IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

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STATE OF IOWA	)	
Plaintiff-Appellee,	)	
vs.	)	
MICHAEL AUGUST BAUER,	)	8-494 87-1817
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Decatur County (CR 1755), Michael J. Streit, Judge.

Defendant appeals his conviction by a jury of second-degree sexual abuse and first-degree burglary. **AFFIRMED.**

Raymond E. Rogers, Acting Chief Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes and Virginia Barchman, Assistant Attorneys General; and Robert L. Fulton, County Attorney, for plaintiff-appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

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We address defendant's claim the trial court erred in refusing to suppress a statement defendant made to a deputy sheriff. We affirm.

Defendant was charged and convicted of burglary and sexual abuse. The victim could not identify defendant. In a search of defendant's residence after the crime the State found a boot owned by defendant. There was blood on the boot determined to be of the same blood type as defendant's and the victim's. While incarcerated and after having invoked his right to counsel defendant asked a deputy sheriff about having his boots returned. The deputy sheriff questioned about the event testified:

> A. Mr. Bauer wanted to know if he could have his boots [back].
>
> * * *
>
> I said he would have to talk to the sheriff about it. About this time I saw the sheriff walk by the door of the jail. I believe I told him Mr. Bauer wanted to speak to him, and he came in the jail.
>
> * * *
>
> Mr. Bauer asked the sheriff if he could have his boots back, and the sheriff said, "No." Mr. Bauer made some statement like "Why not?" and [the sheriff only responded that] they were being held as evidence.
>
> * * *
>
> The sheriff left, and Mr. Bauer made some statement about the boots -- that if they [were] being held in evidence because there was blood on them, it wouldn't do any good because it was pig's blood on the boots.

Defendant contends the statement he made about if the boots were held as evidence because they had blood on them and the blood was pig's blood should have been suppressed.

We determine these statements are incriminating to defendant and he had invoked his right to counsel and his right to remain silent had attached.

The State must cut off interrogation once the suspect invokes his request to counsel. Miranda v. Arizona, 384 U.S. 436, 474, 86 S.Ct. 1602, 1628, 16 L.Ed. 694, 723 (1966). Once defendant has invoked his right to counsel in a fifth amendment setting, further interrogation without counsel is prohibited unless initiated by the accused. Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1884-85, 68 L.Ed.2d 378, 386 (1981). A waiver by the accused is invalid if it was police who initiated questioning. Id. 451 U.S. at 484, 101 S.Ct. at 1884-85, 68 L.Ed.2d at 386; Oregon v. Bradshaw, 462 U.S. 1039, 1043, 103 S.Ct. 2830, 2833-34, 77 L.Ed.2d 405, 411 (1983).

The conversation that resulted in the challenged remarks was initiated by the defendant. We find no evidence of any attempt by the State to elicit incriminating statements from the defendant. See State v. Newsom, 414 N.W.2d 354, 358 (Iowa 1987); State v. Nelsen, 390 N.W.2d 589, 592 (Iowa 1986). We affirm the trial court.

AFFIRMED.