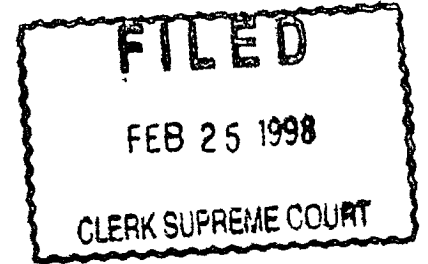


IN THE COURT OF APPEALS OF IOWA

No. 7-681 / 97-88



STATE OF IOWA,
Appellee,

000505

vs.

ROBERT CHARLES RICHEY,
Appellant.

Appeal from the Iowa District Court for Bremer County, Paul W. Riffel, Judge.

The defendant appeals his conviction for first-degree murder in violation of Iowa Code sections 707.1 and 707.2(1) (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John M. Priester and David Arthur Adams, Assistant State Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor and Thomas H. Miller, Assistant Attorneys General, and Ted Hovda, County Attorney, for appellee.

Heard by Cady, C.J., and Sackett and Vogel, JJ.

VOGEL, J.

The defendant, Robert C. Richey, appeals his conviction for first-degree murder in violation of Iowa Code sections 707.1 and 707.2(1) (1995). He argues the district court erred in overruling his motion to suppress.

Background facts. On May 8, 1996, Don Larkin was sitting at his dining room table with his girlfriend, Jean Richey. At approximately 9:40 p.m. Jean Richey heard a loud explosion coming from behind Larkin. Larkin fell to the ground dead, the result of a shotgun blast coming through the window behind him.

Richey, Jean's former husband, had previously made threatening statements indicating he would kill Larkin. Richey's fingerprints were found on the siding under the window where the shot had entered the house, and shoe prints matching shoes recovered from Richey's property were found on a plastic chair outside the window.

Scope of review. The motion to suppress evidence in this case implicates a constitutional right; we accordingly review the record de novo. *State v. Davis*, 446 N.W.2d 786, 787 (Iowa 1989); *State v. Aldape*, 307 N.W.2d 32, 36 (Iowa 1981). We make an independent evaluation of the totality of the evidence from which the defendant's assertions of unconstitutionality arise. *State v. Snethen*, 245 N.W.2d 308, 311 (Iowa 1976); *State v. Alspach*, 524 N.W.2d 665, 667 (Iowa 1994).

Waiver of Miranda rights. Richey claims his statements to DCI agents should have been suppressed as he was intoxicated and therefore did not voluntarily waive

his *Miranda* rights. However, the *Miranda* inquiry will not be triggered unless both interrogation and custody are present. *State v. Davis*, 446 N.W.2d 785, 788 (Iowa 1989).

Custody. While Richey does not argue that he was in custody during the questioning, we nevertheless begin our review by deciding whether Richey was in custody at the time of the interview.

The United States Supreme Court articulated “Miranda warnings are required only where [there is interrogation and] there has been such a restriction on the person’s freedom as to render him ‘in custody.’” *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S.Ct. 711, 714, 50 L.Ed.2d 714, 719 (1977). The litmus is how a reasonable person in the suspect’s shoes would have understood the situation, and thus the standard is an objective one. *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S.Ct. 3138, 3151, 82 L.Ed.2d 317, 336 (1984). Our supreme court evaluates the following factors: (1) the language used to summon the individual; (2) the purpose, place and manner of the interrogation; (3) the extent to which the defendant is confronted with evidence of his guilt; and (4) whether the defendant is free to leave the place of questioning. *State v. Smith*, 546 N.W.2d 916, 922 (Iowa 1996).

We examine each of these factors in turn. Richey testified he was picked up and brought to the police station¹ voluntarily in response to the agents’ request that

¹ Richey indicated to the police that he was too intoxicated to drive into the station, but he subsequently agreed to allowing the officers give him a ride.

he do so. He was interviewed from approximately 2:00 a.m. to 5:00 a.m. at the police station; however, the mere fact an individual is questioned at a police station does not render the interview a custodial interrogation. *See State v. Schwartz*, 467 N.W.2d 240, 245 (Iowa 1991); *State v. Pierson*, 554 N.W.2d 555, 560 (Iowa App. 1996). The manner of the interview was relatively informal. It took place in an office with one officer sitting at a desk, another at a side chair and Richey on the other side of the desk. The two agents were dressed in street clothes and not visibly armed. *See State v. Foell*, 512 N.W.2d 809, 812 (Iowa App. 1993) (holding no custody when only two officers involved in questioning). There were no deceptive tactics used. No coercion was involved at any point, nor was the meeting confrontational regarding Richey's guilt. Richey agreed to keep talking. He was allowed to smoke and was given a soft drink and bathroom breaks. He was told he was free to leave. Later, he indicated he was ready to leave and was again told he could leave if he wished. The door remained unlocked. There was neither a person nor an object obstructing his path to the door. Collectively, these facts do not sufficiently demonstrate Richey was in custody the morning of May 9, 1996. *See Smith*, 546 N.W.2d at 922 (stating the four-prong test must be met in order to find custody existed).

Although Richey was questioned, we do not find evidence custody existed, and thus, *Miranda* warnings, although given, were not required. As we find Richey

was not in custody at the time of the questioning, we need not reach the issue of whether he voluntarily waived his Miranda rights.

We accordingly find the district court correctly overruled Richey's motions to suppress, and therefore uphold Richey's conviction of murder in the first degree.

AFFIRMED.