IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

STATE OF IOWA, )
Plaintiff-Appellee, )
vs. )
JACK LEE WALTON, )
Defendant-Appellant. )

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Appeal from Linn District Court - Harold Swailes, Judge.

Defendant appeals his conviction of robbery in the first degree in violation of sections 711.1 and 711.2, Supplement to the Code 1977, contending that the trial court erred in concluding that his interrogation by the police did not violate his Miranda rights and that his confession was voluntary. AFFIRMED.

Michael S. Vestle, Cedar Rapids, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Thomas N. Martin, Assistant Attorney General; for plaintiff-appellee.

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

PER CURIAM

Defendant appeals his conviction of robbery in the first degree in violation of sections 711.1 and 711.2, Supplement to the Code 1977. He contends that the trial court erred in concluding that his interrogation by the police did not violate his Miranda rights and that his confession was voluntary. We affirm.

Since defendant alleges that his constitutional rights were abridged, we must independently evaluate the totality of the circumstances to determine whether his rights were violated. State v. Fisher, 279 N.W.2d 265, 266 (Iowa 1979). The State claims that defendant waived his Miranda rights. Such a question is one of fact, and the State has the burden of proving by a preponderance of the evidence that the waiver was knowing, intelligent and voluntary. Id.

After examining the record, we agree with the trial court that the State sustained its burden. At the hearing on defendant's motion to suppress, Kenneth Millsap, one of the interrogating police officers, testified that defendant was read his Miranda rights before any questioning began and that defendant read his rights aloud from a written waiver form. Millsap testified that defendant admitted that he understood his rights and was willing to talk to the officers but did not want to sign the written waiver form. He also testified that defendant did not ask to see an attorney until about thirty minutes after the interrogation began and that all questioning stopped immediately after this request. Defendant's testimony contradicts that of Millsap in nearly all respects. The trial court chose to give more credibility to Millsap's testimony. Upon our independent evaluation of the facts, we agree. Since the State has shown by a preponderance that defendant made a knowing and voluntary waiver of his rights, his interrogation by the police was not constitutionally flawed.

Defendant also claims that his confession was involuntary; he specifically claims that he was induced by a promise that he would "get off with an easy way of it" if he confessed. Again, the State has the burden of proving by a preponderance of the evidence that defendant's incriminating statements were voluntarily made. State v. Jump, 269 N.W.2d 417, 424 (Iowa 1978). We think that the State has met this burden also. As stated above, defendant made a voluntary and knowing waiver of his Miranda rights. Contrary to defendant's claim of an alleged promise, Millsap testified that he made no promises at all to defendant in exchange for a confession. In fact, it appears that any discussion of a deal was initiated by defendant; Millsap testified in part as follows:

Q. What was the nature of that discussion?

A. At the point just prior to where he requested to call or to talk to [an attorney] before giving a statement [defendant] questioned us in regard to what kind of a deal he could make if he did give us all the facts in a written statement.

Q. What did you advise him at that time?

A. That we couldn't give him any kind of a deal; that he was already charged and we already had written statements from these co-conspirators.

We conclude that defendant's statements were made voluntarily. Finding no reason to disturb the conviction, we affirm.

AFFIRMED.