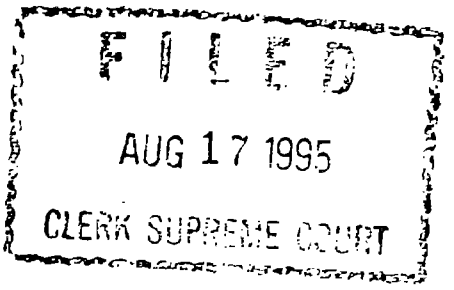
IN THE COURT OF APPEALS OF IOWA



No. 5-319 / 94-0375

STATE OF IOWA,

Appellee,

vs.

REGINALD CARNEL NELSON,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, George Stigler and Margaret L. Lingreen, Judges.

Nelson appeals judgment and sentences, following jury trial, entered upon his convictions of first-degree murder, second degree kidnapping, and first-degree robbery.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Sharon Ruth Stevens, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and Thomas J. Ferguson, County Attorney, for appellee.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

HUITINK, J.

At approximately 5:45 a.m. on October 15, 1993, law enforcement personnel went to 125 Irving Street in Waterloo to execute a search warrant. They were looking for a gun used on October 12 to kidnap Patricia Dunfee while she sat in her minivan and to rob a Coastal Mart and shoot the attendant, Scott Meyer. Reginald Nelson and Keith Taylor were among the people at the residence. They were handcuffed and read *Miranda* warnings when police entered the house.

Nelson agreed to speak with officers and was taken out onto the porch. He was uncuffed and told he was not under arrest. Nelson agreed to go to the police station. He was transported to the station in a marked police car that did not have a "cage." The 125 Irving residence was searched after Nelson left with officers.

At the station, Nelson was read *Miranda* warnings and signed a waiver at 6:30 a.m. He gave a statement. The interrogating officer then received information that some of Nelson's statement was not accurate. He told Nelson he knew that the person Nelson identified as Calvin Taylor was really Keith Taylor. At 8:10 a.m. Nelson was again given *Miranda* warnings and again signed a waiver. He gave a second statement, acknowledging that parts of his earlier statement were not accurate. After this statement was signed by Nelson, the officer asked him another question, which resulted in a third statement.

At 10:00 a.m. Nelson was moved into the "fax room" of the station. The room was open and had two doors. Nelson was not told he was under arrest and was not guarded.

At about noon, the investigating officer entered the fax room and told Nelson he had been interviewing Keith Taylor. He asked Nelson something to the effect of, "What would you say if I were to tell you that Taylor admitted his involvement in the robbery and murder but fingered you as the person who actually shot the attendant?" Nelson responded, "That's a lie." Nelson asked if Taylor had indeed made such a statement, and the officer told Nelson he would not tell him what another said. Nelson then agreed to make a fourth statement.

At twelve noon Nelson signed another *Miranda* waiver. He then admitted he and Taylor had taken the van, robbed the Coastal Mart, and that Taylor had shot the attendant. Nelson and Taylor were then arrested and charged with second-degree kidnapping, first-degree robbery, and first-degree murder.

Nelson moved to suppress the items seized during the execution of the search warrant and his statements. Nelson filed a more specific statement at the State's request. This statement did not mention his statements. After a hearing the trial court concluded the warrant was faulty and suppressed the items seized. The court specifically found that Nelson's statements were made voluntarily and would be

admissible. However, the court also found that the State had not contradicted Nelson's claim that they were the fruit of an illegal search and thus they would not be admitted.

The State moved to reopen the record, claiming it had insufficient notice that Nelson continued to claim his statements were illegal fruits. Another hearing was held. The trial court entered a supplemental ruling, concluding that nothing from the search of the residence tended to direct the government toward the voluntary statements and thus the statements were not the fruit of the search. The court concluded the statements could be used at trial.

Nelson was subsequently convicted as charged and now appeals.

I. Scope of Review.

When defendant alleges deprivation of a constitutional right, such as here, we must make our own evaluation of the totality of the circumstances under which the rulings on constitutional rights were made. *State v. Rademacher*, 433 N.W.2d 754, 759 (Iowa 1988) (double jeopardy issue) (citations omitted). Simply put, the evidence relevant to a constitutional issue is reviewed de novo. *State v. Brown*, 253 N.W.2d 601, 602 (Iowa 1977) (Fourth Amendment issue) (citation omitted).

II. Fruit of the Poisonous Tree.

Defendant argues on appeal his confession should not have been admitted at trial, based on the fruit of the poisonous tree doctrine. Under the fruit of the poisonous

tree doctrine, a defendant's confession, even if voluntary, should be suppressed if it was obtained through exploitation of a prior unlawful search or arrest. *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 417, 9 L. Ed. 2d 441, 455 (1963). In this case, defendant claims his confession was the result of either a (1) unlawful search or (2) unlawful arrest, or both. We will address each of these contentions separately.

A. Confession as Fruit of Unlawful Search.

A court may admit evidence that would not have been discovered but for official misconduct if the casual connection between the illegal conduct and the acquisition of the evidence is so attenuated that the evidence is "purge[d of] the primary taint." *Id.* at 488, 83 S. Ct. at 417, 9 L. Ed. 2d at 455. The proper inquiry is whether the evidence was found by the exploitation of the initial unlawful search or arrest or by means sufficiently distinguishable to break the casual connection between the two. *Id.*

The confession at issue is certainly not the fruit of an unlawful search. Assuming the trial court correctly found the search to be unlawful, defendant's statements were obtained without any police exploitation of the unlawful search. Police officers unequivocally testified nothing found during the search led them to ask defendant if he would voluntarily answer questions, and nothing found during the search was used or even referred to by the police when defendant spoke with them. Defendant was never confronted with any evidence discovered as a result of the search.

See, e.g., ***United States v. Nafzger***, 965 F.2d 213, 217 (7th Cir. 1992) (per curiam) (immediately after illegal search uncovered stolen truck in defendant's tool shed, defendant questioned and admitted he knew truck was stolen); *Ruiz v. Craven*, 425 F.2d 235, 235-36 (9th Cir. 1970) (per curiam) (confession given when confronted by heroin found in illegal search of home); *State v. Abdouch*, 434 N.W.2d 317, 329 (Neb. 1989) (confession after defendant "confronted with an item-by-item description and verbal inventory of the illegally seized evidence"). In this case, the casual connection between the illegal search and the acquisition of the confession is not merely attenuated, it is nonexistent. Defendant's confession was completely unrelated to, and unaffected by, the search. Therefore, the confession was not poisonous fruit of the search.

B. <u>Confession as Fruit of Unlawful Arrest</u>.

Defendant also contends his confession was the poisonous fruit of an unlawful arrest. We again disagree.

The Fourth Amendment does also protect against unreasonable government seizures of persons and property. Seizure of a person occurs when, under the "totality of circumstances," a person reasonably believes he or she is not free to leave an encounter with a government official. *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497, 509 (1980). This test requires case-by-case factual review, based on an objective standard of police conduct and surrounding

circumstances. *Compare INS v. Delgado*, 466 U.S. 210, 218-19, 104 S. Ct. 1758, 1763-64, 80 L. Ed. 2d 247, 256-57 (1984) (no seizure of employees during factory survey despite presence of INS agents at exits because mere probability of being questioned upon leaving did not result in conclusion that not ultimately free to leave) *and United States v. Adebayo*, 985 F.2d 1333, 1338-39 (7th Cir. 1993) (no seizure outside airport terminal when agents in plain clothes, without displaying weapons, approached passenger in public area, and informed him he was free to leave and could refuse to speak) *with Florida v. Royer*, 460 U.S. 491, 501, 103 S. Ct. 1319, 1326, 75 L. Ed. 2d 229, 238-39 (1983) (seizure when officers, after examining and retaining defendant's airplane ticket and driver's license, identified themselves as narcotics agents, told defendant he was suspected of transporting narcotics, asked him to accompany them to police room, and gave no indication he was free to depart) *and United States v. King*, 990 F.2d 1552, 1556 (10th Cir. 1993) (seizure when police ordered driver at gunpoint to place his hands on the steering wheel or else be shot).

Applying the "free to leave" analysis to the case at bar, we find defendant was not placed under arrest. Immediately prior to the search of the home, all adult occupants were handcuffed until the premises could be secured by police. This was done so the officers could safely search the home, as evidence known to the officers before the search indicated the home's occupants were heavily armed, were involved

with gangs, and had talked about the commission of past crimes. The Iowa Code allows officers who are executing a search warrant to detain persons on the premises for the purpose of protecting the officers from attack. Iowa Code § 808.7(1) (1993). Handcuffing alone does not result in an arrest of a defendant. *United States v. Fountain*, 2 F.3d 656, 663 (6th Cir. 1993), *cert. denied*, 114 S. Ct. 608 (1993).

Nor was defendant ever under arrest at the police station prior to giving his confession. After defendant's handcuffs were removed, defendant voluntarily agreed to accompany the officers to the police station. He was specifically told he was not under arrest. The police car in which defendant rode to the police station did not have a "cage" and was not a typical vehicle for transporting persons who are under arrest.

Defendant never asked to leave, nor did he request a lawyer before confessing. Defendant waived his constitutional rights and agreed to speak with the officers on several occasions that morning. He was never told he could not leave, nor was he ever forced to remain at the station that morning. No restraints, such as handcuffs, were used. The police made no threats or promises to maintain his presence.

It is true at one point defendant was "moved" from the interview room where he had been speaking with officers, to another room, but only so the former room could be used to obtain a witness statement. The room to which defendant moved was an "open room" which contained a fax machine and some furniture, and had two doors.

Defendant was in the room alone for a time before a officer returned to speak with him. No officer was present to guard defendant or restrain him from leaving. Defendant was never told he was under arrest until he confessed.

Given these facts, we hold defendant was never under arrest prior to confessing his guilt. Consequently, the fruit of the poisonous tree doctrine is inapplicable.

III. Voluntariness of Confession.

Defendant lastly claims his confession was involuntary. Defendant argues his confession followed a deceptive statement from a police officer which erroneously gave the impression defendant's accomplice had named defendant as the one who actually shot the murder victim. In deciding whether a confession is voluntarily given, our supreme court has required consideration of the following factors:

> the defendant's knowledge and waiver of his *Miranda* rights, the defendant's age, experience, prior record, level of education and intelligence, the length of time defendant is detained and interrogated, whether physical punishment was used, including the deprivation of food or sleep, defendant's ability to understand the questions, the 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. **Hodges***, 326 N.W.2d 345, 348 (Iowa 1982).

Even assuming deception was used here, deception is only one factor to be considered in evaluating the totality of the circumstances surrounding a confession. *State v. Reid*, 394 N.W.2d 399, 402 (Iowa 1986). Police deception, standing alone, does not render a confession involuntary. *Id.* There is no evidence any of the other *Hodges* factors are implicated here.

Under this record, the trial court properly found defendant's confession was voluntary, and thus proper evidence. We affirm defendant's convictions.

AFFIRMED.

Donielson, C.J., concurs; Hayden, J., concurs specially.

HAYDEN, J. (concurring specially)

I concur in the result.