



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
)
Plaintiff-Appellee,)
)
v.)
)
STEVEN MARK GROSS,)
)
Defendant-Appellant.)

Filed December 23, 1986

6-378
85-1753

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Appeal from the Iowa District Court for Muscatine County (No. 1597-585)

- Max R. Werling and Margaret S. Briles, Judges.

The defendant appeals from his conviction, following a jury trial, for the crime of attempted burglary in the second degree. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; Elizabeth Ciebell, Assistant Attorney General and Stephen J. Peterson, Muscatine County Attorney, for the plaintiff-appellee.

Considered by Oxberger, C.J., Snell and Schlegel, JJ.

OXBERGER, C.J.

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Defendant Mark Gross appeals his jury conviction for the crime of attempted burglary in the second degree in violation of Iowa Code sections 713.2 and 713.6 (1985). The sole question presented in this appeal is whether the trial court erred in denying Gross' pretrial motion to suppress the confession which he made to the police following his arrest. Gross argues that because of his drug intoxication, he was unable to make an intelligent and voluntary waiver of his Miranda rights. Relatedly, Gross maintains that due to the influence of drugs, his confession was not voluntarily given. We affirm.

Our review of this constitutional claim is de novo. State v. Reid, 394 N.W.2d 399, 402 (Iowa 1986). Hence, we make an independent evaluation of the totality of the circumstances. State v. Whitsel, 339, N.W.2d 149, 152 (Iowa 1983).

I. WAIVER OF MIRANDA RIGHTS

It is well settled that an individual may waive his constitutional rights. Whitsel, 339, N.W.2d at 152. It is equally well established, however, that the State is charged with the burden of proving by a preponderance of the evidence that such waiver was voluntarily, knowingly, and intelligently made. Id.; see also Miranda v. Arizona, 384 U.S.436, 475, 86 S.Ct. 1602, 1628, 16 L.Ed.2d 694, 724 (1966). If the State fails to sustain this burden, the defendant's inculpatory statements must be suppressed and may not be admitted into evidence. State v. Reid, 394 N.W.2d at 402.

Recently, in Moran v. Burbire, _____ U.S. _____, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986), the United States Supreme Court outlined the proper analysis for determining whether a defendant effectively waived his rights:

The inquiry has two distinct dimensions. First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation,

coercion or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

____ U.S. at ____, 106 S.Ct. at 1141, 89 L.Ed.2d at 421. The following factors are recognized as relevant in the "totality of the circumstances" assessment:

The defendant's knowledge and waiver of his Miranda rights, the defendant's age, experience, prior record, level of education and intelligence, the length of time defendant is detained and interrogated, whether physical punishment was used, including the deprivation of food or sleep, defendant's ability to understand the questions, the defendant's physical and emotional condition and his reaction to the interrogation, whether any deceit or improper promises were used in gaining the admissions, and any mental weakness the defendant may possess.

State v. Reid, 394 N.W.2d at 402 (citations omitted) (quoting State v. Hodges, 326 N.W.2d 345, 348 (Iowa 1982); see also State v. Coburn, 315 N.W.2d 742, 745 (additional factors include the defendant's awareness of the alleged crime and his ability to understand his rights and the consequences of waiving them). Each of these factors is a relevant consideration; however, no one factor is determinable. State v. Whitsel, 339 N.W.2d at 153; see also State v. Wilson, 264 N.W.2d 614 (Iowa 1978) ("The mere fact that one is under the influence of a drug at the time of making an inculpatory statement does not render the statement involuntary, although it is a proper factor for the jury to consider in weighing the evidence."); State v. Reid, 394 N.W.2d at 403 (mental subnormality is not necessarily sufficient to deprive suspect of ability to effectuate valid waiver and confession).

The record in the instant case discloses that at approximately 11:15 p.m. on May 8, 1985, the Muscatine Police Department responded to a call concerning a disturbance at an area pet hospital. When the police arrived at the hospital, they observed the defendant standing at the corner. He was

subsequently arrested for the attempted burglary of the hospital and transported to the police station. Officer Terry Franklin testified that when they arrived at the station, he advised the defendant of his Miranda rights. Franklin explained that he and the defendant went through each line of a form setting forth the rights, and that the defendant stated that he understood the meaning of each; both Franklin and the defendant then initialed each line to indicate the same. After going through the form, the defendant signed a written waiver. He was then taken to Captain Martin's office where he was readvised of his rights. Captain Martin testified that the defendant had no questions concerning his rights, that he understood what they were, and that he agreed to waive them. The defendant then gave a statement which was reduced to writing and signed, in which he stated that he had attempted to burglarize the hospital.

The defendant maintains that the waiver was unconstitutionally obtained because he was under the influence of drugs.¹ Several witnesses for the defense testified that they observed the defendant at approximately 6:30 p.m. on the evening of May 8, 1985, and that he appeared drug intoxicated. The defendant testified that he had taken three Doriden pills in addition to those authorized by prescription. At trial, the defense introduced the testimony of Dr. William Nissen. Nissen opined that, given the defendant's drug usage on the day in question, he would have been highly intoxicated at the time of the arrest and that his judgment would have been impaired. The defendant testified that although he remembered breaking a window at the pet hospital, he did not remember being interrogated.

¹The defendant does not allege that the relinquishment of his rights was the product of coercion, deception or intimidation. Accordingly, we have proceeded directly to the second prong of the test set forth in Moran v. Burbine.

Both officers Franklin and Martin testified that the defendant's appearance was normal and that he had no difficulty speaking or walking. In addition, Franklin testified that the defendant had no problem signing either the statement or waiver and that he seemed continually alert. Although both officers noticed the defendant stumble or sway in the hallway, they testified that when they asked him if he was alright he responded in the affirmative. In addition, both officers testified that the defendant started to cry, but that they did not consider this unusual behavior. Moreover, both Franklin and Martin knew the defendant well and had prior professional contact with him. Furthermore, the defendant had previously signed two waiver forms.

On the basis of the evidence delineated above, the trial court found that although the defendant had suffered some diminished capacity as a result of drug ingestion, "the intoxicating effect of the drugs was not so great as to render inadmissible [his] statements and actions. . . ." Our de novo review of the record and the applicable law leads us to the same conclusions. The record reflects that although the defendant was under the influence of drugs, during the interrogation he demonstrated an ability to listen and to comprehend. Moreover, he clearly and accurately described the details of the crime and expressly indicated an understanding of his Miranda warnings. As such, we conclude that the waiver of his rights was knowingly, intelligently, and voluntarily made. See State v. Reid, 394 N.W.2d at 403; see also State v. Wilson, 264 N.W.2d at 614-15.

II. VOLUNTARINESS OF THE CONFESSION

The defendant additionally contends that because of his condition, his confession was not voluntary. The test of whether an inculpatory statement or confession was involuntarily procured is "whether the defendant's will was overborne by the police officers." State v. Reid, 394 N.W.2d at 402 (quoting

State v. Coburn, 315 N.W.2d 742, 745 (Iowa 1982)). In State v. Hodges, 326 N.W.2d 345, 347 (Iowa 1982), the supreme court further stated:

In order to establish the voluntariness of a defendant's inculpatory statements, the State must demonstrate from the totality of circumstances that the statements were the product of an essentially free and unconstrained choice, made by the defendant at a time when his will was not overborne nor his capacity for self-determination critically impaired.

Id; see also State v. Whitsel, 339 N.W.2d at 153. This analysis implicates an examination of both the characteristics of the accused and the details of the interrogation process. State v. Hodges, 326 N.W.2d at 347-48. The factors relevant in this context are the same as those considered in determining the validity of the suspect's waiver of his constitutional rights. State v. Whitsel, 339 N.W.2d at 153.

We have examined the circumstances surrounding the defendant's confession in light of these principles, and are persuaded that the State has satisfied its burden of proving that the confession was voluntarily rendered. The record reveals that the defendant is a twenty-six year old high school graduate with an extensive record of criminal activity. The defendant was well-acquainted with both of the arresting officers and the arrest procedures. On two prior occasions, he had executed a waiver of his Miranda rights. Moreover, the record reflects that the defendant was carefully advised of his rights and indicated that he understood them; there is no evidence of any coercion on the part of the officers, nor does the defendant allege that he was coerced. As noted above, although the defendant appears to have been under the influence of drugs, the record does not reflect that his capacity to understand the consequences of actions was adversely affected; on the contrary, the testimony of the arresting officers indicates that he appeared attentive and competent. Given this finding and the lack of any evidence of the police employing any

coercive tactics, we conclude that the defendant's confession was voluntary. Accordingly, we hold that the trial court was correct in refusing to suppress the confession.

AFFIRMED.