[Cite as *State v. Bohanon*, 2008-Ohio-1087.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89443

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

TAMIKA BOHANON

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-481262

BEFORE: Rocco, J., Cooney, P.J., and Blackmon, J.

RELEASED: March 13, 2008

JOURNALIZED:

[Cite as *State v. Bohanon*, 2008-Ohio-1087.]

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[Cite as *State v. Bohanon*, 2008-Ohio-1087.]
KENNETH A. ROCCO, J.:

{¶ 1} The State of Ohio appeals from a common pleas court order granting defendant-appellee Tamika Bohanon's motion to suppress. We find no error and affirm the common pleas court's decision.

{¶ 2} Appellee was indicted for one count of theft on June 1, 2006. She was found incompetent to stand trial, but was later restored to competency. She filed a motion to suppress oral and written statements, upon which the court held a hearing on February 5, 2007. After the hearing, the court granted the motion to suppress. The state then filed the instant appeal, and the common pleas court stayed further proceedings.

{¶ 3} At the hearing on the motion to suppress, the court heard the testimony of Detective Donald Ivory of the Cleveland Clinic Police Department. Detective Ivory testified that he was assigned to conduct a follow-up investigation concerning a theft which occurred near the Cleveland Clinic Emergency Room on March 13, 2006. He first reviewed surveillance video with his partner, Detective Bennie. The video showed that the victim, Bobbette Henderson, left her purse in a vending area in the presence of family members for 15 to 20 minutes. After the last two family members – appellee and the victim's sister, Alicia Henderson – left the vending area, appellee returned alone and then immediately entered the restroom. She stayed there for approximately 40 seconds then walked out again. The victim's purse was recovered from a trash receptacle in the restroom. Cash totaling some $632 was missing from

the purse.

{¶ 4} After reviewing the surveillance video, Detective Ivory interviewed the victim, her sister, and her sister's boyfriend. He gave each of them his card, and asked them to have appellee call him. Appellee did call and arranged to meet Detective Ivory on April 10, 2006 at 2:00 p.m. to talk "about the incident that happened at the emergency when you were up here with your aunt."

{¶ 5} Detective Ivory and his partner interviewed appellee in an office at the Cleveland Clinic. The two detectives were dressed in suits and ties. The office was equipped with a desk, a computer, three chairs and filing cabinets. The door was left open during the interview. The detectives informed appellee that she was free to leave and was not under arrest, and offered her something to drink, which she declined.

{¶ 6} The appellee said she understood she was there because "some money came up missing from my auntie." She denied having anything to do with it. The detective then told her that "we have you on video. Either we can try to work this out, or you can try to pay the restitution back to your aunt. We can get rid of this, try to settle the matter right now." Appellee began to cry. Detective Ivory asked her why she needed the money, and she told him she needed an abortion. She also told him she was on probation, and worked at a nursing home. He asked appellee "why don't you just write a letter of apology to your aunt. Maybe she will understand. You can sit down and you can talk with her." Appellee then wrote a

letter to her aunt. The state introduced as evidence a copy the letter signed by appellee, which states:

> Dear Bootiey [sic]
>
> I'm so sorry that I told you I didn't take your money but I did and it will never happen again I love you more than life itself but I just was on some bullsh– [sic] and not thing [sic] about what would happen to me I'm crying because I hurt you a lot and I could of [sic] just ask [sic] you would [sic] give it to me my mind was not working at that [illegible].
>
> /s/ Sign Tamika Bohanon

After appellee finished the letter, Detective Ivory told her that he was "going to have to talk to your probation officer, and let them know of the situation, and I will be filing the charges in the Grand Jury." Appellee responded that she understood and "I'll talk to my aunt; maybe we can work this out."

{¶ 7} The court noted that at the time appellee's competency was evaluated in August 2006, appellee was found to be mildly mentally retarded, with a documented IQ testing of 66. She also suffered from a psychotic disorder and was taking two anti-psychotic drugs. She was unable to understand the nature and objective of the legal proceedings and to assist her attorney at that time. The report establishing her restoration to competency diagnosed appellee as suffering from bipolar disorder and borderline intellectual functioning.

{¶ 8} At the conclusion of the hearing, the court determined that appellee's admission and written apology were not voluntary, and therefore would be excluded.

{¶ 9} The trial court's conclusion that appellee's confession was not voluntary

was a legal determination which we review de novo. *Arizona v. Fulminate* (1991), 499 U.S. 279, 287. "In deciding whether a defendant's confession is involuntarily induced, the court should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." *State v. Edwards* (1976), 49 Ohio St.2d 31, paragraph 2 of the syllabus.

{¶ 10} A defendant's mental condition is a significant factor in determining the voluntariness of a confession, but it "does not justify a conclusion that a defendant's mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional 'voluntariness.'" *State v. Lynch*, 98 Ohio St.3d 514, 2003-Ohio-2284, ¶55 (quoting *Colorado v. Connelly* (1986), 479 U.S. 157, 164). Thus, while appellee's low intelligence and psychosis are important factors in our analysis, we consider them in relation to evidence of official inducement in determining whether appellee's confession was voluntary.

{¶ 11} In this case, we find subtle inducement inherent in the detective's suggestion that they "could get rid of this, settle the matter right now," and that appellee should write her aunt a letter of apology and sit down and talk to her. Perhaps an Oxford don would have recognized the legal implications that an apology would have, but someone of appellee's limited intelligence and psychological condition would not.

{¶ 12} Some twenty years ago, one of our fellow courts of appeals determined that asking the subject of an interrogation to write a letter of apology was "suspect":

> Such a procedure, in lieu of asking for a formal confession, is hardly consistent with modern police practice and certainly suggests a lack of forthrightness on the part of the officer. While we hold that under the totality of the particular facts and circumstances of this case the record supports the trial court's finding that the confessions were voluntary, we do not give judicial imprimatur to this procedure. Under other facts and circumstances, it could well be the factor that tips the balance in favor of an accused.

State v. MacDonald (Jan. 13, 1988), Hamilton App. No. C-860833. We find the inducement inherent in the officer's suggestion that appellee write her aunt a letter of apology, combined with appellee's limited intelligence and psychological conditions, rendered her confession in this case involuntary. Accordingly, we affirm and remand for further proceedings consistent with this opinion.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, JUDGE

PATRICIA ANN BLACKMON, J., CONCURS

COLLEEN CONWAY COONEY, P.J.,
CONCURS IN PART, DISSENTS IN PART
(SEE ATTACHED CONCURRING IN PART,
DISSENTING IN PART OPINION)

COLLEEN CONWAY COONEY, P.J., CONCURRING IN PART, DISSENTING IN PART:

{¶ 13} I respectfully dissent. I would reverse the trial court's suppression of Bohanon's oral confession to police but affirm the suppression of the written confession which was characterized as a letter of apology to Bohanon's aunt.

{¶ 14} First, it is important to note that the sole argument Bohanon's counsel raised at the suppression hearing was the lack of *Miranda* warnings. He claimed she was not free to leave and was coerced into confessing. He argued that she was required to write the apology so she could leave and, thus, it was not voluntary.

{¶ 15} The trial court stated it must consider the totality of the circumstances and noted that Bohanon was on the court's mental health docket. The court noted the initial deception employed by the police when they informed Bohanon that the video showed she did something. Further deception the court found included the suggestion of a written apology, the threat of jail, and the threat to call Bohanon's probation officer. Moreover, the court viewed the written apology with no punctuation as evidence of Bohanon's low I.Q. Therefore, the court concluded the questioning of Bohanon which resulted in the admissions and "apology" was not voluntary, and the court suppressed both the written and oral statements.

{¶ 16} In reviewing a trial court's ruling on a motion to suppress, the reviewing

court must keep in mind that weighing the evidence and determining the credibility of witnesses are functions for the trier of fact. *State v. DePew* (1988), 38 Ohio St.3d 275, 277, 528 N.E.2d 542; *State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583. A reviewing court is bound to accept those findings of fact if supported by competent, credible evidence. See, *State v. Curry* (1994), 95 Ohio App.3d 93, 96, 641 N.E.2d 1172, citing, *State v. Schiebel* (1990), 55 Ohio St.3d 71, 564 N.E.2d 54. The reviewing court, however, must decide de novo whether, as a matter of law, the facts meet the appropriate legal standard. Id., see, also, *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906.

{¶ 17} I would find that the court's findings of fact are not supported by the evidence.

{¶ 18} In determining whether a statement is voluntary, the court must consider the totality of circumstances, including the suspect's age, mentality and prior criminal experience, the length, intensity and frequency of interrogation, the existence of physical deprivation or mistreatment, and the existence of threat or inducement. *State v. Edwards* (1976), 49 Ohio St.2d 31, 40-41, 358 N.E.2d 1051; *State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, 824 N.E.2d 959. The Ohio Supreme Court has found that deficient intelligence is but one factor in the totality of circumstances to be considered when determining the voluntariness of a confession. *State v. Lynch*, 98 Ohio St.3d 514, 2003-Ohio-2284, 787 N.E.2d 1185. Although a defendant's mental condition is a significant factor in deciding whether a confession

was voluntary, it "does not justify a conclusion that a defendant's mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional 'voluntariness.'" Id., quoting, *Colorado v. Connelly* (1986), 479 U.S. 157, 164, 107 S. Ct. 515, 93 L. Ed. 2d 473.

{¶ 19} First, there is no testimony to support the court's finding of deception regarding the video. The detective told Bohanon she was on the video, a truthful statement.

{¶ 20} Secondly, in regard to her mental status, the trial court found it unacceptable that the police suggested Bohanon write an apology letter to her aunt. The trial court described Bohanon as a "vulnerable, crying individual, with an I.Q. of 66, suffering from bipolar disorder, on numerous medications, and as we found out later, incompetent." However, I find no evidence to support that the police had any indication at the time they spoke to her on the phone or when they interviewed her that she was on medication, had a low I.Q., or had been diagnosed as mildly mentally retarded. In fact, the trial court acknowledged at the hearing that there was nothing in Bohanon's behavior that would indicate to the detectives that Bohanon suffered from a mental deficiency. And although Bohanon was later determined to be incompetent, the court psychiatric clinic found her unable to assist in her own defense and incompetent to stand trial. The clinic's findings never suggested that her condition precluded her from making voluntary statements at the time of the police interview. I see no evidence to support that she was actively suffering from a

psychotic disorder or other mental deficiency at the time of her oral statements.

{¶ 21} Third, I find no evidence to support the trial court's determination that the detective's statement to Bohanon that he was going to contact her probation officer constituted a threat or that she was ever threatened with jail time. To the contrary, the record reflects that it was Bohanon who first mentioned that she was on probation. Moreover, Det. Ivory did not mention that he would contact her probation officer until the end of the interview, after her oral statements had been made. There is nothing in the record to support the finding that she was intimidated, threatened, or coerced into making the oral confession.[1]

{¶ 22} Moreover, in reviewing the totality of the circumstances, I would note that Bohanon, at age 26, was not new to the criminal justice system, having previous convictions for receiving stolen property and aggravated arson. She arranged the date and time of the interview, arrived wearing her "nursing uniform," and willingly answered police questions in an office setting, with the door open.

{¶ 23} Therefore, I would find that Bohanon's oral statements were voluntary and reverse the court's suppression of those statements.

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[1]I would affirm the suppression of the written apology as a confession, but it came after her oral statements which I would not suppress.