several homes in Charlotte were broken into, burglarized and vandalized. Saldierna, who was 16-years-old at the time, was arrested in connection with those crimes. Before asking him any questions about the crimes, Detective Kelly gave Saldierna written Juvenile Waiver of Rights forms in both English and Spanish. Kelly read each part of the English language form to Saldierna as he followed along on the forms in both languages. After reading each paragraph, Kelly asked Saldierna if he understood the right. Saldierna answered “yeah” or “yes ma’am” to the inquiries and initialed each paragraph on the form, including the paragraph which stated “I DO wish to answer questions now WITHOUT a lawyer, parent, guardian, or custodian here with me.”

Then, Saldierna asked Kelly if he could call his mom. Kelly asked, “You want to call her now before we talk?” The officers directed Saldierna to step outside where he could call his mother. His mother, however, was on her lunch break and could not be reached. When Saldierna stepped back into the room with Detective Kelly, she said, “Alright Felix, so, let’s talk about this thing going on...” At this point, Kelly continued her interview with Saldierna, and, over the course of the next hour, he confessed his involvement in the incidents.

Saldierna was indicted on two counts of felony breaking and entering and one count each of conspiracy to commit breaking and entering and conspiracy to commit common law larceny after breaking and entering. He moved to suppress his confession but his motion was denied. Saldierna pled guilty to both felony breaking and entering charges as well as one count of conspiracy to commit breaking and entering, but reserved his right to appeal. On appeal, defendant argued that his request to call his mother was an unambiguous invocation of his right to have his parent present during custodial interrogation, and that, in

the alternative, if his request was ambiguous, due to his status as a juvenile, Kelly was required to make further inquiries to clarify whether he actually meant that he was invoking his right to end the interrogation until his mother was present.

The Court of Appeals decided that the defendant's request to speak to his mother was, at best, an ambiguous request to have his mother present during questioning.

On an issue of first impression, the Court then had to determine whether this ambiguous statement by a juvenile, implicating his statutory right to have a parent present during a custodial interrogation, requires that the law enforcement officer conducting the interview clarify the meaning of the statement before continuing questioning. After noting that the General Assembly has expressed a clear intent to offer greater protections to the rights of juveniles when they are subject to custodial interrogation, the Court held that an ambiguous statement by a juvenile implicating his statutory right to have a parent present during a custodial interrogation requires that the law enforcement officer conducting the interview clarify the meaning of the juvenile's statement before continuing questioning. Failure to do so is a violation of G.S. 7B-2101. Accordingly, the Court granted defendant's motion suppressing his statements to Detective Kelly.

Defendant's Incriminating Statements Deemed Voluntary Despite Law Enforcement Officer's Improper Promises

State v. Flood, No. COA14-179 (18 November 2014).

Defendant went to prison on a charge of sex by a substitute parent, and was on probation for that charge and receiving treatment as a sex offender when the following events occurred:

Detective Schwab of the Hoke County Sheriff's Office received a report in early December 2011 that Defendant had sexually abused some children. Defendant voluntarily met with Detective Schwab at the Pender County Sheriff's Office, and Defendant denied committing the offenses. Defendant subsequently agreed to undergo a polygraph examination. Agent Oaks, a certified polygraph examiner with the SBI, conducted a polygraph examination with the Defendant. Throughout this process, Defendant was not in custody, was given multiple breaks, and was told he was free to leave at any time. Defendant was even informed that he would not be arrested that day, no matter what he said to law enforcement. Defendant failed the polygraph, and Agent Oaks interviewed Defendant about why he had not passed the test. Defendant repeatedly denied that he had done anything wrong, but Agent Oaks pressed him on the issue for about fifty minutes. During the interview, Agent Oaks made numerous statements that she and Detective Schwab might help Defendant or make "recommendations" to the District Attorney's office, including recommending treatment rather than jail time, if Defendant confessed. At times, Agent Oaks indicated that the District Attorney's office would have discretion as to what it would do with their recommendations. Agent Oaks also stated that any offer to help Defendant would expire once their conversation ended. Detective Schwab joined Agent Oaks and Defendant a little over forty minutes into the interview. Defendant asked to speak to his mother on the phone. Agent Oaks again admonished that any offer to help Defendant would expire once their conversation ended. Nonetheless, Detective Schwab obliged Defendant's request and lent Defendant his cell phone. All three then took a brief break and left the interrogation room. During the break, Defendant spoke to his mother on the phone and then to Detective Schwab outside the interrogation room; Defendant asked Detective Schwab what he should do, and Detective Schwab repeated the same sentiments he had previously conveyed to Defendant in the interrogation room. Agent Oaks, Detective Schwab, and Defendant then reentered the interrogation room,

and Defendant began making incriminating statements regarding his having had sexual contact with a child.

Defendant was indicted for rape of a child by an adult, first-degree rape, 7 counts of taking indecent liberties with a child, attempted first-degree rape, 3 counts of sexual activity by a substitute parent, 2 counts of first-degree sexual offense, and 2 counts of first-degree sexual exploitation of a minor. Defendant filed a motion to suppress the statements he had made to Agent Oaks and Detective Schwab. Defendant asserted that, during the interview, Agent Oaks made improper promises that she and Detective Schwab would help Defendant if he confessed, which deceived him and rendered Defendant's subsequent incriminating statements involuntary. The trial court granted Defendant's motion. The State appealed, arguing that Defendant's incriminating statements were voluntary.

Generally, to be admissible, a defendant's confession must be the product of an essentially free and unconstrained choice by its maker. The voluntariness of a defendant's confession is based upon the totality of the circumstances. Factors considered by courts making this determination include, but are not limited to: whether defendant was in custody, whether he was deceived, whether his *Miranda* rights were honored, whether he was held incommunicado, the length of the interrogation, whether there were physical threats or shows of violence, whether promises were made to obtain the confession, the familiarity of the declarant with the criminal justice system, and the mental condition of the declarant.

The trial court concluded that the repeated use of the terms "recommend," "recommendation" and "help" by a law enforcement officer, particularly in view of admonitions from our appellate courts that such terms should not be used during interrogations or interviews, induced a hope or promise of reward or benefits, specifically treatment and probation, by the Defendant. Even though the agent at times sought to explain or limit her use of these terms, the court found the statements to the Defendant exceeded a mere indication of willingness of the agent to discuss the Defendant's cooperation with the District Attorney, and that the overall import of the use of those terms was to induce a hope of benefit or reward for a lighter sentence.

The Court of Appeals agreed that Agent Oaks made improper promises to the defendant. Although Agent Oaks' statements to Defendant were peppered with occasional references to the District Attorney's Office having discretion as to what it might do with her and Detective Schwab's potential "recommendations," the court found it clear that the purpose of Agent Oaks' statements to Defendant was to improperly induce in Defendant a belief that he might obtain some kind of relief from criminal charges if he confessed. The court found that, in fact, Agent Oaks' statements appear to promise that she and Detective Schwab would work with the District Attorney's Office on Defendant's behalf -- if he confessed -- in order to lessen the consequences of the charges that would likely be filed against him.

Having determined that Agent Oaks made improper promises to Defendant, which appear to have encouraged Defendant to make incriminating statements, the court then continued the totality of the circumstances analysis to determine whether Defendant was deceived thereby or had his will overborne and, therefore, was induced to make the incriminating statements involuntarily. Generally, a suspect's confession can be rendered involuntary when induced by an officer's statements that it would be harder for the suspect if he did not cooperate or that the suspect might obtain some material advantage by confessing. However, in the present case, at the time of the interview, Defendant was a competent adult; he was not in custody, and there were no *Miranda* issues; Defendant was not held incommunicado; the length of the interview was reasonable; there were no physical threats or shows of violence against Defendant; Defendant was told repeatedly that he could leave at any time and was given multiple breaks; Defendant was even told that he was not going to be arrested that day, no matter what he said to law enforcement; and Defendant had extensive experience with the criminal justice system -- both through

four years of serving as a trained sheriff's deputy and for a prior conviction of an unrelated sex offense against a child.

Taking all of these factors into account, even though Agent Oaks' statements to Defendant were improper, the court declined to say that the circumstances leading up to and surrounding Defendant's confession were such as to overbear Defendant's will or deceive him. Therefore, the court reversed the trial court's granting of defendant's motion to suppress and remanded the case back to the trial court for further proceedings consistent with its opinion.

Despite the court's holding in the case, officers should pay particular attention to advice stated by the court in its analysis. At the very least, the court noted, Agent Oaks' actions fell outside the best practices that law enforcement officers should follow when interviewing suspects. The better practice is for law enforcement officers not to engage in speculation of any form with regard to what will happen if the suspect confesses.

Defendant Properly Charged with Resisting, Delaying and Obstructing an Officer When He Refused to Provide Identification So That Officer Could Issue Citation for Seatbelt Violation

State v. Friend, No. COA14-336 (2 December 2014).

On August 2, 2012, Captain Sumner and Officer Benton were patrolling a parking lot during their town's annual Watermelon Festival. The officers observed Defendant and his brother enter a pick-up truck with Defendant seated in the passenger side. After Defendant's brother started the truck and put it in reverse, Captain Sumner noticed that Defendant was not wearing his seatbelt and asked him to put it on. However, Defendant did not put on his seatbelt, and he began to back the truck up. Captain Sumner asked Defendant a few more times to put his seatbelt on. However, as the truck backed into the street and began to move forward, Defendant still had not put his seatbelt on. Captain Sumner activated his blue lights and conducted a traffic stop. During the stop, Officer Benton approached the passenger side of the truck and asked Defendant for his identification. Defendant told Officer Benton that he did not have identification and refused to provide the information the officer needed to write him a seatbelt citation. Officer Benton advised Defendant that his refusal to cooperate could result in an additional charge. In response, Defendant exited the truck and turned and grabbed onto the truck bed, "bowing up" his chest and telling Officer Benton to arrest him if he thought he could. Officer Benton then placed Defendant under arrest for resisting, delaying, or obstructing a public officer. It took several officers to put Defendant into handcuffs. During processing at the magistrate's office, Defendant lowered his shoulder and charged into Officer Benton, though Officer Benton was able to sidestep the charge and avoid injury. Defendant was then transported to the Hertford County Jail. Captain Sumner escorted Defendant to a holding cell at the jail, removed the handcuffs, and closed the door to the holding cell, believing it would lock behind him automatically. However, the door remained unlocked, and Defendant was able to open it. When Captain Sumner noticed Defendant standing in the holding cell doorway with the door open, he instructed Defendant to get back inside the cell. Instead, Defendant tackled Captain Sumner, knocking him unconscious and damaging his glasses. Captain Sumner suffered a concussion and scratches on the bridge of his nose and was hospitalized.

A grand jury indicted Defendant for resisting, obstructing, or delaying a public officer (refusing to provide his identity for the seatbelt citation); assault on a government officer (charging into Officer Benton); assault causing physical injury on a law enforcement officer (tackling

Captain Sumner and giving him a concussion); and injury to personal property (damaging Captain Sumner's glasses).

Defendant was tried by a jury, who convicted him of all the charges. The trial court sentenced Defendant to prison for 3-13 months for the assault on a law enforcement officer causing physical injury conviction; 150 days for the assault on a government officer conviction; and 60 days on a consolidated judgment for the injury to personal property and resisting, delaying, or obstructing an officer convictions.

Defendant argues, among other things, that the trial court erred in denying his motion to dismiss the charge of resisting, delaying, or obstructing a public officer because his failure to provide Officer Benton with the information necessary to issue him a seatbelt citation did not constitute resistance, delay, or obstruction.

In the present case, the court found that Defendant's refusal to provide identifying information hindered Officer Benton from completing the seatbelt citation. Accordingly, the Court of Appeals agreed with the trial court's denial of defendant's motion to suppress.

Note: This case does not stand for the proposition that a detained individual must identify him or herself. However, if resolution of a detention based upon reasonable suspicion requires identification of the suspect, then this case provides authority to require some evidence of self-identification by the suspect and supports a charge of RDO if not provided. The officer should be able to articulate that the suspect's failure to identify him or herself actually significantly hindered or prevented the officer from completing his/her lawful course of action. Notice that in the case at hand, the officer was attempting to issue a citation for a seatbelt violation, which is an infraction and therefore, a non-arrestable offense. By refusing to provide reliable evidence of identification, the defendant is preventing the issuance of the citation, which is the only mechanism available to the officer to charge the individual. Had the offense been a misdemeanor, the officer could have arrested the individual for the underlying offense, and the magistrate could delay setting condition of pretrial release until the defendant provided some form of reliable identification. Nonetheless, had the officer preferred to issue a citation, and it was reasonable to believe that the defendant was in possession of identification and simply refused to provide it, then it appears that Friend would support a charge of RDO in addition to charging the underlying offense. While likely lawful, the additional charge of RDO in the latter scenario is not as necessary or compelling as in the former scenario.