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IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

STATE OF IOWA	)	
Plaintiff-Appellee,	)	November 26, 1980
vs.	)	
ISAAC PLEDGE, JR.,	)	0-230
Defendant-Appellant.	)	63684

Appeal from Linn District Court - Brent G. Harstad and William R. Eads, Judges.

Defendant juvenile appeals from conviction of first degree theft and involuntary manslaughter. - REVERSED AND REMANDED.

Jon M. Kinnamon, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

OXBERGER, C.J.

Defendant, Isaac Pledge, appeals his conviction of first degree theft and involuntary manslaughter. We reverse and remand.

Pledge, a juvenile, was convicted in Linn county district court following what began as a purse snatching incident. The elderly woman victim fell to the ground during the incident and broke her hip. This matter took on tragic dimensions when the woman died of complications following corrective surgery. Police took Isaac into custody for questioning. A waiver statement and a dictated confession were signed by Isaac during this questioning on the morning of June 7, 1978. The juvenile court held a hearing, at State's request to waive jurisdiction, and on September 14, 1978, ordered Isaac transferred to district court. The State filed a complaint accusing Isaac of first degree murder and first degree robbery. The Grand Jury returned an indictment charging Isaac with first degree theft and involuntary manslaughter. At the commencement of trial on these charges, a suppression hearing was held on the admissibility of the statements signed by Isaac on June 7. Isaac's motion to suppress was overruled; and on February 9, 1979, a jury found him guilty of both charges.

Isaac argues 1) certain evidence at the waiver hearing was inadmissible, 2) the juvenile court erred in transferring him to district court, and 3) the trial court erred in overruling the motion to suppress.

I. The juvenile court at the waiver hearing received certain evidence "for the purpose of the record" subject to objections. This evidence included statements of two witnesses to the alleged crime without their availability for cross-examination, summarized reports of Isaac's school suspensions, and opinion testimony of a school administrator concerning Isaac's amenability to educational processes. The court in ruling on the objections considered the evidence relevant and material and akin to offers of proof. The State asserts evidence in this type of hearing need not adhere to the rigid standards as in a criminal trial, and is subject only to the requirement of relevancy and materiality. While not adopting that standard, especially as this matter occurred prior to the juvenile justice provisions now in effect, we find the evidence was relevant and material.

Specifically, the statements of the two witnesses to the incident were used for the purpose of finding probable cause. Hearsay evidence of this kind may be the basis for such finding in criminal preliminary hearings. Iowa R. Crim. P. 2(4)(b). Although juvenile transfer hearings may be of even more critical importance than the hearing on the merits, State v. Halvorson, 192 N.W.2d 765, 769 (Iowa 1971) citing Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L.Ed.2d 84 (1966), this import does not mandate a more rigid standard in determining probable cause in this type of proceeding.

The hearsay reports and opinion evidence concerning Isaac's school behavior are in the nature of those investigative reports allowable under the new juvenile provisions. § 232.45(4), The Code 1979. Furthermore, the juvenile court's determination to transfer was not based solely upon this disputed evidence. Other competent evidence was presented to support the transfer. Therefore, we do not find this evidence was prejudicial to Isaac at the waiver hearing.

II. Continuing this argument, Isaac asserts the evidence for transfer did not meet the State's burden imposed by the juvenile court to be clear and convincing proof. In transfer matters prior to the new juvenile code, we adopted the criteria set forth in Kent v. United States, 383 U.S. 541, 566, 86 S. Ct. 1045, 16 L.Ed.2d 84 (1966). See State v. Speck, 242 N.W.2d 287, 294 (Iowa 1976). This criteria is to be applied by the juvenile court to determine whether or not it would be contrary to the best interest of the minor or the public to retain its jurisdiction. § 232.72, The Code 1977. The juvenile court found probable cause to believe Isaac's guilt of the offense and found Isaac to be over the age of 14 thus fitting the statutory requirement to allow the exercise of discretion in transferring. Id. We find the evidence supports those findings.

The court's inquiry then focused on Isaac's rehabilitation potential and the need to protect the community. The court found little optimistic support for rehabilitation in the juvenile system based on evidence of Isaac's past participation and aggressive tendencies. The court further found the nature of the offense and subsequent behavior of Isaac to require a higher degree of protection for the community than the juvenile system could offer. While we view the circumstances unfortunate, we find the evidence sufficient to support the juvenile court's decision to transfer.

III. Isaac argues the district court erred in overruling his motion to suppress

State's exhibit 2, a written statement signed by the accused. Isaac asserts he did not knowingly and intelligently waive his rights and the subsequent statement was involuntarily made.

These challenges ultimately rely on custodial influences upon Isaac and Isaac's personal characteristics which affected his ability to freely and knowingly waive his rights and voluntarily confess to the offense. Although Isaac's assertion raises two distinct inquiries, the same factors will be considered to determine both issues. However, each must be decided separately. State v. Swanson, 228 N.W.2d 101 (Iowa 1975). In addition to the tests set forth by the United States Supreme Court,¹ we consider the guidelines in In re Thompson, 241 N.W.2d 2 (Iowa 1976). Thompson was decided prior to legislative application of the per se exclusionary effect of juvenile waivers without adult counsel. See § 232.11(2), The Code 1979. Neither did the court in that case judicially adopt that rule. However, the court in Thompson emphasized the importance of such advice and acknowledged failure to provide adult support throws a "deep shadow of judicial distrust over the resulting confession." Id. at 6.

In light of these considerations, we look to the circumstances surrounding the interrogation on June 7, 1978. The State offered as proof of waiver and confession the two prepared statements signed by defendant and the testimony of the officers who were present. Isaac presented evidence showing his 1) age of 15, 2) intelligence bordering on retardation, 3) basic skills scores falling within bottom one to two percentile of population, and 4) psychological weakness and immaturity in stress situations. Evidence of outside influences upon Isaac consisted of 1) the detectives' refusal to contact parents until two hours after Isaac's statement, 2) no adult counsel present, 3) formal, isolated environment of interrogation room, 4) Isaac's knowledge of Maide's implicating statement, 5) confession dictated by detectives, 6) detective's direction to sign at the x, and 7) Isaac's uncertainty of the charges against him, which certainly depended upon his statement.

Although no outrageous coercive behavior on the part of the detectives is in evidence, other elements exist which support a conclusion of an overborne will and

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966); In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed.2d 527 (1967); Schneekloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041, 36 L.Ed.2d 854 (1973).

impaired capacity for self-determination. See State v. Snethen, 245 N.W.2d 308, 315 (Iowa 1976).

While it is true separate consideration of each factor stated above would not automatically negate the voluntariness of a statement or action, it is also convincing that the total situation which depends upon an interrelation of all factors would be incapable of fostering voluntary, knowing behavior. Isaac's low intelligence and basic skills deficiency cast doubt on his ability to comprehend the prepared statements the detectives directed him to read aloud. The detectives told Isaac the extent of the charges depended on his version of the facts. His immaturity and inclination to yield in stress situations draws into question the reliability of his response. Finally, with no supportive adult present, there is serious doubt Isaac was aware of choices available to him or the consequences of his immediate action. See In re Thompson, 241 N.W.2d 2, 7 (Iowa 1976).

Under the circumstances, we find the State did not prove by a preponderance of the evidence that Isaac's waiver of rights was freely or knowingly given. Neither do we find sufficient proof of the voluntariness of Isaac's confession in light of the totality of the circumstances which include Isaac's personal characteristics and the influences upon him.

Finding error in the admission of Isaac's statement, we reverse the trial court's ruling and remand for new trial on the matter consistent with this decision.

REVERSED AND REMANDED.

All judges concur, except Donielson and Carter, JJ., who dissent.

DONIELSON, J. (dissenting)

I dissent from the majority's finding that the defendant's waiver of Miranda rights was not freely and knowingly given and the conclusion that his confession was not voluntarily made. I think that the State showed by a preponderance of the evidence that the waiver was knowing, voluntary, and intelligent, State v. Comor, 241 N.W.2d 447, 454 (Iowa 1976), and that a de novo review of the totality of the circumstances reveals that the statement was knowingly, intelligently, and voluntarily made. State v. Cullison, 227 N.W.2d 121, 127 (Iowa 1975). See State v. Hahn, 259 N.W.2d 753, 758 (Iowa 1977).

Defendant's interrogation took place in 1978, long prior to the effective date of section 232.11(2), The Code 1979. The police were entitled to proceed as authorized by the law in effect at that time. I conclude that the trial court's denial of defendant's motion to suppress is a principled application of the Miranda rule as it was applied to juveniles in Interest of Thompson, 241 N.W.2d 2 (Iowa 1976), prior to the enactment of section 232.11(2). In Thompson, the Supreme Court of Iowa rejected the contention that there is a per se rule which holds that a minor, acting alone, may not waive the constitutional rights afforded under Miranda. It was there noted that "it is apparent most courts, required to deal pragmatically with an ever-mounting crime wave in which minors play a disproportionate role, have considered society's self-preservation interests in rejecting a blanket exclusion of juvenile confessions." 241 N.W.2d at 5. Such reasoning is particularly applicable in the present case.

I find nothing objectionable about the police tactics used to obtain defendant's waiver and subsequent confession. In my estimation, the majority has somewhat magnified the evidence of outside influences upon the defendant. For example, since it is not clear from the record that the defendant ever asked to be allowed to call his parents, it is somewhat an exaggeration to identify "detective's refusal to allow call to parent" as a factor influencing the defendant's waiver. Furthermore, the fact that the confession was dictated by the detectives loses some of its significance when one recalls that the defendant was given ample opportunity to correct or amend the statement as it was being dictated in his presence and that he was in fact encouraged to do so. The record indicates that the fact that no adult counsel was present may fairly be attributed to defendant's failure to request, after he had been informed of his right to counsel, that either his parents or an attorney be present.

Defendant was taken to the detective center, told the subject of the inquiry, and given his Miranda rights. One of the two detectives present had the defendant read back to him the Miranda rights card and the effect of a waiver was explained to the defendant before he signed the card. Elements of police coercion in obtaining the waiver are simply absent in this case. Nor do I find evidence of police coercion in obtaining the confession. The interrogation was not unreasonably lengthy and there is no evidence of deception used or pressure applied by the interrogating detectives. There is no indication that the defendant was subjected to any kind of physical abuse or discomfort. Defendant was advised that Maide had implicated him and that two eyewitnesses were available, but, rather than being an attempt to coerce defendant's confession, such information was necessary in order for the defendant to make an intelligent and informed decision as to whether to confess. The appropriate question is whether the confession was "the product of an essentially free and unconstrained choice, made by defendant at a time when his will was not overborne nor his capacity for self-determination critically impaired." State v. Snethen, 245 N.W.2d 308, 315 (Iowa 1976). On the basis of this record, I would have to find that defendant's confession was voluntary.

In essence, it appears to me that too much emphasis has been placed upon the fact that the defendant is of low-level intelligence. While this is certainly one of the circumstances to consider, it is equally clear that sub-normal intellectual ability does not deprive one of the capacity to understand or to waive Miranda rights. See Hahn, 259 N.W.2d at 758. When properly considered as one factor in applying the totality of the circumstances test, the fact that a defendant exhibits low-level intelligence should not be over-emphasized unless the police have somehow taken advantage of the deficiency. I see no evidence that that has happened in the instant case and I am not prepared to accept the proposition that a person of low intelligence cannot voluntarily confess to a crime. See State v. Clough, 259 Iowa 1351, 1355, 147 N.W.2d 847, 850 (Iowa 1967). We should not further cloud the essential purpose of the law, which is to obtain the truth. As long as the interrogation is non-coercive and the confession is voluntarily given, low intelligence alone should not be permitted to compromise that basic purpose. I therefore would affirm the conviction.

Carter, J., joins in this dissent.