FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-271 / 88-870

709

STATE OF IOWA,

Plaintiff-Appellee,

vs.

TIMOTHY CHRISTIAN SMITH,

Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Richard J. Vogel, Judge.

Defendant appeals from his conviction, following a jury trial, of first-degree murder. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

In this case the district court overruled defendant's motion to suppress inculpatory statements made by defendant to a DCI agent prior to his being arrested. Defendant was subsequently found guilty by a jury of first-degree murder. We affirm. The sole issue before us is whether defendant was in custody at the time of his questioning.

On August 8, 1987, the body of Ruth Ann Drummond was found in her mobile home. She was the apparent victim of a brutal homicide. Law enforcement officers immediately commenced an investigation into Drummond's death. There is substantial evidence in the record to support the following findings: Arthur Drummond and his wife, Ruth, the victim of this crime, resided in a mobile home. On Saturday, August 8, 1987, Arthur left his home at approximately 7:05 a.m. to work at his service station. At approximately 10:30 a.m., his mother and other relatives came to his station and asked about his wife as she was supposed to meet them in downtown Ottumwa. They told him that when they tried to call her, there was no answer.

Arthur stated that he always worked until noon on Saturdays, and that his wife would usually meet him and they would have lunch together. When his wife failed to meet him, he went home and discovered her body on their davenport. As their phone was dead, he ran to a neighbor's for assistance.

When an Ottumwa deputy sheriff arrived at the scene at approximately 12:20 p.m., he observed blood everywhere and Ruth Drummond's nude body was on the couch. There were newspapers over the floor and an upturned chair. At the end of the couch he observed a six- to seven-inch long white object that looked like a piece of a table leg. On the counter in the kitchen was a white, club-like item about eighteen to twenty inches long which looked like a part of the other white object.

Ronald Mower, a DCI agent, testified that on August 9th he searched the residence and property next door to the Drummonds. It appeared that weeds along the fence were bent or broken toward the Drummond residence. In the residence were three bedposts which were similar to the white objects left at the crime scene.

Jerry Brown, a DCI criminalist, testified that there was a bare footprint in dust outside a bedroom window of the Drummond home. Brown stated that on the living room floor of the residence were pieces of newspaper. Ladies' white underpants were also on the floor. Several of the newspapers collected had blood and wood stain paint on them. Some table knives as well as a large ten-inch bladed knife, which appeared to have blood smears on it, were removed from the scene.

The state medical examiner who performed the autopsy on the victim testified that Mrs. Drummond had received

traumatic injuries by blows from a broad, blunt instrument and by blows from a narrow blunt instrument to her head, left arm, and trunk. She also received ten different cuts and stab wounds. He stated that the cause of death was from the multiple stab wounds to the left side of her chest. Mrs. Drummond had Type A blood; on the ten-inch blade kitchen knife seized from the scene and the white tube objects, Type A blood was found. He stated that the blows to Mrs. Drummond's face were very forceful; her facial bone and the roof of her left eye socket were broken. The white bedpost seized from the scene was consistent with the blunt instrument blows received by the victim.

The medical examiner further stated that there was evidence of sexual motivation in connection with the killing. Evidence of such could be found in the pattern of repeated multiple stab wounds received by the victim about the left breast. The victim's body was nude and there was a considerable amount of blood on the front of the body. There was a smearing of blood present on the inside of the victim's thighs, which indicated a pattern of four-finger impressions on the inside surface of each thigh suggesting a sexual-type assault.

Investigation of this brutal murder continued. As part of the investigation, law enforcement personnel conducted a neighborhood canvass. Defendant was one of approximately forty people interviewed during the canvass.

As a result of a bloody footprint found at the scene, law enforcement personnel requested footprint exemplars from those people who had originally been interviewed during the neighborhood canvass. Defendant provided such an exemplar on December 4, 1987. At that time he was interviewed for approximately one-half hour by DCI agent John Quinn. He was not considered a serious suspect.

On December 10, 1987, Agent Quinn was contacted by defendant's employer concerning defendant's failure to report in to him. At that time, defendant's footprint exemplar had not yet been compared with the one found at the scene. Agent Quinn requested that such a comparison be done immediately. The comparison resulted in a finding that defendant's footprint matched one found at the crime scene.

Agent Quinn thereafter sought to ascertain defendant's whereabouts through interviews with friends and relatives of defendant. On the evening of December 10th, Agent Quinn was notified that defendant was at his brother-in-law's home in Floris, Iowa. Agent Quinn, who was then in Ottumwa, went to the Floris home in order to question defendant. Agent Quinn testified that upon his arrival:

> I walked into the residence and essentially said hi to Tim. This is essentially the fourth time we've talked, two previous interviews and also two times on the phone. Talked to Bill Covert for a little bit.
>
> I just inquired from Tim that I wished to talk to him, conduct an interview with him. He said that would be fine. I said if he wanted to do it here

> at the Covert residence or at the sheriff's office, and he said at the Covert residence would be fine. I asked Bill Covert if it would be okay to use a room in the house. He said yeah, that it would be okay, to use one of the bedrooms upstairs. And Tim directed me up to one of the rooms upstairs where we conducted the interview.

During the course of the interview, which lasted approximately one hour, defendant broke down and made incriminating statements. No Miranda warnings preceded the interview.

Our scope of review is de novo. State v. Little, 421 N.W.2d 172 (Iowa App. 1989). We examine the totality of the circumstances. Id.

Miranda's application is limited to those situations where a defendant is interrogated while in custody. Id. at 173; Oregon v. Mathiason, 429 U.S. 492, 495, 97 S. Ct. 711, 714, 50 L. Ed. 2d 714, 719 (1977); State v. Cook, 330 N.W.2d 306, 311-13 (Iowa 1983). The United States Supreme Court has defined custodial interrogation to be "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way." Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 694, 706 (1966). In order to determine whether a person is in custody, the court must look to see if the person was subjected to "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125, 103 S. Ct.

3517, 3520, 77 L. Ed. 1275, 1279 (1983) (quoting Mathiason, 429 U.S. at 495, 97 S. Ct. at 714, 50 L. Ed. at 719). In assessing this question, the proper inquiry is "how a reasonable man in the suspect's position would have understood his situation." Berkemer v. McCarty, 468 U.S. 420, 442, 104 S. Ct. 3138, 3151, 82 L. Ed. 317, 336 (1984).

Upon review of the record, we agree with the district court that defendant was not entitled to the panoply of protections afforded to criminal suspects under Miranda because he was not in custody at the time the incriminating statements were made by him to Agent Quinn. We reach this conclusion for a number of reasons. Defendant voluntarily submitted to the interview. The interview took place, upon defendant's choosing, in a bedroom in the home of a relative. Agent Quinn testified that defendant was free to leave. In addition, Agent Quinn, the sole interrogator, was dressed in civilian garb and had interviewed defendant on prior occasions. Agent Quinn displayed no weapon or handcuffs. The defendant was not coerced or threatened in any manner. Furthermore, the length of the entire interview was less than an hour and took place in surroundings familiar to the defendant. Under this set of facts, we find that the average reasonable person in defendant's position would not feel his freedom of action was unduly restricted during the interview.

The fact that defendant was the prime suspect at the time the interview took place is not determinative of the issue at hand. As the United States Supreme Court pointed out in Mathiason:

> [P]olice officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioned person is one whom the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody."

429 U.S. at 495, 97 S. Ct. at 714, 50 L. Ed. 2d at 719. Similarly, the fact Agent Quinn admitted that the arrest of defendant on December 10th was a possibility is not relevant in determining whether defendant was in custody. See Berkemer, 468 U.S. at 442, 104 S. Ct. at 3151, 82 L. Ed. 2d at 336.

Since we find defendant was not in custody at the time he made the incriminating statements, Agent Quinn was not required to inform defendant of his Miranda rights.

AFFIRMED.