IN THE COURT OF APPEALS OF IOWA

No. 5-332 - 94-878

FILED
AUG 17 1995
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ROBERT EUGENE BILLINGS,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Rodney Ryan, Judge.

Robert Eugene Billings appeals the judgment and sentence entered upon his conviction of third-degree burglary in violation of Iowa Code section 713.6(A) (1993). **AFFIRMED.**

Curt Krull, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Deputy Attorney General, and John P. Sarcone, County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab, and Cady, JJ.

CADY, J.

This appeal requires us to decide if inculpatory statements by the defendant were voluntarily made to police during an interrogation. The district court denied defendant's pre-trial motion to suppress the statements. On appeal, we affirm.

Robert Billings was a suspect in a residential burglary. He was seventeen years old at the time. Arrangements were made by a detective for the Des Moines Police Department to question Billings at the police station concerning the burglary. Billing's mother was present during the interrogation.

Prior to questioning Billings, the police detective read the juvenile waiver and parental consent form to Billings and his mother. The forms were subsequently signed, and Billings eventually admitted to participating in the burglary. He was taken into custody and later waived to adult court, where he was found guilty of third-degree burglary. The conviction was based, in part, on Billing's confession.

Billings unsuccessfully sought to suppress his confession prior to trial. His mother testified at the suppression hearing that, prior to signing the consent form, she asked the detective if her son would be taken to "Meyer Hall or jail" if she signed the form. The detective purportedly responded "no, basically all you are doing is giving me permission to ask Robert some questions." She believed this meant he would be going home with her after the interview. She also testified that the detective told Billings during the questioning to "tell the truth" and that he would do whatever he could to "help" Billings. Billing's mother later testified that the detective said he

would tell the judge or county attorney to help Billings if he was truthful.

The detective denied making any promises or assurances to Billings or his mother. He had no specific recollection of Billing's mother asking him any questions, but indicated his customary practice is to avoid making any assurances and to explain that others will make the decisions about what will happen in the case. The detective made notes of the interview, but the interrogation was not taped or otherwise preserved. Billings argues on appeal that the state failed to prove that the detective did not make promises of leniency in obtaining the waiver and confession. He claims the confession should not have been used to support his conviction.

Inculpatory statements made by an accused to law enforcement must be voluntary. The general test of voluntariness is whether under the totality of the circumstances the will of the accused was overborne. *State v. Reid*, 394 N.W.2d 399, 402 (Iowa 1986). A variety of factors are considered in making this determination, including whether any deceit or improper promises were used to obtain the confession. *State v. Hodges*, 326 N.W.2d 345, 348 (Iowa 1982). Statements are involuntary if induced by promises of leniency. *State v. Kase*, 344 N.W.2d 223, 225 (Iowa 1984).

An offer by police to inform the prosecutor that the accused was cooperative is not tantamount to a promise of leniency. *State v. Whitsel*, 339 N.W.2d 149, 153 (Iowa 1983). Moreover, a mere adjuration to be truthful does not ordinarily amount to an improper inducement. *See Smith v. State*, 518 So. 2d 174, 178 (Ala. Crim. App.

1987). However, if in addition to telling the accused it is better to tell the truth, the interrogating officer also explains what advantage will likely be gained from making a confession, the officer's statements become "promises" or "assurances", rendering the statements by the accused involuntary. *Hodges*, 326 N.W.2d at 348.

The State carries the burden to show that a suspect's *Miranda* waiver and subsequent confession was voluntary. *State v. Vincik*, 398 N.W.2d 788, 792 (Iowa 1987) (confession). Our review of the issue is de novo. *See State v. Howard*, 509 N.W.2d 764, 766 (Iowa 1993). Weight, however, is given to the finding of the trial court. *State v. Williams*, 182 N.W.2d 396, 401 (Iowa 1970). This is especially true when resolution of factual disputes depends on the credibility of witnesses. *State v. Parkey*, 471 N.W.2d 896, 897 (Iowa 1991). Trial courts are in a more favorable position to evaluate credibility than appellate courts. *Id.*

In this case the critical testimony of the interrogating police officer squarely contradicts the salient testimony of the defendant's mother. The trial court, however, made no specific finding to resolve the factual dispute. Instead it concluded that the defendant's mother's version of events, even if true, did not amount to promises of leniency, trickery or deceit.[1]

We disagree with the trial court's conclusion that the statements attributed to the detective by Billings mother, if made, would not constitute an impermissible

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[1]We encourage trial courts to resolve factual disputes presented.

promise of leniency. A fine line can exist between admissibility and exclusion in this issue, but the line is crossed when a police officer tells a suspect what advantages could be gained by making a confession. *Hodges*, 326 N.W.2d at 349. We believe the line would have been crossed in this case if the officer told Billings he would help him by talking to the judge or county attorney. Such statments reasonably imply that an advantage could be gained by making a confession. Thus, we must review the evidence and determine whether the officer made improper assurances.

From our de novo review of all the circumstances, we conclude the State proved the waiver and confession were voluntary. We find the testimony of the officer convincing. He was consistent, did not attempt to provide information when his recollection would not permit, and followed a routine in the questioning process to avoid making any promises or assurances. Defendant's mother, on the other hand, was inconsistent in her recollection of the important events. Moreover, her version of the events seemed to expand with each new question. In the end, her testimony vastly exceeded the scope of defendant's original claim, and tainted her credibility.

We find the officer made no promises or assurances to induce the confession or obtain the waiver. Considering all the circumstances, we conclude the waiver and subsequent statements were voluntary. Accordingly, we affirm the conviction.

AFFIRMED.