IN THE COURT OF APPEALS OF IOWA

No. 3-496 / 91-1289

FILED
JAN 25 1994
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

BRIAN A. CROWLEY,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Defendant appeals from his conviction for first-degree murder and robbery in violation of Iowa Code sections 707.2 and 711.2 (1989).

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Ahmet S. Gonlubol, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Bridget Chambers, Assistant Attorney General, and Thomas J. Ferguson, County Attorney, for appellee.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

SACKETT, J.

Defendant-appellant Brian Anthony Crowley appeals following his conviction of murder in the first degree and robbery in the first degree. Defendant, who waived his right to a jury trial and was tried to the court, contends the trial court erred in refusing to suppress statements he made following his arrest and the State did not introduce substantial evidence to prove him guilty of felony murder beyond a reasonable doubt. We affirm.

In the early evening of December 29, 1989, Phillip Dahlgren and Bruce Ward suffered knife wounds at an apartment they occupied in Waterloo. Dahlgren died from the wounds and Ward identified defendant as the assailant.

Defendant left the apartment after inflicting the wounds and was arrested at 5:45 the next morning. Following defendant's arrest, he gave a statement admitting he stabbed Dahlgren. He also divulged James Smith had formulated a plan to rob Dahlgren and waited outside for defendant when the stabbing took place.

Defendant claims these statements were not voluntarily made. He contends the officers eliciting the statements coerced him and, at the time he gave the statements, he suffered cocaine intoxication and lack of sleep. Defendant further contends the manner of his arrest and transportation to the police station caused him to fear police brutality.

The state bears the burden of establishing defendant made the statements voluntarily and was not coerced in making them. See State v. Reid, 394 N.W.2d 399, 402 (Iowa 1986); State v. Cullison, 227 N.W.2d 121, 127 (Iowa 1975). It is agreed defendant was advised of his rights to remain silent and to counsel established under the case of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). The question then is whether, considering factors including the defendant's age, experience, prior record, emotional state, intelligence and education, and ability to understand; together with the time he was detained and interrogated; the absence or presence of physical force; and any deprivation of food or sleep; we find on de novo review the confession was not coerced. See State v. Vincik, 398 N.W.2d 788, 789 (Iowa 1987); Reid, 394 N.W.2d at 402.

To find the confession voluntary and not coerced, we must determine it was not the result of threats or violence, direct or implied promises, or improper influence. See State v. Hrbek, 336 N.W.2d 431, 436 (Iowa 1983).

At about 5:45 a.m. the morning following the stabbing, defendant was located at an apartment, thrown to the ground, handcuffed, and advised of his rights under Miranda. It was late December. Defendant, who was not wearing a coat or shoes, requested additional clothing before being taken outside. He was not given the clothing

but the police car was brought close to the building. Defendant was taken to the Waterloo police station where he was immediately put in an interrogation room. He signed a waiver of rights form and was questioned starting at about 6:33 a.m. At that time, defendant apparently had not slept and had been running since the stabbing.

Interrogation techniques were used with defendant, including baiting him with statements raising racial implications and attempting to accuse defendant of committing a more severe act than it was thought he committed. The purpose of doing this was to cause defendant to admit the less severe act. An officer typed a statement while defendant talked. Defendant refused to sign the typed statement. During the interview, it was learned Dahlgren died. Defendant was arrested for first-degree murder.

A subsequent urine analysis revealed defendant had consumed cocaine sometime prior to the arrest. It was impossible to tell from the urine sample when defendant consumed cocaine or how much cocaine defendant consumed.

At trial, defendant produced the testimony of Dr. Frank Gawin, a board-certified psychiatrist, who specializes in stimulant abuse research and is director of that department at the University of California in Los Angeles. Gawin gave the opinion defendant was on a cocaine binge from December 28, 1989 to about 1 a.m. on December 29, 1989; and, because defendant had no sleep, the binge had not ended when he was

taken in custody. Gawin testified defendant's condition lead to paranoia. He testified a hallmark of the post-euphoric state of cocaine intoxication is fear and anxiety with a distortion of reality which the doctor was of the opinion defendant experienced during the interrogation. The doctor was of the opinion defendant's condition caused him to fear retribution from the officers if he did not tell them what they wanted to hear. The doctor testified it was his opinion defendant did not give a voluntary waiver and the statements were not voluntary.

The State advances the testimony of the interrogating officers was that the interview process was a matter-of-fact quiet conversation; there were no threats of harm nor promises made; and defendant requested neither food nor a nap. The officer testified defendant showed no signs of paranoia or concern for his safety during the interview.

The State's expert, Dr. Taylor, was of the opinion defendant was able to give a voluntary statement; was able to form specific intent; there was factual consistency between defendant's statements and the other available evidence; and, defendant made corrections to the written statement and chose not to sign the statement.

The issue boils down to a question of credibility and which opinion should be given more weight. We are impressed by the credentials of defendant's expert. We give consideration to the credibility assessment of the

trial court. See Nichols v. Schweitzer, 472 N.W.2d 266, 275 (Iowa 1991); Knight v. Anderson, 292 N.W.2d 411, 415 (Iowa 1980); Schuller v. Hy-Vee Food Stores, Inc., 407 N.W.2d 347, 353 (Iowa App. 1987). We affirm on this issue.

Defendant's second contention is the State failed to introduce substantial evidence to prove beyond a reasonable doubt that he committed first-degree murder and first-degree robbery. We review the record in the light most favorable to the state. State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987).

The trial court found defendant stabbed Dahlgren and, as a result of being stabbed, Dahlgren died. The trial court also found defendant stole Ward's pants and the contents of the pant's pockets. Defendant does not challenge either of these findings but only contends there was not sufficient evidence to prove he stabbed Dahlgren with malice aforethought and he intended to commit robbery in the first degree. Defendant advances the evidence at trial that he was in a state of cocaine-induced psychosis precluded a finding he could form the necessary intent.

Again the issue hinges on the weight given to expert testimony. See Kaiser v. Stathas, 263 N.W.2d 522, 526 (Iowa 1978); Hengesteg v. Northern Eng'g, Inc., 478 N.W.2d 307, 309 (Iowa App. 1991); Miller v. Eichhorn, 426 N.W.2d 641, 642 (Iowa App. 1988). We affirm.

AFFIRMED.