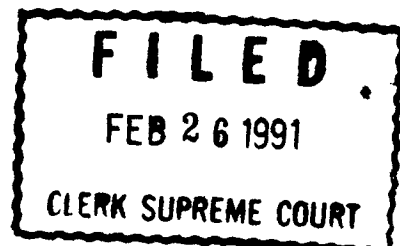


IN THE COURT OF APPEALS OF IOWA

No. 0-642 / 90-352



STATE OF IOWA,

Appellant,

vs.

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ANTIONNE LEROY JOHNSON,

Appellee.

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Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

The State was granted discretionary review to challenge two district court rulings sustaining the defendant's motions to suppress inculpatory statements and to exclude evidence of other crimes. **AFFIRMED.**

Bonnie J. Campbell, Attorney General; Julie Ann Halligan, Assistant Attorney General; and Thomas J. Ferguson, Acting County Attorney, for appellant.

Linda Del Gallo, Acting State Appellate Defender, and B. John Burns, Assistant State Appellate Defender, for appellee.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

**DONIELSON, P.J.**

The State has been granted discretionary review to challenge two district court rulings. One ruling suppressed defendant's inculpatory statement upon a finding it was not voluntarily given. The other granted defendant's motion in limine to exclude evidence of other burglaries. We now affirm.

On November 17, 1988, defendant Antionne Johnson was arrested for a burglary of the home of Ruby Hild. He was transported to the jail after 7:00 p.m. Defendant refused to be cooperative with the police in the booking process. He refused to be fingerprinted or photographed, and he became abusive, profane, and physically resistive. Police reported it was necessary to physically subdue and restrain Johnson due to his hostility and agitation. At one point two officers physically forced the defendant into his jail cell and, in the process of doing so, the defendant fell and struck his face on the jail cell floor.

In the jail cell defendant became extremely agitated. He rattled the jail bars and was extremely loud. He also tore loose part of a metal zipper from the mattress in the cell and used the zipper in an attempt to slash his left wrist. In this attempt he broke the skin and drew blood but did not inflict serious injuries. When the jailer became aware of defendant's actions, officers forcefully moved defendant to an adjoining jail cell. Defendant again was violent and resistive and it took a number of officers to control him.

Shortly after the 11:00 p.m. shift change defendant's booking process was finally completed. Defendant was cooperative with officers' efforts at this time.

The next morning, between 8:00 a.m. and 9:00 a.m., an officer of the Waterloo Police Department became aware of defendant's arrest and noticed similarities between the burglary of the Hild home and the burglaries of a number of other homes occupied by elderly people. Convinced there might be a connection between defendant's arrest and these other burglaries, the officer went to defendant's jail cell to interrogate him.

Prior to talking to defendant, the officer advised defendant of his Miranda rights and defendant signed a written consent and waiver of rights. The officer and defendant met for approximately one hour. Johnson made statements to the officer incriminating himself in the Hild burglary, as well as in several others.

Johnson was charged with burglary in the second degree for the Hild burglary. He filed a motion to suppress his inculpatory statements. He also filed a motion in limine seeking to exclude any reference to burglaries other than the Hild burglary. A hearing was set.

At the hearing, defendant testified that on November 17, he started drinking at about 7:00 a.m. From 7:00 a.m. to 11:00 a.m., he claimed to have consumed eight to ten cans of beer. After 11:00 a.m., he obtained two fifths of MD 20/20, drank one of the fifths by himself and

shared the second fifth with friends. At approximately 12:30 p.m. he bought a twelve-pack of beer and a "thing" of gin. The defendant claimed he drank four or five of the cans of beer and drank one-third of the gin. At some point after 4:00 p.m. defendant drank two cans of beer in a car while riding with another person, another couple of cans at another's home, as well as a bottle of wine. In addition to consuming this alcohol, defendant testified he smoked crack cocaine and one joint of marijuana. He maintained he was "wasted" at the time of his arrest and continued to feel the effects of the consumed drugs throughout the morning and afternoon of November 18. Police officers, on the other hand, testified they perceived no indications of defendant being under the influence on November 17 or November 18.

The district court also heard conflicting testimony concerning alleged promises made by the interviewing officer. The officer contended he informed defendant only that the officer, if called to testify at defendant's trial, would testify that defendant had been cooperative and truthful. Defendant alleged that in exchange for defendant's statement, the officer agreed to talk to the prosecution about not pressing additional charges and, if additional charges were filed, to "do whatever he could to make [sentences] run concurrent instead of boxcar."

The district court sustained both of Johnson's motions, writing:

Considering the totality of the circumstances, defendant's psychological condition and the promise made by Officer Clark that if defendant agreed to talk the officer would attempt to ensure that any sentences received would be concurrent, the court finds that defendant's confession must be suppressed as not being a free and voluntary statement.

Of necessity, with the suppression of defendant's confession, the use of the 404(b) evidence fails as well. None of the ten listed witnesses could identify defendant as being the culprit responsible for the burglaries to their homes despite in a number of instances photographic lineups being made to them which contained in some instances defendant's photo. Because the defendant's confession is the only connection of defendant to those other burglaries, to permit the evidence to be received pursuant to 404(b) would require "strikingly similar" circumstances. State v. Walsh, 318 N.W.2d 184 (Iowa 1982). As noted, the only connection between defendant and those other asserted burglaries is the defendant's confession. The confession having failed, the 404(b) evidence also becomes inadmissible.

Inculpatory statements. The State first contends the district court erred by suppressing Johnson's inculpatory statements. The State argues the district court was wrong in concluding a police officer made improper promises of leniency to induce Johnson's statements. The State argues that under the totality of the circumstances, the record indicates that Johnson's inculpatory statements were fully voluntary.

Because this issue involves an alleged violation of basic constitutional safeguards, this court will make an independent evaluation of the totality of circumstances. State v. Whitsel, 339 N.W.2d 149, 152 (Iowa 1983).

The applicable law on the issue of the admissibility of confessions alleged to have been induced by improper promises is summarized in State v. Nolan, 390 N.W.2d 137 (Iowa App. 1986), and we find no reason to reiterate it here. The district court correctly applied the law, and after considering the conflicting testimony, concluded the officer did make an improper promise of leniency. See id. at 142 (confessions obtained through promises or assurances that the accused would receive better treatment, less severe punishment, or more mercy by confessing guilty may not be used). The district court's examination of the totality of the circumstances, led it to conclude defendant's confession was not freely and voluntarily given. In so concluding, the district court necessarily credited defendant's testimony and discredited the officer's testimony. When considering pretrial matters, determinations of credibility of witnesses are peculiarly within the district court's purview. Our ability to make such determinations is limited and we are inclined to give weight to the district court's findings. We do so here. We conclude the district court properly suppressed defendant's inculpatory statements.

Evidence of other crimes. The State argues that even if the inculpatory statements were properly excluded, the district court nonetheless erred by excluding any references to burglaries other than the Hild burglary. The State contends the evidence of the other burglaries is

admissible to establish the identity of the Hild burglary perpetrator. The problem with the State's argument is that there is no connection between defendant and the other burglaries, absent defendant's confession. Without some proof defendant perpetrated the other burglaries, the State has failed to show the relevancy of the evidence. Even assuming for the sake of argument the burglaries are "strikingly similar," the State has established only that several burglaries were committed by someone--the identity of that person as yet unknown. How this can establish the identity of the Hild burglar escapes this court. The trial court did not err in determining the evidence of other burglaries was inadmissible at defendant's trial.

**AFFIRMED.**