

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-655

COMMONWEALTH

VS.

VINCENT E. ADAMS.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

A jury convicted the defendant on one indictment charging breaking and entering in the nighttime with intent to commit a felony, three indictments charging larceny of a motor vehicle, and two indictments charging larceny under \$250. The defendant argues on appeal that his confession was involuntary because it was obtained through police coercion and therefore that his motion to suppress should have been allowed. In particular, the defendant claims that his will was overborne by police suggestions that they would arrest his sister unless he confessed. Because we conclude, as the motion judge did, that the confession was voluntary, we affirm.

Background. The following factual summary is based on our de novo review of the documentary evidence presented at the suppression hearing. See Commonwealth v. Tremblay, 480 Mass.

645, 654-656 (2018).¹ A police officer found the defendant in the front passenger seat of a stolen car with his girlfriend in the driver's seat and his sister in a rear passenger seat. After the defendant's arrest and waiver of Miranda rights,² Detective James Burns of the Pembroke Police Department interviewed the defendant for approximately one hour.

At the beginning of the interview, the defendant -- who was already familiar with Burns and police interviews generally because of his criminal history -- inquired about bail. The defendant then provided a detailed exculpatory account of the night he was stopped in the stolen car, claiming that he did not know that the car was stolen, though he admitted to stealing "a lot" of cars in the past. Burns told the defendant that three cars went "missing" from a garage where the defendant briefly worked. Still, the defendant maintained his lack of involvement and opined that Burns's tactics were ineffective.

Approximately twenty minutes into the interview, Burns stated that he had a complaint for the defendant's sister for receipt of stolen property, saying, "She's going to go, and it's

¹ Neither party presented testimony; the evidence consisted of police reports, a video recording of the defendant's interview, and a form indicating the defendant's waiver of rights under Miranda v. Arizona, 384 U.S. 436 (1966).

² The defendant does not challenge the validity of his Miranda waiver.

up to you, basically, whether I do that." The defendant continued to strongly deny involvement in the thefts.

Burns proceeded to play the defendant a portion of his girlfriend's incriminating police interview. The defendant stated that his girlfriend was lying and later suggested that Burns "got her to say that," though his confidence appeared to decrease after viewing the video recording (video). Burns said that the defendant was "going back" and reiterated that there was a complaint for his sister, "'cause she was in the car -- that's all they need -- they could've arrested all three of you last night." The defendant again denied involvement.

Moments later, now approximately thirty minutes into the interview, Burns listed the evidence pointing to the defendant, which included his girlfriend's admission "to the whole thing." After opining that the defendant could be "buried" with the evidence collected thus far, Burns said that he "really [did not] want to put anything on [the defendant's] sister." The defendant responded that nothing could be put on his sister because "she had no idea about anything." Burns replied, "I don't want to arrest her but I will put in a complaint. It's already done -- the complaint, and that's advised by my boss. I don't have to -- I can -- you know . . . It's you. It's nobody else. It's you." Burns then reiterated the incriminating evidence.

After Burns noted that the location of the third stolen car could corroborate the girlfriend's admission, the defendant commented that that was "not great." When the defendant again asserted his innocence, Burns accused the defendant of not caring about anyone besides himself. The defendant replied that he cared about his deceased mother, his father, and his sister. Burns challenged him to "prove it" by "tak[ing] responsibility for [his] actions." After suggesting that he would be admitting to something he had not done, the defendant briefly paused and then remarked that Burns wanted to know who possessed the stolen car "so bad." When Burns responded affirmatively and told the defendant it was "all in [his] hands," the defendant provided a detailed confession to the thefts.

Discussion. For a defendant's statements to be admissible, due process requires that they "be voluntarily made, as a product of rational intellect and free will, and not as a result of 'inquisitorial activity' by the government such as coercion or threats." Commonwealth v. Hoose, 467 Mass. 395, 403 (2014), quoting Commonwealth v. Walker, 466 Mass. 268, 277 (2013). Once the defendant sufficiently raises an issue of voluntariness, the burden shifts to the Commonwealth to prove beyond a reasonable doubt that the defendant voluntarily made the statements. See Commonwealth v. Tremblay, 460 Mass. 199, 206-207 (2011), and cases cited.

In determining whether a confession was voluntary, we examine the totality of the circumstances "to ensure that the defendant's will was not overborne." Hoose, 467 Mass. at 403. Factors pertinent to this analysis include "promises or other inducements, conduct of the defendant, the defendant's age, education, intelligence and emotional stability, experience with and in the criminal justice system, physical and mental condition, the initiator of the discussion of a deal or leniency (whether the defendant or the police), and the details of the interrogation, including the recitation of Miranda warnings."

Commonwealth v. Mandile, 397 Mass. 410, 413 (1986). Because the defendant's interview was recorded, "we are 'in the same position as the motion judge in viewing the video[]'" and therefore conduct a de novo review. Commonwealth v. Melo, 472 Mass. 278, 286 n.15 (2015), quoting Commonwealth v. Hoyt, 461 Mass. 143, 148-149 (2011).

Based on our review of the interview video, we conclude that the totality of circumstances demonstrates that the defendant's will was not overborne. The defendant, then twenty-three years old, was not restrained during the interview. The defendant denied alcohol or drug intake, did not appear intoxicated, and spoke clearly and articulately. He was composed, "quick-witted," and "consistently self-protective," Melo, 472 Mass. at 291, with no discernable mental or emotional

vulnerability. His calm and confident demeanor only faltered after Burns played his girlfriend's incriminating interview. Significantly, the defendant demonstrated his experience with the criminal justice system by inquiring about bail, showing familiarity with Burns, rebuffing Burns's claims, and identifying police tactics.

In arguing that his confession was involuntary, the defendant points to Burns's statements that he had a complaint for the arrest of the defendant's sister and Burns's implications that the police would not arrest the sister if the defendant confessed. We recognize that "[c]oncern for a loved one may, in certain circumstances, render a confession involuntary." Commonwealth v. Scott, 430 Mass. 351, 355 (1999). But even assuming that the police lacked probable cause to arrest the sister,³ we think it clear that the defendant's will was not overborne by Burns's statements. See Tremblay, 460 Mass. at 208 ("deception or trickery does not necessarily compel suppression"); Commonwealth v. Berg, 37 Mass. App. Ct. 200, 203-204 (1994), quoting Smith, *Criminal Practice and Procedure* § 378 (2d ed. 1983 & Supp. 1994) ("not every promise or inducement

³ The parties spend considerable time discussing the issue of probable cause. To the extent that issue is relevant to whether the defendant's confession was voluntary, it is just one factor in the totality of the circumstances analysis. See Tremblay, 460 Mass. at 208-209.

renders a statement involuntary"). The defendant's sister was neither in custody nor present for his interview. Cf. Commonwealth v. Hunt, 12 Mass. App. Ct. 841, 842-843 (1981) (police brought in defendant's wife, who was in tears, during defendant's interview, leading to his confession).⁴ The defendant did not ask for confirmation that the police would not arrest his sister if he confessed. Moreover, the defendant indicated his disbelief of the police's ability to arrest her.

The temporal proximity between Burns's statements about the sister and the defendant's confession does not tip the balance. First, the defendant continued to deny involvement for over ten minutes after Burns first mentioned that he had a complaint for the sister. Second, although the defendant confessed after he expressed concern for his family members, his confession was also temporally linked to Burns's listing of the evidence against him and the defendant's viewing of his girlfriend's incriminating interview. The defendant's demeanor shifted after he saw this video -- not after Burns's mention of a complaint for the sister. The sequence of events thus supports a

⁴ Hunt, on which the defendant heavily relies, is also distinguishable because, there, substantial deference was accorded to the motion judge, who allowed the motion to suppress after hearing live testimony. See Hunt, 12 Mass. App. Ct. at 843-844.

conclusion that Burns's statements about the defendant's sister did not induce an involuntary confession.

In sum, the defendant made a measured decision to confess; rather than being an impulsive reaction to a coercive police tactic, the confession was detailed and reflective, and even included thoughtful commentary on his accomplice's missteps. See Commonwealth v. LeBlanc, 433 Mass. 549, 555 (2001) (slow and careful repeating of narrative supported finding of voluntariness). Our review of the interview video leads us to conclude that the defendant's confession was a product of his free will.

Judgments affirmed.

By the Court (Neyman, Shin & McDonough, JJ.⁵),



Clerk

Entered: November 26, 2019.

⁵ The panelists are listed in order of seniority.