FILED
OCT 18 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

THE STATE OF IOWA, )

Plaintiff-Appellee, ) Filed October 18, 1979

vs. )

KENNETH O. RITTER, ) 291
63232

Defendant-Appellant. )

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Appeal from Black Hawk District Court - Dennis D. Damsgaard, Judge.

Defendant appeals from conviction of the offense of robbery in the first degree, a violation of section 711.2, Supplement to the Code 1977. AFFIRMED.

Michael E. Sheehy, Waterloo, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Jeanine Freeman, Assistant Attorney General; for plaintiff-appellee.

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

PER CURIAM

Defendant appeals from conviction of the offense of robbery in the first degree, a violation of section 711.2, Supplement to the Code 1977. On appeal defendant asserts that: (1) his physical and mental condition, due to his earlier ingestion of alcohol and various drugs, precluded a voluntary waiver of his constitutional rights as guaranteed by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 716 (1966); and (2) alleged threats by examining officers to implicate his sister in the crime and to take his sister's child away from her coerced him into making oral and written inculpatory statements. We disagree and affirm the decision of the trial court.

The county attorney's information charging defendant with robbery in the first degree stemmed from a robbery of the Westside Grocery in Waterloo on October 30, 1978. Defendant was arrested in Fort Dodge on an unrelated charge on November 3, 1978 at approximately 3:15 a.m. At approximately 4:00 p.m. on November 3, defendant was questioned about his suspected involvement in robbery of the Westside Grocery by detectives Eric Gunderson and Steven Witt of the Waterloo Police department. Defendant was given the Miranda warnings and he signed a waiver of rights form. Pursuant to questioning by the detectives, defendant made an oral and written confession.

At a pretrial hearing on defendant's motion to suppress his oral and written confessions, defendant testified that at the time the statements were given, due to his prior ingestion of alcohol and various drugs,[1] he was nervous and hyper and had stomach cramps and an upset stomach. Consequently, he testified that he could not recall being advised of his constitutional rights or making any written or oral statements. Detectives Gunderson and Witt testified, however, that defendant did not appear to have been intoxicated or withdrawing from drug usage and that he appeared to be alert and coherent. A doctor who examined defendant for stomach cramps approximately twenty-four hours after interrogation stated that, in his opinion, defendant had been experiencing mild withdrawal symptoms at that time and had probably been doing so as well the day before. The doctor testified that, as a result, defendant would have been

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[1] Defendant testified that during the twenty-four hour period preceding his arrest, he had ingested a pint of tequilla, ten milligrams of valium, eight or nine beers, and an unknown quantity of unidentified barbituates.

in a restless, hyperactive, and irritable state which perhaps would have made him more susceptible, to influence, but that even assuming defendant was more susceptible this would not necessarily assume defendant would be unable to act intelligently and voluntarily.

Defendant also testified at the hearing that he had confessed because the detectives had threatened to implicate his sister in the crime and to arrange with the Department of Social Services to have her child taken away if he did not cooperate with them. The detectives testified that no such threats or statements had been made, but that defendant was told, after he asked, that his sister had given the police a statement.

Our review is **de novo.** State v. Jump, 269 N.W.2d 417, 423 (Iowa 1978); State v. Hilpipre, 242 N.W.2d 306, 309 (Iowa 1976). The State has the burden of proving by a preponderance of the evidence that defendant's inculpatory statements were made voluntarily. Lego v. Twomey, 404 U.S. 477, 489, 92 S.Ct. 619, 630, 30 L.Ed.2d 618, 630 (1972); State v. Cullison, 227 N.W.2d 121, 127 (Iowa 1975). A statement is voluntary if it is the product of a rational and free will. Hilpipre, 242 N.W.2d at 309. Defendant's decision to speak must be essentially free and unconstrained, with his will not overborne and his capacity for self-determination not critically impaired. Cullison, 227 N.W.2d 127. No one factor is determinative of the voluntariness of a confession; the totality of the circumstances of each case must be examined individually. Id. After carefully reviewing the totality of the circumstances, we conclude the State has shown by the preponderance of the evidence that defendant's capacity was not critically impaired at the time when the inculpatory statements were made. In reaching this result we have given weight to the trial court's determination of fact as it relates to the credibility of testimony given by the witnesses. See Iowa R. App. P. 14(f)(7); State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976).

There is much evidence in the record showing defendant was aware of what was going on during the interrogation. Testimony indicates he was able to understand the circumstances of his arrest and the questions which were asked of him by the detectives. His answers were articulate and responsive to their questions and, at times, he responded with pertinent questions of his own. Defendant's written statement, which Detective Witt attempted to type in the same words as defendant used, was detailed and well organized. Defendant reviewed this statement for approximately five minutes and, after making a correction in the statement, signed it. The doctor who later

examined defendant testified, in response to a hypothetical question regarding defendant's state at the time of interrogation, that "perhaps" defendant would be more susceptible to influence, but he also testified that perhaps he would not. We conclude, therefore, at the time defendant made the inculpatory oral and written statements, his capacity for self-determination was not critically impaired.

Defendant also contends he was coerced into making the inculpatory statements by threats regarding his sister which were allegedly made by detectives Gunderson and Witt. He contends that they threatened to implicate his sister in the crime and to arrange for her child to be taken away from her unless he cooperated.

A statement or confession extracted by threats or violence, by direct or implied promises, however slight, or by the exertion of any improper influence is not voluntary. State v. Hilpipre, 242 N.W.2d 306, 309 (Iowa 1976). A determination whether the statement or confession was the result of coercion rests on a determination of whether defendant's will was overborne. Reck v. Pate, 367 U.S. 433, 440, 81 S.Ct. 1541, 1546, 6 L.Ed.2d 948, 953 (1961); State v. Cullison, 227 N.W.2d 121, 127 (Iowa 1975). Statements which are freely and voluntarily made are not rendered inadmissible just because defendant's motive may have been to prevent the arrest of a close relative. People v. Jones, 221 Cal. App. 2d 37, 40, 34 Cal. Rptr. 267, 268-69 (1963), cert. denied 377 U.S. 911, 84 S.Ct. 1174, 12 L. Ed. 181 (1964). After carefully examining the record, we conclude the statements made by detectives Gunderson and Witt did not coerce defendant into making the oral and written confessions. In reaching this conclusion, we again give weight to the trial court's determination of fact as it relates to the credibility of witnesses' testimony. See Iowa R. App. P. 14(f)(7); State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976).

Although the testimony of detectives Gunderson and Witt was directly contradicted by the testimony of defendant, we believe defendant's testimony to be of questionable credibility. Defendant, at the time he was questioned, was a twenty-six year old adult possessing normal intelligence. The evidence indicates defendant had been confronted with certain evidence concerning the crime when, after he had asked, the detectives disclosed that his sister had given the police a statement. Shortly thereafter defendant made the inculpatory statements. That defendant might be concerned about his sister is understandable. It is obvious from the record he cared very much for her. Furthermore, she had been with him at the time the crime under

investigation was committed. Nevertheless, we cannot conclude that the circumstances were such that defendant's will was overborne, so as to make his confession involuntary, by this concern after learning that his sister had made a statement to the police. We find the inculpatory statements that defendant made were freely and voluntarily given and not the product of alleged threats to his sister's welfare made by the detectives who questioned him.

The decision of the trial court is affirmed in all respects.

AFFIRMED.