

NORTH CAROLINA  
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. [REDACTED]

STATE OF NORTH CAROLINA

VS

ORDER DENYING MOTION  
TO SUPPRESS AND DISMISS

[REDACTED]

THIS CAUSE came to be heard before Superior Court Judge Lucy Inman on [REDACTED] November 27, [REDACTED] upon the properly filed motion by Defendant [REDACTED] (“Defendant”) to suppress evidence of statements made by Defendant to a law enforcement officer and to dismiss the charge of felonious breaking and entering. Defendant was present at the hearing along with his attorney of record, [REDACTED]. The State of North Carolina was represented by Assistant District Attorney [REDACTED].

The Court initially reviewed and considered a psychologist’s report assessing Defendant’s intellectual capacity. Prior to proceeding further, the Court *sua sponte* conducted a hearing to determine Defendant’s competency to proceed. Based upon information provided by Defendant’s attorney as well as Defendant’s answers to questions posed by the Court and the Court’s observation of Defendant’s demeanor, the Court found that Defendant is able to understand the nature and object of the proceedings against him, is able (albeit minimally) to assist his counsel in a rational and reasonable manner, and is able to comprehend his own situation in reference to the proceedings.

During the hearing on Defendant’s Motion to Suppress, the Court heard sworn testimony by Defendant and by [REDACTED]. The Court also considered the

psychologist's report. The Court in its discretion declined to hear testimony by the psychologist, finding that such testimony is of *de minimus* relevance at best, which relevance is substantially outweighed by the cost and delay of allowing the testimony, and should be excluded pursuant to Rule 403 of the North Carolina Rules of Evidence. The psychologist testified during the trial, outside the presence of the jury, that she had not formed any expert opinion regarding Defendant's mental competency that was not stated in her report.

After hearing and considering all the evidence and case law presented and the arguments of counsel, the Court finds the following:

#### FINDINGS OF FACT

1. On or about November 9, [REDACTED], Detective [REDACTED] of the Johnston County Sheriff's Department received information from another law enforcement officer that Defendant had been identified as a person who unlawfully broke and entered into the home of [REDACTED] located in Johnston County. Nothing was reported stolen from the home.
2. Detective [REDACTED] interviewed the victim, who identified Defendant from photographs taken on November 8, [REDACTED] by a motion-activated camera in the bedroom of the victim's home. The victim said that his son, [REDACTED] was a former friend of Defendant. Later investigation disclosed that Defendant had been in the victim's home a year or more prior with the consent of [REDACTED]  
[REDACTED]

3. Detective [REDACTED] visited Defendant's home and spoke with Defendant's mother, who said Defendant was not at home. Detective [REDACTED] left his telephone number and asked that Defendant call him to arrange an interview.
4. Shortly after Detective [REDACTED] left Defendant's residence, Defendant contacted the detective by telephone and they arranged for an interview at 7 p.m. on November 14, [REDACTED].
5. On November 14, [REDACTED], at approximately 7 p.m., as he had arranged with Defendant days earlier by telephone, Detective [REDACTED] returned to Defendant's home. Detective [REDACTED] was dressed in uniform and was driving a Johnston County Sheriff's Department patrol car.
6. Detective [REDACTED] spoke with Defendant and Defendant's mother just outside the front door of their home. Detective [REDACTED] told Defendant and Defendant's mother that Defendant had been identified by photographs taken in the victim's home on the date of the alleged breaking and entering. Detective [REDACTED] told Defendant that he was not under arrest and was not required to answer questions. Defendant did not tell Detective [REDACTED] that he was not willing to answer questions.
7. Detective [REDACTED] proceeded to ask Defendant questions. Defendant's mother attempted to answer the questions on her son's behalf.
8. At some point during the interview process, Defendant's mother told Detective [REDACTED] that Defendant was "slow" and "not as smart as some of the other kids." Defendant was 20 years old at the time of the interview. Defendant did not appear to Detective [REDACTED] to lack any understanding of the questions asked or the

information provided to him, including information that he was not under arrest and was free to leave.

9. In order to obtain information only from Defendant, Detective [REDACTED] asked Defendant to leave his mother and to sit in the detective's patrol car. Defendant consented and walked with the detective to the patrol car.
10. Before getting into the patrol car, Detective [REDACTED] again advised Defendant that he was not under arrest and was free to leave.
11. Seated in the patrol car, Defendant told Detective [REDACTED] that he had been in the victim's home looking for pistols that he could sell for money. Defendant said he was owed money by [REDACTED] [REDACTED]. Defendant said the door to the victim's home was unlocked when he entered. Defendant said he had been in the home before with [REDACTED] [REDACTED] consent.
12. Detective [REDACTED] observed that at the time Defendant gave the statement, he appeared nervous and remorseful, concerned that he was causing his mother to worry.
13. Prior to Defendant's statement, Detective [REDACTED] had no way of knowing what Defendant's purpose had been for entering the victim's home.
14. Prior to Defendant's statement, Detective [REDACTED] did not curtail Defendant's freedom of movement in any manner.
15. Detective [REDACTED] testified that based upon Defendant's statement in the patrol car, he determined that a crime had been committed and that Defendant should be taken before a magistrate to be charged with breaking and entering. Detective [REDACTED] testified that he informed Defendant that he was going to be arrested and

- drove Defendant to the Johnston County Jail. Detective [REDACTED] testified that he did not place handcuffs on Defendant or otherwise restrain him and allowed Defendant to ride in the front seat of the patrol car. Detective [REDACTED] testified that he did not ask Defendant any further questions until after advising Defendant of his Miranda rights in a booking area of the Johnston County Jail.
16. In the booking area of the Johnston County Jail, at approximately 7:20 p.m., Detective [REDACTED] advised Defendant of his Miranda rights. Detective [REDACTED] then asked Defendant to repeat his statement, which Detective [REDACTED] transcribed to a handwritten statement and asked Defendant to sign. Defendant signed the paper.
17. Defendant's recollection of the events on November 14, [REDACTED] differed from those of Detective [REDACTED]. Defendant recalled Detective [REDACTED] writing the statement in the patrol car in front of Defendant's home. Defendant did not recall whether Detective [REDACTED] informed him that he was not under arrest and was free to leave prior to him giving a statement to Detective [REDACTED]. Defendant recalled that Detective [REDACTED] wrote down his statement while they were seated in the patrol car at Defendant's residence. Defendant did not recall whether Detective [REDACTED] advised him of his rights at any time.
18. Defendant testified that prior to November, [REDACTED] he had spoken with law enforcement officers but he had never before been "in trouble."
19. Defendant submitted in evidence a report prepared by [REDACTED] [REDACTED] PhD, a licensed psychologist, assessing Defendant's mental capacity. Dr. [REDACTED] report concluded, based upon a comprehensive review of records and three interviews with Defendant, that Defendant is intellectually disabled. Dr.

██████ reported that Defendant obtained a full-scale intelligence quotient score of 58, which is in the 0.3 percentile, and reported that Defendant's score on the Competency Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR) test fell below the mean score for individuals who had been determined not competent to proceed. Dr. ██████ noted in her report and in her testimony that Defendant immediately signed an informed consent form at her office without asking to review it with his attorney and concluded that he was overly deferential and compliant with her and likely to defer and comply with other persons in authority, including law enforcement officers, without question.

20. Defendant testified that he did "not really" understand he was free to leave and was not required to make a statement to Detective ██████ when he was questioned as his home on November 14, ██████ Defendant testified that he told Detective ██████ he had entered the victim's home for the purpose of stealing pistols "so I could just get it over with."
21. Based on all of the evidence gathered by Detective ██████ Defendant was charged with felonious breaking and entering – breaking and entering into the victim's home for the purpose of committing larceny.
22. At all times relevant prior to and at the time Defendant first told Detective ██████ that he had entered the victim's residence looking for pistols to sell, a reasonable person in Defendant's position would not have believed that he was under arrest or restrained in his movements to the degree associated with a formal arrest and would not have believed that he was not free to terminate the interview. In light of Detective ██████ repeated statements that Defendant was not under arrest and

was free to leave, even a reasonable person with Defendant's intellectual disability and deference to authority would not have believed he was under arrest or restrained to the degree associated with a formal arrest.

23. After placing Defendant under arrest and before asking Defendant any further questions, Detective [REDACTED] advised Defendant that he had the right to remain silent, that anything he said could be used against him, that he had the right to have an attorney present, and that an attorney could be appointed to represent him if he could not afford to hire an attorney.
24. Considering the totality of the circumstances, including testimony by Defendant, testimony by Detective [REDACTED] and the report of Dr. [REDACTED] the Court finds that Defendant voluntarily and willingly waived his Miranda rights before making any statement after being placed in custody by Detective [REDACTED]
25. The Court announced the foregoing findings at the conclusion of the hearing on November 27, [REDACTED] and denied the motion. Counsel agreed to the Court entering a written order at a later time so that the trial could proceed without delay.

#### CONCLUSIONS OF LAW

1. The parties were properly before the Court and the Court has jurisdiction over the parties.
2. Defendant's statements to Detective [REDACTED] were not coerced and were made voluntarily and willingly. Defendant was not in custody when he first made a statement to Detective [REDACTED] in the detective's patrol car, and if Defendant signed the handwritten statement in Detective [REDACTED] patrol car prior to being placed in custody, no Miranda warning was required.

3. If Defendant made a second statement and signed the handwritten statement at the Johnston County Jail after being placed in custody, Defendant made that statement after having been advised of his Miranda rights and Defendant waived those rights.

WHEREFORE, it is hereby ORDERED, AJUDGED, and DECREED that the defendant's Motions to Suppress and to Dismiss are denied.

This, the 7th day of December, [REDACTED] *nunc pro tunc* November 27, [REDACTED]

---

The Honorable Lucy N. Inman  
Superior Court Judge