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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed January 26, 1982

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STATE OF IOWA,)
Plaintiff-Appellee,)
vs.) 1-394/65242
DENNIS DEAN DARINGER,)
Defendant-Appellant.)

Appeal from Linn District Court, Robert E. Ford, Judge.

Defendant appeals from his conviction for burglary in the second degree in violation of sections 713.1 and 713.3, The Code 1979, asserting the evidence was insufficient to corroborate his confession and support the jury's verdict of guilty, and claiming the confession was not voluntarily given. AFFIRMED.

Brad J. Brady of Crawford, Sullivan & Read, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General, and Michael Jordan, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

Defendant appeals from his conviction for burglary in the second degree in violation of sections 713.1 and 713.3, The Code 1979, asserting the evidence was insufficient to corroborate his confession and support the jury's verdict of guilty, and claiming the confession was not voluntarily given. We affirm defendant's conviction.

Defendant, Dennis Dean Daringer, was charged by information on December 12, 1979, for burglary in the second degree in violation of sections 713.1 and 713.3, The Code 1979. Defendant was charged with the burglary of Rapids Chevrolet, from which some tires were stolen in August of 1979. The jury returned a verdict of guilty and defendant was sentenced to prison for a term not to exceed ten years.

Defendant's involvement in the burglary became known to the Cedar Rapids police somewhat by accident. Michelle Pierson, who had been living with the defendant, lodged a complaint against the defendant with the Cedar Rapids police. Michelle claimed defendant had stolen some of her property after the couple terminated their living arrangement. She also indicated the defendant had been involved in an unrelated burglary. Defendant, on his own accord, arrived at the police station approximately twenty minutes after Michelle lodged her complaint, and identified himself to Detective Millsap. Detective Millsap, the officer in charge of handling Michelle's complaint, interviewed each party in a separate interview room. Detective Millsap testified defendant was orally advised of his Miranda rights and then asked to sign a standard rights waiver form. Detective Millsap also testified defendant read aloud the waiver and then signed the form. Defendant did not ask for an attorney during the interview, nor did he indicate any desire to remain silent and have the interview terminated. During the interview, defendant signed a statement confessing to the burglary.

Prior to trial, defendant moved to suppress the oral and written statements he made during the interview at the police station. The trial court overruled the motion, holding defendant's fifth and fourteenth amendment rights had not been violated. Defendant was subsequently convicted of burglary.

On appeal defendant claims (a) the State failed to corroborate the defendant's confession, (b) there was insufficient evidence to submit the case to the jury, and (c) the trial court erred in overruling defendant's motion to suppress. We find no merit in any of defendant's arguments and affirm his conviction.

Under Iowa R. Crim. P. 20(4), the confession of a defendant, unless made in open court, is not sufficient to sustain a conviction unless accompanied with other proof the defendant committed the offense. State v. Hobson, 284 N.W.2d 239, 243 (Iowa 1979). The existence of corroborative evidence is a question of law for the court, and its sufficiency is ordinarily a question for the trier of fact. State v. Vesey, 241 N.W.2d 888, 890 (Iowa 1976). The evidence need not be strong but it must tend to connect the accused with the commission of the crime. We are of the opinion the trial court was correct in finding the evidence as a whole was sufficient for jury consideration. The other evidence tending to connect defendant with commission of the burglary includes recovery from defendant's car and basement of tires of the same size, type and manufacturer as the stolen tires and the statements made to the Cedar Rapids police by Ms. Pierson regarding defendant's participation in the burglary. The trial court properly submitted the question of the sufficiency of the corroborative evidence to the jury.

Defendant also claims the State failed to introduce sufficient evidence to establish the required elements of burglary under sections 713.1 and 713.2, The Code 1979. Under sections 713.1 and 713.2, the State must prove defendant entered an area enclosed in a way to provide a place for the keeping of valuable property secure from theft, such place not being open to the public without authority and

entered the area with the intent to commit theft or a felony. Defendant claims the State failed to prove defendant entered the fenced-in storage lot, from which the tires were stolen, without authority. Reviewing the record in a light most favorable to the State, see State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981), and accepting as established all legitimate inferences that are fairly and reasonably deduced from the record, id., we find substantial evidence in the record to support the conclusion defendant entered the storage lot without permission or authority. See State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976). The manager of Rapids Chevrolet testified the storage lot was not open to the public without the presence of a salesman. A fair inference from the manager's testimony and from the manner in which defendant admitted he gained entry to the storage area is that defendant entered without authority or permission. There was sufficient evidence from which the jury could find the State proved, beyond a reasonable doubt, all the elements of the charge.

Defendant finally argues the trial court erred in overruling defendant's motion to suppress the inculpatory statements he made to the police. Defendant contends (a) he was not sufficiently apprised of his Miranda rights, (b) the State failed to prove defendant knowingly, intelligently and voluntarily waived his rights, and (c) the State failed to prove the defendant's confession was voluntary.

In our de novo review of the record respecting the admission of inculpatory statements by the defendant, see State v. Hilpipre, 242 N.W.2d 306, 309 (Iowa 1976), we find defendant was apprised of his Miranda rights, his waiver was given knowingly, intelligently and voluntarily and his confession was the result of his free and unconstrained choice.

Detective Millsap testified defendant was orally advised of his constitutional rights as required by Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966), during the initial stages of the interview. Defendant was also given a

written waiver form, containing a full statement of his constitutional rights required by Miranda v. Arizona. Defendant read the rights waiver form back to Detective Millsap. There is no evidence in the record defendant did not understand his rights or that he wanted to exercise any of those rights. Cf. State v. Fisher, 2279 N.W.2d 265, 267 (Iowa 1979); State v. Davis, 304 N.W.2d 432, 435 (Iowa 1981). On the contrary, the record indicates defendant knew he could have counsel, either court-appointed or privately retained, during the interview, and he knew if he did not remain silent, which was his prerogative, any statements could be used against him. Defendant voluntarily decided to cooperate with the police, sign a rights waiver and dictate a confession to the burglary. Under the totality of the circumstances, see State v. Davis, 304 N.W.2d at 435-36, defendant's choice to confess was free and unconstrained, as was the waiver of his rights under Miranda. See generally State v. Jump, 269 N.W.2d 417, 424-28 (Iowa 1978). We find no deception of defendant by the police such that would render defendant's confession or rights waiver involuntary. See State v. Jacoby, 280 N.W.2d 828, 832-33 (Iowa 1977). The State has proved, by a preponderance of the evidence, defendant was fully informed of and understood his Miranda rights and defendant's rights waiver and confession were voluntarily and intelligently given.

AFFIRMED.