

IN THE COURT OF APPEALS OF IOWA

FILED

APR 26 1979

CLERK SUPREME COURT

416

REED WAYNE HAMILTON,

Appellant,

vs.

THE HONORABLE A. B. CROUCH,
Judge of the Fifth Judicial
District of Iowa,

Respondent,

THE STATE OF IOWA, ex rel.
DAN L. JOHNSTON,

Petitioner-Cross
Appellant,

vs.

THE DISTRICT COURT OF IOWA,
THE HONORABLE A. B. CROUCH,
Judge,

Respondent.

Filed April 26, 1979

102

2-62483 & 2-62484

Certiorari to and discretionary review from Polk County District Court - A.B. Crouch, Judge.

Defendant by certiorari and the State by discretionary review, challenge trial court rulings on admissibility of evidence. Writ annulled on certiorari and ruling of trial court affirmed on State's appeal.

John C. Wellman of Polk County-Des Moines Offender Advocate Office for Reed Wayne Hamilton.

Dan L. Johnston, Polk County Attorney, and Robert Burnett, Assistant Polk County Attorney, for the State of Iowa.

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

These two criminal prosecutions for first degree murder are before us prior to trial and final judgment at the request of both defendant (in the district court) and the State. Defendant is here by reason of an order of the supreme court granting his petition for certiorari. The State is here by reason of a similar order granting its application for discretionary review. We will refer to the defendant in the district court as defendant. The defendants in the certiorari proceeding will be referred to as the trial court and the State respectively. The issues before us relate to rulings on pre-trial motions to suppress evidence. We consider all contentions made by the parties and decline to disturb the rulings of the trial court.

I. The first issue presented is the defendant's contention that all incriminating statements made to law enforcement officers during interrogation should have been suppressed. The factual basis for this claim is defendant's contention that he was sufficiently under the influence of cocaine at the time of said interrogation that any articulated waiver of his Miranda rights was involuntary as were his subsequent statements made in response to police interrogation. The issues of (a) voluntariness and (b) waiver of Miranda rights, although similar in many respects, are separate and distinct. State v. Washington, 257 N.W.2d 890, 895 (Iowa 1977). As to these and the other constitutional issues raised by the parties in these appellate proceedings, we make an independent examination of the facts underlying the trial court's determination. State v. Cullison, 227 N.W.2d 121, 127 (Iowa 1975).

The State concedes that defendant was under the influence of cocaine at the time of his arrest, but contends that at the time he was interrogated, the effects, if any, of this circumstance had dissipated sufficiently that his actions were the product of an essentially free and unconstrained choice. On this issue the defendant presented evidence from two psychologists that his physical and emotional characteristics were such that he would be subject to involuntary outbursts when his mechanisms became overwhelmed by drug abuse. The dispute is whether this was the situation at those points in time when he ostensibly waived his Miranda rights and answered the officers' questions. Police officers and an assistant county attorney present at those times testified that defendant appeared coherent and relatively normal. A portion of the interrogation was tape recorded. The trial court listened to this tape at the suppression hearing and also heard defendant testify in person at that time. The trial court made a

specific finding that defendant's voice and responsiveness on the recorded statement "compared favorably" with his answers to questions at the suppression hearing.¹ It also found:

Considering all the evidence, the Court finds that the Defendant's mental condition due to the use of drugs did not interfere with his understanding his rights under Miranda and interfere with his ability to knowingly and intelligently consent to the interrogation; that his statements made during the early part of the interrogation were voluntary and, therefore, admissible.

The trial court qualified the effect of this ruling, however, by suppressing all portions of and results of that part of defendant's interrogation which took place after the officers offered to "try to help" the defendant. Statements of defendant made after this promise were deemed inadmissible and form the subject of the State's appeal which is considered in division II of our opinion. As to the portion of the interrogation which was ruled to be admissible, we adhere to the rule that the mere fact a suspect under questioning is under the influence of a self-administered drug does not necessarily render his statements involuntary. State v. Wilson, 264 N.W.2d 614, 614-15 (Iowa 1978); State v. Rank, 214 N.W.2d 136, 139 (Iowa 1974). Our review of the totality of the evidence leads to the conclusion that the trial court was correct in its determination that defendant's statements and waiver of Miranda rights were voluntary. It did not err in denying the motion to suppress statements made prior to the time the promises previously referred to were made to the defendant.

II. On the State's appeal, it is urged that the trial court erred in suppressing that portion of the interrogation of defendant which followed the statement of officers that "tell us the truth and we will try to help you." The State's argument in this regard is based almost entirely on its interpretation of State v. Mullin, 249 Iowa 10, 85 N.W.2d 598 (1957). It is urged that under the court's holding in Mullin statements given in response to promises by interrogating officers are not deemed involuntary unless the promises specifically relate to mitigation of punishment. As applied to the facts of the

¹ The portion of the interrogation which appears on the tape commenced approximately 9 hours following defendant's arrest. Earlier interrogation which commenced approximately 5 hours following the arrest and continued intermittently until the time of the taped interrogation was not electronically recorded. It is that interrogation which is at issue in division I of this opinion.

present case, we reject the State's contention for two reasons. First, defendant might reasonably have interpreted the officers' comments to be an offer of leniency. Second, we believe that both Mullin and State v. Hilpipe, 242 N.W.2d 306, 310-11 (Iowa 1976), condemns promises that an accused would receive better treatment as well as promises of less severe punishment. We conclude the trial court did not err in suppressing that portion of the interrogation following the making of the promise by police.

III. Lastly, we consider defendant's assertion that the trial court erred in not suppressing evidence obtained in the search of an automobile owned by defendant's fiancée. We disagree. Officials searching private property do not need a search warrant when a person lawfully in control of the property consents to the search. State v. Knutson, 234 N.W.2d 105, 107 (Iowa 1975). The trial court determined that the owner of the car had consented to the search in question, thereby making the search lawful. The evidence fully supports this finding.

In addition, in application of the concept of the personal nature of fourth amendment rights recognized in Rakus v. Illinois, ___ U.S. ___, 99 S.Ct. 421, 58 L.Ed. 387 (1978), we do not believe defendant's rights were violated in the search of his fiancée's automobile.

We have considered all issues presented. We annul the writ of certiorari and affirm the trial court on the State's appeal.