FILED
OCT 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

419

STATE OF IOWA,

Plaintiff-Appellee,

vs.

WILLIAM ERIN MATTIX

Defendant-Appellant.

Filed October 29, 1985

5-462
84-1795

Appeal from the Iowa District Court for Jackson County - David J. Sohr, Judge.

Defendant appeals from his conviction for robbery contending that the trial court erred by refusing to suppress his incriminating statements. **AFFIRMED.**

Charles Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, and Michael Kane, Jackson County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, and Sackett, JJ.

A jury found the defendant guilty of second-degree robbery, and the defendant has appealed from the resulting conviction. He contends the trial court erred by refusing to suppress incriminating oral and written statements since these statements were obtained in violation of his constitutional right to counsel.

Our review of the trial court's denial of the motion to suppress is de novo. State v. Phams, 342 N.W.2d 792, 795 (Iowa 1983).

Defendant was arrested at the scene of the robbery. When Officer Long of the Maquoketa police arrived at the scene, he asked the defendant: "What did you do now, Erin?" Defendant answered: "I don't think I should say anything until I see my attorney." Defendant was not questioned any further. After defendant was transported to the police station, he was processed and booked. During the initial processing, Officer Long asked the defendant to clean his pockets out on the table. Defendant complied and a large amount of change from his pocket was counted by defendant and Officer Long. At this time, defendant volunteered the statement that only $1.50 of the change was his. Defendant also stated that the police should not listen to "Wally" or that he gets in trouble every time he is with "Wally." Neither of these statements were in response to questioning.

Defendant was then read his Miranda rights. Defendant asked to call his parole officer and was permitted a phone call. However, defendant was unable to reach his parole officer. Officer Long then asked defendant if he still wanted to talk to an attorney and defendant said no. Defendant executed a written waiver of rights form and proceeded to give an oral statement detailing his involvement in the robbery. Defendant thereafter executed a second waiver of rights form and agreed to place his statement in writing. The statements were admitted into evidence at trial subsequent to a suppression hearing.

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)).

Defendant claims that none of the interrogation in this case was initiated by him and that the confessions were obtained as a result of interrogation initiated by the police in violation of his constitutional right to counsel.

In his statement of the facts, defendant concedes that he "volunteered statements to the effect that he always gets into trouble when he hooks up with Wally Dirks, and that only a small portion of the money on his person belonged to him." (emphasis added). Testimony at the suppression hearing indicated that these statements were not made in response to police-initiated interrogation.

The only question initiated by police was when they asked defendant if he still wanted to talk to an attorney. We do not believe that this question constitutes interrogation within the contemplation of Miranda or any of its progeny. It was clearly within the province of the police in this instance to

ask the defendant if he "still wanted an attorney." Defendant had invoked his right to counsel but rather than calling his attorney instead he called his parole officer. Because defendant could not reach his parole officer, it is fair to infer that the police were merely inquiring as to whether defendant wished to make another phone call.

Furthermore, defendant had already been given his Miranda rights. He also knew enough about police procedure and his rights to invoke his right to counsel at the time of his arrest. Asking the defendant if he still wanted an attorney is not the type of interrogation which Miranda sought to avoid. We find defendant initiated further discussions with the police and knowingly and intelligently waived his right to counsel.

The trial court did not err in denying the motion to suppress.

AFFIRMED.