FILED
JUN 30 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

RICHARD E. IRISH,

Appellant.

Filed June 30, 1978

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Appeal from Monona District Court - D. M. Pendleton, Judge.

Defendant appeals his conviction for manslaughter, a violation of § 690.10, The Code, claiming trial court erred in several evidentiary rulings. Affirmed.

Daniel C. Galvin, of O'Brien, Galvin & O'Brien, Sioux City, for appellant.

Richard C. Turner, Attorney General, Thomas A. Evans, Jr., Assistant Attorney General, Robert R. Huibregtse, Assistant Attorney General, Stephen W. Allen, Monona County Attorney, for appellee.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant, Richard E. Irish, appeals his conviction for manslaughter, a violation of § 690.10, The Code. He questions the admission of certain of his own statements, the procedure by which those statements were admitted, and the admission of opinion evidence.

I. Trial court's failure to make his conclusion that defendant's statements were voluntary appear in the record with unmistakable clarity.

In this division, defendant argues that because trial court merely overruled defendant's objection to admission of his statements to Trooper Taylor, and did not specifically state his finding that those statements were voluntary, the standards of Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964) and Georgia v. Sims, 385 U.S. 538, 87 S.Ct. 639, 17 L.Ed.2d 593 (1967) were violated. See also State v. Walton, 247 N.W.2d 736, 740 (Iowa 1976).

We are not persuaded that error occurred. The cases upon which defendant relies involved situations in which the trial court reached only a preliminary conclusion as to the admissibility of the confession but submitted the question to the jury for final determination. It was therefore questionable, at best, whether the trial court made a determination under the New York procedure disapproved in Denno, the Massachusetts procedure, which that case approved, or some other procedure.

In this case, the question of the statements' admissibility was not submitted to the jury at all. Therefore the judge must necessarily have made the ultimate and final determination on voluntariness. The issues and applicable law were clearly presented to trial court. While an express finding that the statements and the Miranda waiver were voluntary would be preferable, the omission is not fatal here. See United States v. Medina, 552 F.2d 181, 182-86 (7th Cir. 1977); United States v. Gardner, 516 F.2d 334 (7th Cir.), cert. denied, 423 U.S. 861, 96 S.Ct. 118, 46 L.Ed.2d 89 (1975); Sheer v. United States, 414 F.2d 122, 125 (5th Cir.), cert. denied, 396 U.S. 946, 90 S.Ct. 387, 24 L.Ed.2d 249 (1969); but see United States v. Goss, 484 F.2d 434, 436-37 (6th Cir. 1973).

II. Voluntariness of the waiver and the statements.

Defendant's objection at trial raised only the question of whether he understood the nature and quality of the Miranda warning. We do not, therefore, consider the voluntariness of the statements. State v. Washington, 257 N.W.2d 890, 895-96 (Iowa 1977).

The principles to be applied here are those set out in State v. Russell, 261 N.W.2d 490, 492-94 (Iowa 1978) as governing the first prong of the Russell defendant's attack. Irish was coherent, responsive and articulate in his answers to the questions by Trooper Taylor. The medication upon which defendant places much emphasis was given after he waived his Miranda rights. Cf. State v. Gilmore, 259 N.W.2d 846, 860 (Iowa 1977) (A finding that the last part of defendant's statement is involuntary does not render prior voluntary statements inadmissible.). The State showed, by a preponderence of the evidence, that defendant knowingly and intelligently waived his Miranda rights.

III. Opinion evidence.

Defendant finally asserts that no factual basis was shown for Trooper Taylor's opinion that Irish was under the influence of alcohol. The rule on such opinions is set out in State v. Davis, 196 N.W.2d 885, 893-94 (Iowa 1972). The testimony here was given in compliance with that rule. Defendant's objections go to the weight of the testimony, not its admissibility. Trial court was correct in allowing the evidence.

AFFIRMED.