

FILED

MAR 31 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

276

Plaintiff-Appellee,

)

Filed March 31, 1986

vs.

)

**6-15
85-516**

BRENT OWEN DONATSCH,

)

Defendant-Appellant.

)

Appeal from the Iowa District Court for Jackson County (No. 5082) -

James E. Kelley, Judge.

Defendant appeals from his conviction for second-degree murder.

AFFIRMED.

Charles Harrington, Appellate Defender, and Deborah a. Goins, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Ann DiDonato, Assistant Attorney General, and Mike Kane, County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Snell, and Sackett, JJ.

Defendant Brent Donatsch has appealed his conviction of second-degree murder claiming the trial court erred in admitting defendant's confession since it was involuntary and defendant did not waive his Fifth Amendment right to counsel and right to remain silent.

We make an independent, de novo review of the totality of the relevant circumstances. State v. Rhiner, 352 N.W.2d 258, 262 (Iowa 1984).

Defendant and one Ronek were arrested on a robbery charge in Texas. Because defendant and Ronek were last seen with the murder victim in Maquoketa, Iowa, Agent Ken Sandy from the Iowa DCI and Officer Brooks from the Maquoketa police interviewed the defendant in Texas. During this interview, defendant gave two written statements which implicated him in the Maquoketa murder. Defendant was subsequently charged with first-degree murder. Defendant filed a motion to suppress the incriminating statements alleging they were induced by improper police statements after defendant had requested an attorney.

The general rule is that an accused in custody is not subject to further interrogation by the authorities when he has requested his right to counsel, ". . . unless he validly waives his earlier request for the assistance of counsel." Smith v. Illinois, ___ U.S. ___, ___, 105 S.Ct. 490, 492, 83 L.Ed.2d 488, 493 (1984)(citing Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1884-85, 68 L.Ed.2d 378, 386 (1981)). This is a two-part inquiry:

- (1) whether the accused actually invoked his right to counsel, and if so,
- (2) the court may admit his responses to further questioning only on finding that he:
 - (a) initiated further discussions with the police, and
 - (b) knowingly and intelligently waived the right he had invoked.

Smith v. Illinois, ___ U.S. at ___, 105 S.Ct. at 493, 83 L.Ed.2d at 493-94 (citing Edwards v. Arizona, 451 U.S. at 484-86, 101 S.Ct. at 1884-85, 68 L.Ed.2d at

386-87; Miranda v. Arizona, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694, 706-07 (1966).

At the suppression hearing, defendant testified he was given his Miranda rights and then he asked for an attorney.

DEFENDANT'S ATTORNEY: Now, according to the officer's testimony, Brent, Officer Sandy apparently left the room after you requested an attorney; is that correct?

DEFENDANT: Yes.

Q. And Mr. Brooks indicated that the two of you had a short conversation in his absence pertaining to the weather, things of that sort, back home; is that correct? A. Yes.

Q. What else, if anything? A. I asked Mr. Brooks what me and Mitch would be charged with and he said to me it looks like — he said to me, "It looks like manslaughter to me." He goes, "Mr. Kane will probably charge you guys with manslaughter." Then he said, "Cooperation will help you, too."

Q. Was there any witness besides Mr. Brooks and yourself to that statement? A. No.

Q. You realize you are under oath? A. Yes, I do.

Q. Do you swear to God that Mr. Brooks told you that? A. Yes, I do.

Q. What, if anything, did he say about quoting him? A. "Don't quote me on that."

Q. That is what he said? A. Yeah.

Q. Did he promise you anything? A. No.

Q. Apparently while you were with Mr. Brooks, from the record anyway, you then indicated you would give a statement; is that correct? A. yes.

Q. Was that before or after Mr. Brooks told you in essence that it appeared to him as if you were going to be charged with manslaughter? A. After.

Q. Was that one of the reasons that you changed your mind and decided to give them a statement? A. Yes, it was. [emphasis added]

On cross-examination, the defendant stated:

DEFENDANT: When I first seen Mr. Brooks and Mr. Sandy, they took me to a little room, interrogation room, interview room, and told me they wanted to talk to me about a burglary and the death of Thomas Goodwin, and gave me a card and read me my rights. When they did that, I go, "I'll talk to you, but I want to talk to a lawyer first." Mr. Sandy goes, "Okay. I'll see what I can do," and he leaves the room. Me and Mr. Brooks started talking. I asked why he came, what it was like back in Maquoketa and asked what me and Mitch were going to be charged with, and he says to me, he goes, "It looks like manslaughter to me." He goes, "Mr. Kane will probably charge you with manslaughter." I'm sure about this, he used either cooperation or cooperate, "Cooperation will help you guys," or, "If you cooperate, it will help you guys." [emphasis added].

Officer Brooks and Agent Sandy testified at the suppression hearing they had not told defendant what he would be charged with, they had not initiated further interrogation after defendant invoked his right to counsel, and they had not made any coercive or promissory statements in order to get defendant's confession. Officer Brooks testified:

OFFICER BROOKS: As [Agent Sandy] walked out of the room, he says, "I will see what the procedure will be to get you an attorney, but if it doesn't look like it's going to be a feasible-type situation to accomplish, we will wait until we get back to Maquoketa and talk to you then," and as he walked out the door, he said, "We don't really need your statement anyway."

COUNTY ATTORNEY: He then leaves the room and you and Brent [the defendant] are left in the room, right? A. That is correct.

Q. What transpires between you and Brent during the time that Sandy is absent? A. There is some small idle talk. Brent asked me how it was I got to be the one to come down to Texas, so I told him that the chief

made the decision on who got to go to Austin to do the interviews. We talked a bit about the weather. For that week and a half before it had been raining solid. I believe that was about the time they left Maquoketa. I told him it was still raining, and then Brent asked me, he said, "You guys didn't come all the way down here just for a burglary, did you?" And I said, "No, we didn't." And that's when I made the statement to him that that's all I could talk about, I wasn't allowed to talk any further about any interview of any kind until we found out the procedure for getting him an attorney. So from that point on there really wasn't anything said.

Q. So there is a few minutes of awkward silence, is there? A. That is correct. I was in the room for maybe eight to ten minutes.

Q. Eventually that silence is broken by whom? A. Brent asked me for a cigarette.

Q. What did you do in response to that request? A. I told him I didn't smoke, but I would go out and see if I could get one for him, so I left the room and walked maybe ten feet from the door where there is a desk with a lieutenant and asked for a cigarette, and from that point I could see down the hallway or the length of the room. I could see him talking on the phone, I presumed to you, and I talked to the detective for a few minutes and told him to wait a minute, I was going to take the cigarette to Brent, and I walked to the door to give him the cigarette and he said, "Forget the attorney. I will talk to you guys."

Q. You come back into the interview room and it's you and Brent in the interview room; is that correct? A. That is correct.

Q. And you have the cigarette with you and he says what? A. He says, "Forget the attorney. I'll talk with you guys."

Q. In response to that remark, what do you do? A. I go ahead and give him the cigarette and I believe it was a lighter. Then I walked down the hall — told Brent I will be back in a bit, close the door behind me — walk down the hall and go to Ken Sandy who is on the phone with you, and I told him Brent wants to go ahead and talk.

Q. In response to that, what do you and Sandy do? A. Ken gets finished talking with you on the phone.

We both go back to the room and sit down with Brent and Ken asks again, "Are you sure you want to talk without an attorney" Brent says, "I'll talk with you." And Ken says, "You understand you can stop at any time?" And he says, "Here, let's go over these again," so he runs over the statement of rights again. [emphasis added].

There is no dispute from the record that defendant invoked his right to counsel when he was questioned initially. We find the record indicates the interrogation ceased at that point. The evidence also supports a finding that defendant initiated further discussions with the police.

Defendant argues he gave the incriminating statements after the police made improper comments and therefore he waived his rights involuntarily. However, he does not contend he did not understand his rights.

In order to establish the voluntariness of a defendant's inculpatory statements, the State must demonstrate from the totality of circumstances, that the statements were the product of an essentially free and unconstrained choice, made by the defendant at a time when his will was not overborne nor his capacity for self-determination critically impaired.

The defendant's knowledge and waiver of his Miranda rights, the defendant's age, experience, prior record, level of education and intelligence, and length of time defendant is detained and interrogated, whether physical punishment was used, including the deprivation of food for sleep, defendant's ability to understand the questions, defendant's physical and emotional condition and his reaction to the interrogation, whether any deceit or improper promises were used in gaining the admissions, and any mental weakness the defendant may possess.

State v. Rhiner, 352 N.W.2d 258, 262 (Iowa 1984).

An officer can ordinarily tell a suspect that it is better to tell the truth. The line between admissibility and exclusion seems to be crossed, however, if the officer also tells the suspect what advantage is to be gained or is likely from making a confession. Ordinarily the

officer's statements then become promises or assurances, rendering the suspect's statements involuntary.

Id. at 263 (emphasis added).

In applying these factors and examining the totality of the circumstances in this case, we conclude that defendant knowingly and intelligently waived his rights without the pressure of coercive or promissory statements made by the police. Defendant was given his Miranda rights several times. Even though the defendant was only twenty years old, he was familiar with police procedure since he had prior experience with law enforcement officials. He read and signed a waiver of rights form. The interview commenced at approximately 1:05 p.m. and ended about 3:45 p.m. We believe the state demonstrated the statements were made freely by the defendant. Even assuming the police made the alleged improper statements, we find they would not constitute a promise of leniency in return for a confession. From the facts of this case, defendant's rights were not violated.

We find the trial court did not err by failing to suppress as evidence defendant's statements.

AFFIRMED.