FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

501

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
VINCE L. SPOONEMORE,	)	8-612 88-12
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Muscatine County (No. 1773-987), J. L. Burns, Judge.

Defendant appeals his conviction by a jury for second-degree burglary. **AFFIRMED.**

William L. Wegman, State Public Defender, and Barbara M. Anderson, Assistant Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Mark Joel Zbieroski, Assistant Attorney General; and Stephen J. Petersen, Muscatine County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J. 502

Defendant appeals his conviction by a jury for second-degree burglary. He contends the trial court erred by denying his motions to suppress both an alleged confession improperly obtained in the absence of counsel and evidence taken from his improperly-impounded van.

On September 2, 1987, Vince Spoonemore was arrested and charged with second-degree burglary for breaking into a store, Fantasyland, and stealing cash from it. After receiving his Miranda rights and following his initial court appearance and his appointment of counsel, Spoonemore allegedly gave an oral confession in the hopes of making a deal with the police. When the attempt at a deal failed, defendant refused to sign a written confession and subsequently denied making any confession at all. Meanwhile, the police, proceeding without a warrant, impounded Spoonemore's van and conducted an inventory search which produced incriminating evidence. The trial court overruled Spoonemore's motions to suppress both his alleged confession and the evidence taken from his van. The jury found the defendant guilty as charged.

Defendant is challenging the constitutionality of the procedures used to convict him; therefore, our review is de novo. State v. Bousman, 387 N.W.2d 605, 609 (Iowa 1986). Our task is to consider the totality of the circumstances surrounding the alleged confession and impoundment of the van. State v. Leto, 305 N.W.2d 482, 484 (Iowa 1981).

I. The defendant first claims the trial court erred in denying the defendant's motion to suppress statements allegedly obtained from him in violation of his sixth amendment right to counsel. The State asserts the statements were properly admitted because the defendant initiated the conversation with the police and he waived his right to have counsel present.

Our review of the record reveals that defendant was arrested at approximately 4:00 A.M. on September 2, 1987. Defendant received his Miranda rights and an officer unsuccessfully attempted to interview him. At approximately 8:30 A.M., defendant was taken to court for an initial appearance and then he was taken to a cell at the Muscatine Sheriff's Department.

Detective Werner testified that the jailers told him the defendant wanted to talk with him that morning. No Miranda rights were read at this time. However, the detective told Spoonemore that he should be talking to his attorney and the captain. According to Werner, defendant did not want an attorney because an attorney would screw it up. Werner told Spoonemore that if he wanted to try to work this charge off, he had to talk to Captain Martin. So Detective Werner called the captain and arranged for him to meet Spoonemore at 11:00 A.M. In the meantime, Spoonemore was returned to his cell.

At the scheduled time, Martin came to the jail and talked to Spoonemore. Captain Martin testified that he advised Spoonemore of his rights and that defendant signed a written Miranda waiver form. The two then spoke about the burglary. Werner was present during part of the conversation and testified that Spoonemore did most of the talking.

When asked if he talked with Spoonemore about an attorney, the captain said he did and that the last thing in the world Spoonemore wanted was an attorney. Spoonemore told Captain Martin that he committed the burglary. Spoonemore's statement was typed up by Detective Werner, but Spoonemore refused to sign it without a deal. According to Martin, Spoonemore offered to buy drugs for the police in exchange for having his burglary charge dismissed. Martin told Spoonemore that any deal would have to be done through his attorney and the county prosecutor, so Spoonemore did not sign the statement. The written statement was not used at trial nor was its admissibility ruled upon by the trial court.

The defendant, on the other hand, testified that Captain Martin said, "Tell me about the burglary." To which defendant repeated, "I don't know what you are talking about." Defendant is claiming that he never confessed to the burglary and anything he said was in response to the captain's questioning.

Whether defendant confessed or not is a question of fact. There is substantial evidence in the record to support a finding that he confessed. Therefore, we must next consider whether the confession was obtained in violation of defendant's constitutional rights. Since counsel had already been appointed for the defendant, the issue is whether the confession was "deliberately elicited" by police.

"After the sixth amendment right to counsel attaches, the State is precluded from attempting to 'deliberately elicit' incriminating statements from the defendant, absent the presence of counsel or a valid waiver." State v. Nelsen, 390 N.W.2d 589, 592 (Iowa 1986). Once attached, interrogation may not occur unless (1) the accused initiates the discussion about the crime and (2) the accused waives any sixth amendment right. State v. Swaim, 412 N.W.2d 568, 577 (Iowa 1987), citing Michigan v. Jackson, 475 U.S. 625, 106 S. Ct. 1404, 89 L. Ed. 2d 631, 642 (1986). The State has a heavy burden to prove that the defendant initiated further conversations and knowingly and intelligently relinquished the traditional benefits associated with the right to counsel. Absent this proof, the fruits of such conversations are inadmissible as evidence on behalf of the State in direct proof of its case. State v. Newsom, 414 N.W.2d 354, 359 (Iowa 1987).

As previously noted in our review of the evidence, there is conflicting testimony regarding defendant's conversations with the two officers. Even though our review of the constitutional issues is de novo, we accord "considerable deference" to the district court's findings on credibility. State v. Hatter, 342 N.W.2d 851, 854 (Iowa 1983). Both officers in defendant's case testified that they spoke to him at his request. The district court saw and heard these witnesses and found the fact to be as the officers testified. State v. Farris, 359 N.W.2d 190, 192 (Iowa 1984). This evidence is sufficient to establish that defendant initiated the discussion about the crime.

The last element of this issue is whether defendant knowingly and intelligently waived his right to have counsel present. Such a waiver can be valid even where defendant has not conferred with counsel. State v. Hilpipre, 242 N.W.2d 306 (Iowa 1976). The key inquiry is whether the defendant was made sufficiently aware of his right to have counsel present and of the possible consequences of a decision to proceed without advice. Patterson v. Illinois, _____ U.S. ____, ____, 108 S. Ct. 2389, 2395, 101 L. Ed. 2d 261, 272 (1988). Generally, a defendant's waiver of Miranda rights is sufficient to waive his sixth amendment right to counsel. Id., _____ U.S. at ____, 108 S. Ct. at 2397, 101 L. Ed. 2d at 275.

Spoonemore signed written waivers of his Miranda rights. These waivers informed him that statements could be used against him. Testimony shows defendant was asked about counsel, but he preferred to talk to the police alone. Defendant has had prior experience with the police. We find that he knowingly and intelligently waived his right to have counsel present. Therefore, the trial court properly admitted the statements made by the defendant outside the presence of counsel.

II. Defendant claims the trial court erred in denying the defendant's motion to suppress evidence of currency taken from his van in violation of his fourth amendment rights. He contends the impoundment of his van was constitutionally invalid. Therefore, the inventory search was invalid and the currency found should have been suppressed. We disagree.

A warrantless search of a van may be justified when there is evidence in plain view and it is known the van was involved in a crime. Also, vehicles by their nature present "inherently exigent" circumstances. State v. Cain, 400 N.W.2d 582, 585 (Iowa 1987). Here, the record shows the police recognized the van to be the one seen in the area of the burglary. A sketch of the store and rolled coins could be seen through the windows. Furthermore, even though the defendant was with the police, the codefendant was not and items could easily be removed from the vehicle.

Our review of the evidence shows that both probable cause and exigent circumstances existed justifying seizure of the van. Once a vehicle is properly seized, the police have a legitimate concern over the protection of the defendant's property, concern over protecting themselves from claims and disputes over that property, and a duty to protect the police from potential danger, any of which may justify a search. South Dakota v. Opperman, 428 U.S. 364, 369, 96 S. Ct. 3092, 3097, 49 L. Ed. 2d 1000, 1005 (1976).

At trial, Captain Martin testified that defendant voiced his concern about the security of the property in his van. Another officer testified that defendant also expressed his concerns to his attorney. The officer reported this to Martin, who ordered the inventory of the van. It was during this inventory search that the currency was found in the van and removed.

Given defendant's expressed concern over the security of his property in the van and the fact that the codefendant was not in custody, the police were legitimately concerned about protecting defendant's property and about protecting themselves from claims over that property. Therefore, the search was justified and the evidence was properly admitted.

The conviction of the defendant is affirmed.

AFFIRMED.