IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

STATE OF IOWA)

Plaintiff-Appellee,)

vs.)

HERBERT O. SPELLER, Jr.,)

Defendant-Appellant.)

Filed October 28, 1987

7-333
86-1451

391

Appeal from the Iowa District Court for Linn County (No. CRF 9726-0386) - Larry J. Conmey, Judge (pretrial motions) and Ansel J. Chapman, Judge (trial and sentencing).

The defendant appeals from a judgment entered upon a jury verdict finding him guilty of robbery in the first degree. **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; Denver D. Dillard, County Attorney; and Harold Benton, Assistant County Attorney; for plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden, and Sackett, JJ. Snell, J., takes no part.

SACKETT, J. 302

Defendant, Herbert O. Speller, Jr., appeals from a judgment entered on a jury verdict convicting him of robbery in the first degree in violation of Iowa Code sections 711.1 and 711.2 (1985).

Defendant asserts the trial court erred (1) in denying his motion for disclosure of the identity of the person who informed the police defendant was involved in the robbery, and (2) in overruling his motion to suppress his confession. Finding no error, we affirm.

I.

Defendant asserts the trial court erred in denying his motion for disclosure of the identity of the person who informed the police defendant was involved in the robbery.

A fast-food restaurant was robbed at gunpoint. The police received a tip from an informant that defendant was involved in the robbery. The police then prepared an array of eight photographs of men who were of the same race and approximately the same age as defendant. The array included pictures of both defendant and his half brother. The manager of the store, who waited on the robber and gave him the money from the cash register, positively identified defendant from the photographic array. Based on this identification, the magistrate issued a warrant for defendant's arrest.

In his pretrial motion for disclosure of the informant's identity, defendant claimed he was entitled to whatever information the informant could provide regarding the perpetrators of the crime. The trial court denied defendant's motion on the grounds the informant was unpaid and was possibly anonymous.

The State is privileged to withhold the identity of a person who furnishes information relating to violations of the law. State v. Luter, 346 N.W.2d 802,

810 (Iowa), cert. denied, 469 U.S. 830 (1984); State v. Nelson, 395 N.W.2d 649, 652 (Iowa App. 1986). This privilege is premised upon the State's interest in maintaining the flow of information essential to law enforcement. Nelson, 395 N.W.2d at 652 (citations omitted). To be weighed against the State's interest, however, is a defendant's right of access to facts necessary for the preparation and presentation of a defense as well as a defendant's right to fair trial. Id.

The facts to be considered in this balancing process are:

1. Nature of the offense charged;
2. Defenses raised; and
3. Potential significance of an informant's testimony.

Id. (citing State v. Webb, 309 N.W.2d 404, 410 (Iowa 1981); State v. Lamar, 210 N.W.2d 600, 602 (Iowa 1973)).

A defendant seeking to overcome the State's privilege to withhold the identity of informants has the burden of proving the informant is likely to have evidence bearing on the merits of the case. State v. Sheffey, 243 N.W.2d 555, 559 (Iowa 1976); Nelson, 395 N.W.2d at 652. When informants are present at the scene of the crime or participate in the offense, their identity should ordinarily be divulged as they are then witnesses to the event. Nelson, 395 N.W.2d at 653.

Guided by the aforestated standards, we find defendant failed to meet his burden to compel discovery of the informant's identity.

Defendant's principal defense is his half brother committed the crime. Defendant fails to show "the specific essential course the informer's testimony would take" that would materially aid this defense. State v. Howell, 290 N.W.2d 355, 359 (Iowa 1980); see State v. Horn, 282 N.W.2d 717, 725-26 (Iowa 1979). Mere speculation an informant may be helpful to the defendant's case is not enough to carry the burden and overcome the public interest in protection of the informant. Sheffey, 243 N.W.2d at 559; Nelson, 395 N.W.2d at 653.

Defendant makes no showing the informant was a witness to the crime. The potential significance of the informant's testimony is greatly diminished by the fact probable cause to arrest defendant arose from the manager's identification of defendant's picture rather than from the informant's tip alone. The manager testified for the State and defendant exercised his right to cross-examine her.

The trial court did not err in denying defendant's motion for disclosure of the identity of the informant. We affirm the trial court's ruling because it reached the right result though on different grounds. See Bascom v. Jos. Schlitz Brewing Co., 395 N.W.2d 879, 885 (Iowa 1986).

II.

Defendant claims the trial court erred in overruling his motion to suppress his confession.

After his arrest, defendant signed a statement in which he confessed to the robbery. At the pretrial suppression hearing defendant claimed the confession was induced by promises of leniency regarding his bond and the disposition of his case. Defendant testified at trial he believed he would avoid serving any time in jail if he confessed to the robbery and went to work for the police as an informant. Defendant also claimed he confessed to the robbery to protect his half brother, who defendant claims committed the crime.

The two detectives who took defendant's statement denied making any threats or promises to defendant. One detective testified that after defendant gave his statement, defendant offered to give the detectives some information on unrelated crimes if they could get his bond reduced. The detective further testified defendant never gave him any information of value but that the detectives did make an unsuccessful attempt to have defendant's bond reduced.

The State is charged with the burden of proving the voluntariness of a defendant's confession by a preponderance of the evidence. State v. Reid, 394 N.W.2d 399, 402 (Iowa 1986). We determine the issue whether officers have exercised coercion so as to render statements involuntary by examining the totality of the circumstances. State v. Munro, 295 N.W.2d 437, 440 (Iowa 1980).

From our independent examination of the record, see State v. Holderness, 301 N.W.2d 733, 739 (Iowa 1981), we conclude the trial court correctly admitted defendant's confession.

Defendant was advised of his rights and signed a waiver of rights form upon his arrival at the detectives' office at 9:50 a.m. Evidence showed the detectives' secretary began typing defendant's written statement at 10:30 a.m. Defendant understood his rights and did not request an attorney.

Defendant's allegation he was promised he would not serve any time for the robbery if he confessed is supported only by his testimony at trial. The detectives' testimony, the short period of time in which these negotiations were to have taken place, and defendant's prior experience with the criminal process adequately refute defendant's allegations he was induced into making a confession.

Considering the totality of the circumstances, we find the confession by defendant was voluntarily made and admissible at trial.

AFFIRMED.