

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

IN DISTRICT COURT
SIXTH JUDICIAL DISTRICT
CRIMINAL DIVISION

STATE OF MINNESOTA,

Court File #69VI-CR-15-736

Plaintiff,
v.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER AND JUDGMENT

BRUCE WAYNE CAMERON,

Defendant.

DATE OF HEARING: July 28, 2016

DATE SUBMITTED: October 11, 2016

APPEARANCES: For Plaintiff
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The above matter came on for a Contested Omnibus hearing at the St. Louis County Courthouse, in Hibbing, Minnesota, before the Honorable David E. Ackerson, Judge of District Court. The Defendant is challenging the sufficiency of the evidence against him on grounds of: the constitutionality of the juvenile court certification statute; probable cause for a search warrant; failure to give Miranda warnings prior to interviews that led to incriminating statements; and voluntariness of Defendant's confession.

Based on the testimony at the hearing, the parties' stipulations as to evidence, the record of discovery herein, and all of the file and proceedings herein, THE COURT HEREBY MAKES THE FOLLOWING:

I.

COMPETENCY

FINDING OF FACT

1. The Defendant, Bruce Wayne Cameron, a Native American male, date of birth January 7, 1971, is charged with Murder in the Second Degree in the death of Leona Mary Maslowski, 83 years old, on or about October 4, 1987, when the Defendant was 16 years of age.

2. At the request of defense counsel, a Rule 20 Evaluation of the Defendant's competency was ordered, and the report was filed on July 18, 2016, MNCIS file entry #89. The parties agreed to rest on the record as to a determination of the Defendant's competency to proceed to trial herein.

3. This court has reviewed the report which contains an opinion that the Defendant is competent at the present time.

4. Based on the present record, this court finds that the Defendant is able to understand the charges and proceedings against him and to consult and cooperate with his legal counsel.

II.

CONSTITUTIONALITY OF JUVENILE CERTIFICATION STATUTE

5. The Defendant was 16 years of age when the alleged offense was committed; he was 44 years old when charged herein. The Defendant claims that the juvenile certification statute, Minn. Stat. §260B.193 subd. 5(d), is unconstitutional as applied to him because under the statute there is no opportunity for him to seek to have the charges against him handled in juvenile court. The Defendant rests on the record as to this issue and makes no further argument.

6. The State argues that pursuant *State v. Behl*, 564 N.W.2d 560 (Minn. 1997), and related case law, the statute is constitutional as a matter of law.

7. This issue is purely a legal issue that requires no additional findings of fact.

III.

PROBABLE CAUSE FOR SEARCH WARRANT

8. The Defendant challenges probable cause for a search warrant to obtain for the Defendant's palm print, that was issued on April 8, 2015. The Defendant rests on the record relative to this challenge.

9. At the time of the search warrant application, law enforcement had become aware from a subsequent case in 1992 involving the Defendant that the latent fingerprints on a door frame in the victim's apartment, near where her body was found, were positively identified as belonging to the Defendant.

10. A palm print had also been located at the scene near the fingerprints.

11. Under the circumstances, this court finds that an adequate factual basis was present to justify issuance of the search warrant to secure the Defendant's palm print for comparison purposes.

IV.

FAILURE TO GIVE MIRANDA WARNING

12. The Defendant was questioned on April 8, 2015 for approximately two hours and again on June 2, 2015 for approximately two and one half hours. No Miranda warning was given on either occasion.

13. On both occasions the interview took place in an interview room at the Virginia Police Department. A Minnesota Bureau of Criminal Apprehension (MBCA) detective and Virginia police department detective were present at the first interview; there were two MBCA detectives conducting the second interview.

14. On both occasions the Defendant was told that he was not under arrest and was free to leave. On the first occasion, the Defendant did in fact end the questioning by indicating he had nothing more to say, and was allowed to leave.

He also attempted to end the second interview, but the officers continued to question him until he eventually made incriminating statements in the nature of a confession of guilt.

15. On both occasions, the nature of the questions were such that the detectives were focusing on the Defendant as the person who killed the victim and were attempting to obtain inculpatory statements from the Defendant.

16. The room was small and confining, with Defendant seated away from the door, making it difficult for the Defendant to end the interview and leave. While these circumstances contributed to the coercive nature of the interview and are relevant to the issue of the voluntariness of Defendant's statements as discussed below, nevertheless, under all the circumstances, a reasonable person in Defendant's position should have realized that he was free to leave.

V.

VOLUNTARINESS OF CONFESSION

17. The Defendant was interviewed for a total of four and a half hours on two separate occasions; for two hours on April 8, 2015 and an additional two and a half hours on June 2, 2015. During the April 8, 2015 interview he denied any involvement and made no incriminating statements. Prior to any incriminating statements June 2, 2015, he attempted to end the interview, Omnibus Hearing exhibit #8, page 9:

"PG ["PG = Paul Gherardi, Special Agent/Minnesota Bureau of Criminal Apprehension"]

PG "... I'm gonna sneak in there, I'm sure

those older guys were talkin' about how easy of a mark she is, go down steal booze from her or you know, she got the cash in the old sock drawer.

JK ["JK = Jerry Koneczny, Special Agent/Minnesota Bureau of Criminal Apprehension"]

JK Can't hear, doesn't see well.

PG Sneak in there, grab some cash and you're gone, none is the wiser.

JK The thing is, is that the county attorney's office is (SOMEONE COUGHS) gonna need to know how to proceed here. *And, and the thing is if this is something that needs to stay in juvenile court then we need to know that. If this is something that should be in adult court, we're gonna need to know that. (Emphasis added.)*

PG I know you agree with us, Bruce. Tell me, you're gonna feel better g-, gettin' it off your chest.

BC ["BC = Bruce Cameron"]

BC Okay, ... couple, couple more days to think about it and get back or.

PG W-, nothin's gonna change in two more

days ya know ...

BC ... oh I know but I just gotta think about this. This is a lot to think about.

PG Well, do you, do you not trust us, is there some'm you think we're playing ...

BC ... no, no ..."

At that point the interview did not end, but continued with the two detectives going on at length about wanting to help the Defendant to keep his case in juvenile court if he makes a confession, and about how they're going to take his DNA and obtain DNA evidence and after that they will not need any statement from him in the future. See page 10 of June 2, 2015 transcript.

18. The detectives told the Defendant that they had a search warrant for DNA which they described as "touch DNA" that would prove the Defendant to be guilty, and that after obtaining it they would have no further need for a statement, that to obtain juvenile court leniency he had to acknowledge his guilt right at that time or he would be eventually sent to prison.

At the bottom of page 11 of the June 2, 2015 interview:

"PG ... tell us what direction we should go, Bruce. *Have control on your outcome.*
(Emphasis added.)

JK Yeah you, you really do have the, you, *you really do have kind of control over your destiny here as far as how you want*

this to play out for ya. Um, a-, and I'll tell you right now if you're worried that, you know if you, if, if you're worried that you're not leaving here today, that's not the case. I will tell you that right now. The county attorney's office basically has told us that um, they wanna know from you why this happened, what's all involved, they wanna know why that is. Um, and *they've basically said to us that you know um, at this point we're gonna treat this as a juvenile matter.* Um, we're not to arrest you or ah, we're to get the information provided to their office ah ... (Emphasis added.)

PG Get the DNA.

JK Get the DNA and, and go forward. That's their mindset right now. Um, *if the DNA stuff goes in and it comes back there's, there's, there's more links, that's gonna take your ability to keep this in juvenile court,* I think, pretty much out of the possibility because at that point in time, you know it, what would be, what would be the reason. And like Paul said, you know there's been every ... (Emphasis added.)

PG (INAUDIBLE)

JK ... I can't protect you from yourself by

making bad decisions. You know I know where'd I wanna be on this deal. I'd wanna be in juvenile court, I'd wanna stay in juvenile court. I would not want to go into adult court because of the, the ramifications of it.

BC Okay."

19. The statement that Defendant's DNA would convict him of murder turned out to be a misrepresentation. The BCA lab results indicate that there is no evidence that Defendant's DNA was present at the murder scene. Pursuant to MNCIS entry #78 at page 9, a MBCA lab analysis dated December 18, 2015 of male DNA found at the murder scene located on item 10-7, described as a swabbing from the back of a towel, further described as a "hand towel from the bathroom near the body of Leona Mary Maslowski" indicates at the bottom of page 1 as follows:

The Y-chromosomal DNA as follows:

Item 10-7
<ul style="list-style-type: none">• Mixture of four or more male individuals• Major profile does not match Bruce Wayne Cameron, Bryan John Klabunde or Guy James Nicolls

20. While at the time of the June 2, 2015 interrogation the MBCA detectives did not know that these DNA results from the search warrant executed on June 2nd after the interview of the Defendant would in fact not match the Defendant's DNA, their statements that the Defendant's DNA would in fact be found at the scene and thereby conclusively convict

him of the crime, were factual misrepresentations concerning the DNA results. Taken together with their further frequently repeated misrepresentations concerning juvenile law to the effect that the Defendant could control his destiny and obtain juvenile court treatment rather than facing an adult court sentence for Second Degree Murder, if, but only if, he confessed immediately, these misrepresentations of the circumstances were so coercive as to completely overcome the will of the Defendant, and to compel him to make inculpatory admissions at that very time and place.

21. Prior to making his admissions, the Defendant repeatedly denied any involvement in the crime, not only throughout the earlier interview on April 18, 2015 but also again during the first part of the interview on June 2, 2015. For example, during the interview of June 2, 2015 at page 5:

"PG And at this point you can have some control in that. We tell the story, you know, prosecutor, well let's, let's try him as an adult and, and go for the full boat here. Get him certified as an adult and like we'll throw the book at him. Or we can talk about it, and I told you before, Bruce, this would, this happened last week it'd be a different story. We want closure, the family wants closure and I think deep down inside, you in your heart, you want some closure too so you can move on with the rest of your life and not have this weighing on your shoulders. You ready to tell us what happened in that room, Bruce?"

BC Just don't remember (INAUDIBLE) I don't know what to tell you about."

22. Not only did the Defendant repeatedly deny any involvement in the crime prior to making his admissions, but the record does not indicate that he ever, on any occasion after the June 2, 2015 interview, acknowledged or reaffirmed his admissions. At the time of the Rule 20 Evaluation Report, that was based on an interview between the examiner and the Defendant that took place on June 21, 2016, approximately one year after the inculpatory admissions by the Defendant, the Defendant told the examiner unequivocally that he was not involved in the alleged crime. The report states at page 3 as follows:

"... When asked if he remembered what happened, he stated, "No." He told the examiner, "I think I was persuaded to say I did it, they pressured me and pressured me." He told the examiner, "I don't think that I've hurt anybody in my life." When asked why police picked him up, he told the examiner, "I must have said something." He admits that he was at a party in the upstairs of the house when it occurred. He told the examiner, "I was drinking beer and probably smoking marijuana." When asked what happened later, he told the examiner, "I went home around midnight. I don't know when she died." He reported that several other people that were at the party may also be suspects. He believes that one of them committed suicide about a month after the old lady died."

23. During the June 2, 2015 interview, after the MBCA detectives indicated to the Defendant that it was necessary for him to confess immediately if he wanted the benefit of avoiding

adult court, the detectives continued to lead the Defendant in an extreme manner by suggesting to him what specific factual responses from him would be acceptable to them. In fact, well over 90% of the talking going on in the interview was by the detectives, and the Defendant's answers were mostly one word or one phrase. Eventually at page 13 of the interview, after the Defendant had in effect attempted to end the interview (see Finding of Fact #17 above), the detectives assumed facts that the Defendant had not previously acknowledged, and in effect jumpstarted his admissions by presuming these facts in a speculative fashion. At page 13:

JK ... what bothers me the most about this is because I know that you really control your destiny here for how this is gonna get resolved. ... That's, that's your decision to make. ... I think we're all pretty much (SOMEONE COUGHS) in agreement that you were there when this happens. The question just becomes is why this has happened.

PG And at, tomorrow morning at 9:30 a.m. your DNA will be in our lab in St. Paul. I'm driving it down there myself. How'd you get in the room, Bruce?

JK You were there, right?

BC Yup at party.

JK Okay.

PG Bruce ...

JK ... (INAUDIBLE) but you were in the room with her. You were downstairs with her.

PG Which way did you get in? Start there. Was it money or booze that you were trying to get?

BC It was booze."

The detectives in effect told the Defendant that he was present in the victim's home, and then asked him whether his motivation was money or booze, and thereafter the Defendant made a statement implying that he was in fact present. Thereafter, the Defendant's answers appear to be a matter of guessing what the supposedly correct answer to the detectives question should be. At the bottom of page 13:

"PG Did they send you down there go grab it?

BC I think so, yeah.

PG You were the youngest, you know. She catch you in the act?

BC Think so, yeah."

24. During the interview the detectives subsequently steered the Defendant into admitting not only that he was there but that he was surprised by the victim, and then pushed and punched her, and then ran away. At page 15:

"PG She confronts you, how do you respond?

BC Like I ran.

PG Well you did more, more than run,
Bruce. What happened? Did you hit
her?

BC Just knocked her over."

At page 16:

"PG Okay. Then what happened?

BC I just went out.

PG Bruce, I, I know that's not true. I
know that's not true Bruce."

25. The detectives continued to lead and steer the Defendant into further admissions so as to attempt to fit his statement into the known investigative facts of the case. This leading was so extreme, again assuming facts not previously stated by the Defendant, as to seriously impugn the reliability of the admissions. At page 21:

"PG Bruce, we know you continued to assault
her. Tell us the details.

JK The injuries that are on her are not all
caused by being pushed down and by a
human hand. *So there's another object
that was used.* (Emphasis added.)

PG *Where did you get it from? Did you bring it with ya as part of the plan?*
(Emphasis added.)

BC No.

JK Or was it something at the house?

BC It was some'm at the house.

PG What was it?

BC *Was it a candle holder or?* (Emphasis added.)

PG *A what?* (Emphasis added.)

BC Candle holder or.

PG A candle holder? Oh you, you're shaking your head (INADUBILE) I think you know ...

BC ... (INADUBILE)

PG I think you know. What was the object that you used? Where did you get the object?

BC It was on the shelf or some'm or.

PG And, and where?

BC In the apartment or.

PG (INAUDIBLE) Did you have to leave the room to get it?

BC See I don't remember, it's kinda hard guys."

It appears that the detectives were totally surprised when the Defendant indicated that he had used a "candle holder". There is nothing in the record of the investigation to indicate that such an item was involved. In terms of reliability of the Defendant's response, the Defendant's statement simply does not fit the facts, notwithstanding the extreme suggestiveness of the questioning.

26. The statement by the Defendant that he used a candleholder to assault the victim was followed by additional lengthy interrogation in which the officers attempted to further steer, lead, and draw out the Defendant into making more detailed admissions that could possibly be corroborated by the evidence of the investigative scene. At page 34:

" PG ... We know the details of her death. You know that right?

BC Yeah.

PG We know that. You just gotta tell us.

BC Was there a knife, I don't know.

PG You, I'm asking you. I don't wanna feed that to you. I want you tell me. Did you hit her with a baseball bat?

BC No.

PG Did you hit her with a chair?

BC No.

PG A frying pan?

BC No.

PG A bottle of booze?

BC Possibility.

PG I'm a-, no, did you hit her with a
bottle of booze?

BC Yeah, maybe.

PG Maybe? Um, did you kick her when she
was down?

BC I don't recall.

PG Did you kick her in the head?

BC Not that I know of, no.

PG Did you choke her with something? A
phone cord ah, a um, petha, piece of
clothing?

BC Don't recall that (INAUDIBLE)

PG Did you choke her with her hand, with your hands?

BC Possibility but I'm not sure.

PG You, what, what makes you not sure?

BC It's been so long since this happened?

PG Have you choked anybody e-, before?

BC No.

PG Did you, you know ...

BC ... never harmed anybody, no.

PG Okay so you know this moment like yesterday, Bruce. I know you do. It's impossible not to. I know you don't wanna think about it but you do know.

JK I need you to think about it. I, I need you to get past this.

PG We wanna believe that you're not the cold blooded killer.

BC Okay.

PG Okay, we wanna believe that. Part of us deciding that is how willing you want to make amends for what happened. And in order to make amends for what happened

you have to rip the band-aid off and tell us everything that happened. Then we know, yup, Bruce was forthright with us. Show us that you're that person. And I, I haven't seen it, we're getting closer but I th- you could spill this out like, like some'm you experienced yesterday. No doubt in my mind. I know you can do it. What else did you use.

JK What is it that, what is it that you know you did for sure. Unequivocally, absolutely that you know you did for sure.

BC Just punched her and knocked her down.

JK You know you did that for sure.

BC Yes.

JK Okay.

PG You, you said you hit her with an object. You said you might've strangled her or choked her, I think were the words. And there's possibly a knife. And possibly a, and possibly a (INAUDIBLE)..."

Relative to Defendant's statement about a knife, it was well known in 1987 by virtually everyone interviewed that the victim had been stabbed, so this statement in 2015 is not corroborative.

27. The only reasonable inference from the extreme leading of the Defendant by the detectives is that the Defendant's will at that point was entirely overcome, and he was merely trying to say whatever they wanted him to that would get him the benefit of juvenile court treatment and the promise of not going to prison.

28. Eventually the Defendant attempted to indicate that other persons who were potentially involved had also participated in the crime. See page 37, 38. The detectives rejected the suggestions by the Defendant that other individuals were involved and in effect told the Defendant, at page 43, that all of the injuries to the victim were caused by the Defendant. The Defendant eventually responded at page 46 with "Mm-hmm", and so the detectives eventually persuaded the Defendant to more or less agree at page 47 that whatever any of the evidence from the crime scene investigation would indicate had happened must have been done and caused solely by him.

29. A further review of the Rule 20 Evaluation Report filed July 18, 2016, MNCIS entry #89, at page 4, indicates that Defendant suffered from "mild cognitive impairment", as indicated by a score of 21 out of a total of 30 possible points on the Montreal Cognitive Assessment.

30. It appears to this court in the totality of the circumstances that it is at least as likely, and perhaps more likely than any other possible scenario, that the Defendant on June 2, 2015 had no independent recollection of killing the victim, but simply made his best attempt to tell the detectives what he thought the detectives wanted to hear in order to secure the leniency of juvenile court treatment with no adult prosecution and no potential prison sentence. Thus, the State

has not shown that it is more likely than not that the confession was voluntary.

VI.

PROBABLE CAUSE

31. The evidence of the Defendant's fingerprint and palm print on a doorframe at the scene of the crime is not in itself sufficient for probable cause that the Defendant committed the offense charged. There appears to be no temporal nexus between the prints and the actual crime. In other words, the State has produced no foundational evidence indicating that the prints were made at any time proximate to the alleged offense.

32. The initial investigation in 1987, immediately after the victim's body was discovered, indicated that many others, including Bryan Klabunde, Guy Nicolls, and Ross Autio, had been in the victim's apartment on numerous occasions, drank alcohol with the victim, knew where the victim kept her alcohol, knew where she kept her money, and had ample occasions to leave their fingerprints and DNA at or near the crime scene.

33. The early investigation indicated that Bryan Klabunde rented the duplex apartment upstairs of the victim, and was well acquainted with her. The statements further indicated that Klabunde, Nicolls, and Autio were involved in frequent binge drinking episodes that lasted for days and weeks at a time, that the "parties" would take place in Klabunde's upstairs apartment, that the victim was often unhappy with the noise level upstairs, and that many other people were aware of the drinking bouts and would drop in from time to time.

34. The early investigation further indicates that Klabunde, Nicolls, and Autio, along with the Defendant's sister Patti Cameron, as well as the Defendant and other individuals, had been drinking on Sunday evening October 4, 1987. All early statements and investigation consistently indicated that Defendant, along with Nicole Olson, then 15 years of age, left the "party" by midnight, as they had school the next day. As soon as the liquor stores opened on Monday October 5th, the individuals who had continued to drink all night, including Guy Nicolls, Ross Autio, and Patti Cameron, got a ride to a liquor store in Virginia and purchase two 1½ gallon containers of whiskey and continued to drink thereafter.

35. Ross Autio gave a statement to investigators that he remained sober and only had a small amount to drink throughout this time period. However, the statements of the other participants in the "party" indicated that Ross Autio was extremely intoxicated and had been slapped and punched by the women present for being inappropriate in his behavior towards them. Approximately one month after the crime was committed, Ross Autio committed suicide.

36. As indicated in previous findings, recent DNA testing of male DNA found at the murder scene indicated that the DNA did not come from the Defendant, nor Bryan Klabunde or Guy Nicolls. There is no evidence that Ross Autio's DNA has been tested, nor that of any other person.

37. Under the foregoing circumstances, it would appear that the isolation of the fingerprint and palm print near the murder scene is not sufficient evidence for probable cause. Shortly after the crime occurred the Defendant gave a statement indicating that he had in fact been in the victim's apartment and had assisted her in dialing 911 when an earlier party upstairs had gotten loud. The Defendant's statement at that time

indicated that the victim invited him in to her home and that he sat and chatted with her in the kitchen. Other statements by the aforementioned adult men who had been drinking in the upstairs apartment indicates that all three of them, Klabunde, Nicolls, and Autio, had been in the victim's apartment on earlier occasions. In fact, Klabunde, at one time subsequent to his original statements, contacted law enforcement and told them that they should not be surprised if they found his fingerprints in various places in the victim's home. Under all of these circumstances, it appears even less probative of the crime that the Defendant's prints were found at one place in the victim's home, and more remarkably curious that there were no other fingerprints of Defendant or any other people located at or about the murder scene. The inference is clear that whomever perpetrated the murder likely did not leave fingerprints because they were wearing gloves or engaging in some other actions that prevented fingerprints from being left at the scene.

38. The 1992 offense where the Defendant pled guilty to felony theft may be considered as appropriate Spreigl evidence, but in itself is not sufficient to support probable cause for the instant offense.

39. The current record supports numerous reasonable possibilities of what may have happened. However, there is no evidence giving reason to believe, absent Defendant's admissions on June 2, 2015, that he was involved in the death of the victim. At this point on the present record it appear to this court unlikely that the State's evidence, absent the admission of June 2, 2015, could be such as to be sufficient to sustain a conviction. Therefore, under the Rules of Criminal Procedure, Rule 26 subd. 18(1), "... if the evidence is insufficient to sustain a conviction", the State's case could not survive a motion for directed verdict of acquittal.

40. The Defendant's confession on June 2, 2015, even if determined to be voluntarily given and not in violation of the Defendant's constitutional rights to due process, appears to the court to be unreliable, because of the lack of any corroboration with facts discovered during the crime scene investigation, and also because of the questioning by the detectives that was not only leading, but speculation, conclusions, and assumed facts not in evidence. In its totality the questioning completely undermined the potential reliability of the Defendant's answers, short as they were.

CONCLUSIONS OF LAW

I.

COMPETENCY

1. Defendant is hereby determined to be legal competent to face the charges against him.

II.

CONSTITUTIONALITY OF JUVENILE CERTIFICATION STATUTE

2. This court agrees with the State. Juvenile court is a creature of statute and affords no constitutional right to Juvenile Court treatment when the person's age exceeds juvenile court jurisdiction limits when the charges are prosecuted, even though the accused person was a juvenile at the time the offense was allegedly committed.

3. The policy basis underlying juvenile court does not remain applicable when a person is 44 years of age at the time charged with the offense that was allegedly committed as a juvenile.

III.

PROBABLE CAUSE FOR SEARCH WARRANT

4. The State had a reasonable basis to request a search warrant for the Defendant's palm print.

IV.

FAILURE TO GIVE MIRANDA WARNING

5. Even though during both interviews in question the Defendant was subject to interrogation, on neither occasion was he in custody for Miranda purposes. No Miranda warning was required.

V.

VOLUNTARINESS OF CONFESSION

6. The State has failed to prove by a preponderance of evidence that the Defendant's admissions, under the totality of the circumstances, were voluntary. The confession was therefore obtained in violation of the Defendant's constitutional right to due process and must be dismissed.

7. A fair statement of the applicable law is contained in the unpublished case of State v. Kirk, (Minn. App. 2015), Minn. Ct. App. A14-1951 at page 7:

"... In a pretrial hearing at which the defendant seeks to suppress a confession on the basis that it was involuntary, the state bears the burden to prove that the confession was voluntary by a "fair preponderance of the evidence." *State v. Thaggard*, 527 N.W.2d 804, 807 (Minn. 1995).

"The Due Process Clause of the Fourteenth Amendment prohibits the admission into evidence of a statement that was not voluntarily given." *State v. Zabawa*, 787, N.W.2d 177, 182 (Minn. 2010). In determining voluntariness, the question is whether the defendant's will was overborne. *Id.*

A court considers the totality of the circumstances when determining whether a statement was voluntary. *State v. Farnsworth*, 738 N.W.2d 364, 373 (Minn. 2007). The court must examine whether the actions of the police, along with other circumstances, were "so coercive, manipulative, and overpowering that the defendant was deprived his ability to make an independent decision to speak." *Zabawa*, 787 N.W.2d at 182. However, the fact that police questioning encouraged inculpatory statements does not by itself render a confession involuntary. *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991).

Relevant factors in determining whether a confession was voluntary include the defendant's intelligence, education, age, experience, maturity, and ability to comprehend. *Zabawa*, 787 N.W.2d at 182; *Ritt*, 599 N.W.2d at 808. The court also considers the nature and circumstances of the interview, including "its length, the lack of or

adequacy of warnings, whether the defendant's physical needs were met or ignored, and whether the defendant was denied access to friends." *Zabawa*, 787 N.W.2d at 183. The court must also consider the use of trickery and deception. *Thaggard*, 527 N.W.2d at 810. "If police use deception in an interrogation and it is the kind that would make an innocent person confess, the confession is involuntary and must be suppressed." *In re Welfare of D.B.X.*, 638 N.W.2d 449, 455 (Minn. App. 2002) (quotation omitted). Courts must consider whether promises were made and the substance of the promises in determining whether a confession was voluntary. *Id.*"

8. The totality of circumstances in this case show that the detectives who conducted the interrogation created a highly coercive environment that totally overcame the will of the Defendant, and rendered his inculpatory statements to be involuntary.

9. The totality of the circumstances that support this court's conclusion that the Defendant's confession was not voluntary include the coercive atmosphere surrounding the interrogation of the Defendant, including the size of the room, the execution of search warrants after each interrogation, and the absence of any Miranda warnings. Although the Defendant is a middle aged man, and at age 44 should potentially be more sophisticated than the average juvenile, he suffers from mild cognitive impairment and appears to have been thoroughly intimidated and frightened by the coercive nature of the interrogation.

10. The most important factors and circumstances that weigh against the voluntariness of the confession are the misrepresentations made by the interrogating detectives as to the potential consequences of a confession. While there is no evidence that the detectives were acting in bad faith or fraudulently, the misrepresentations, even if made in good faith, that a confession would lead to the Defendant having his case heard in juvenile court, and not face an adult criminal prosecution with the potential of an extended prison sentence, taken along with the misrepresentations that execution of the warrant for the Defendant's DNA would be enough to convict the Defendant absolutely, so that any statement by him would be unnecessary, led in a compelling manner to coerce the Defendant into a state of mind such that he must make an immediate confession, in order to obtain the benefit of juvenile court leniency, regardless of the truth of his statements. These misrepresentations, taken together under all of the circumstances, were such that the Defendant's will was totally overcome, compelling him to make up a story that would be consistent with the expectations of the detectives, so as to obtain the benefit of treatment through the leniency of the juvenile court system, as opposed to certification into adult court.

11. The nature of the questioning by the detectives, that was not only extremely leading, but also speculative and assuming facts not previously admitted to by the Defendant, was also inherently coercive. The detectives essentially told the Defendant what they wanted him to say and then led him into saying it.

VI.

PROBABLE CAUSE

12. It appears to the court that the record does not support probable cause to proceed against the Defendant. The State's case is not likely to survive a motion for directed verdict of acquittal, Rule 26 subd. 18 (1). It appears to the court that it is not fair and reasonable to require the Defendant to stand trial on the present record. *State v. Florence*, 306 Minn. 442 239 N.W.2d 892 (Minn. 1976). While the parties' arguments have focused on the voluntariness of Defendant's confession, and have not directly addressed the adequacy of other evidence, this court concludes that, absent Defendant's admissions on June 2, 2015, probable cause is lacking.

13. Even if the Defendant's admissions of June 2, 2015 were deemed to be voluntary, it is this court's opinion that they would not be admissible under the Minnesota Rules of Evidence.

14. There is much discussion in the literature, and it is certainly possible, as indicated in the article submitted by defense counsel in support of Defendant's motion herein, that a Defendant can make a false confession to a crime that the Defendant did not commit. This could happen even if the confession were voluntarily made. It has been suggested in some of the literature of forensic psychology, with support contained in legal journals, that there should perhaps be a revisiting of the law concerning confessions. Historically the concern has been strictly with the voluntariness of the confession, the underlying premise being that if a confession is voluntary then it logically follows that the confession must in fact be true and reliable. However, some writers suggest that a threshold determination of reliability should be made by the trial court as

gate keeper, similar to how expert testimony is handled, even if it is determined that the confession is voluntary. Most certainly, confessions are regarded by juries as strong evidence of guilt. If a confession is in fact false, there is strong likelihood of convicting an innocent person.

15. In ruling on the admissibility under the Rules of Evidence of admissions made by a Defendant, the trial court should be mindful of the general purpose of the Rules of Evidence as stated in Rule 102, "These rules shall be construed to secure fairness ... to the end that the truth maybe ascertained and proceedings justly determined." An inculpatory admission by a Defendant, while fitting the general definition of hearsay under Rule 801(c), is technically not hearsay under Rule 801(d)(2), it being a statement offered against a party-opponent. Further, the Defendant being a party adverse to the State, a question should not be objectionable merely because it is leading. However, when the question calls for, or is based on, speculation, conclusions, or facts not in evidence, an objection should be sustained and the answer disregarded. This court is also mindful of Rule 403, allowing evidence otherwise relevant to be excluded on the basis of the probative value being substantially outweighed by the danger of unfair prejudice. Applying these rules to the interrogation of the Defendant on June 2, 2015, this court concludes that all of Defendant's admissions were secured by questioning that violated the Rules of Evidence, and are therefore inadmissible, and should not be heard by a jury.

16. In determining reliability of a confession, and in order to eliminate the possibility of a false confession, it would seem appropriate that there be some corroboration of the Defendant's admissions with other provable facts independently secured during the investigation by State authorities, or at

least some subsequent reaffirmation by the Defendant. In the instant case, with no such corroboration or reaffirmation, this court must conclude that the State has failed to provide independent evidence to verify and support the reliability of the admissions.

17. On the present record this court cannot conclude that the Defendant's admissions, even if they were voluntarily made, are more likely true than false, or more likely reliable than not. In keeping with the policy behind the Rules of Evidence as stated in Rule 102, this court concludes that the State has failed to show that the admissibility of Defendant's admissions herein would assist in ascertaining the truth or justly determining these proceedings.

ORDER

IT IS HEREBY ORDERED:

1. The Defendant's admissions contained in his statement to law enforcement on June 2, 2015 are not voluntary, are in violation of his constitutional right to due process, and are hereby suppressed.

2. There being no probable cause to sustain the charges against the Defendant, the Complaint is hereby dismissed.

3. The Defendant shall be released from custody at 12:00 p.m. ten days from the date of this order, subject to such conditions as this court may deem appropriate by subsequent order.

4. In anticipation of a pre-trial appeal by the State, the Arrowhead Regional Corrections Intensive Pretrial Release Program shall forthwith evaluate the Defendant and make recommendations to the court with copies to counsel relative to the possibility of Defendant being released on supervised conditions in lieu of bail pending any appeal period.

5. This matter may be set for further hearing by either party in the event of a pre-trial appeal by the State to review bail and conditions of release for the Defendant.

BY THE COURT:

Dated: _____

Hon. David E. Ackerson
Judge of District Court