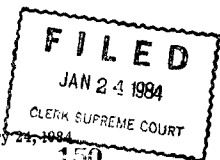


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

TOM W. KNAPP,)

Defendant-Appellant)

Filed January 24, 1984

3-411
69609

Appeal from the Iowa District Court for Muscatine County - Robert K. Stohr, Judge.

Defendant appeals from his conviction for the aggravated misdemeanor of arson in the third degree. AFFIRMED.

Thomas J. Miller, Attorney General and Roxann M. Ryan, Assistant Attorney General, for the plaintiff-appellee.

Fern Shupeck, Assistant Appellate Defender, for the defendant-appellant.

Heard by Donielson, P.J., Hayden, and Sackett, JJ.

Defendant appeals from his conviction for the aggravated misdemeanor of arson in the third degree. We affirm.

I.

Defendant Knapp's first argument is that the trial court erred in refusing to suppress an incriminating statement which he made while he was allegedly suffering from the ill effects of a concussion. He argues that because of "temporary mental incapacity" resulting from this concussion, his incriminating statement was not given intelligently, knowingly, or with full awareness of its consequences. We find no support in the record for defendant's contentions.

In determining the admissibility of statements made during a custodial interrogation, we make our own evaluation of the totality of the circumstances. State v. Jump, 269 N.W. 2d 417, 424 (Iowa 1978). We note that the state bears the burden of proving the voluntariness of inculpatory statements. Id. Our review of the record reveals no factual support for defendant's argument. We conclude that the state has demonstrated from the totality of the circumstances that the statements made by Knapp were the product of an essentially free and unconstrained choice made by him at the time when his will was not overborne nor his capacity for self-determination critically impaired. The trial court correctly refused to suppress these statements.

II.

Defendant's brief addresses the ineffective assistance of counsel claim as follows:

Appellant has made known to appellate counsel several complaints concerning his trial attorney's performance including:

1. The failure of trial counsel to interview and call a witness when requested to do so by the defendant; and,
2. The failure of trial counsel to properly handle the matter of defendant's Motion for Reconsideration of Sentence.

Although appellant's claims may be valid, the present record indicates only that the defendant was adequately represented, his attorney having evaluated the merits of the case and advised his client accordingly. Under the circumstances, appellant's complaints are best suited for a postconviction relief proceeding so that an evidentiary record on the circumstances surrounding counsel's performance can be made. [citations omitted]

The state contends in its brief that defendant's allegation were insufficient to preserve error. We agree. See State v. White, 337 N.W. 2d 517, 519-20 (Iowa 1983). The showing made here by defendant is inadequate to support a holding that the issue of ineffective assistance should be reserved for determination in postconviction proceedings. See Iowa R. App. P. 14(a)(4)(statement of the case in a brief "shall . . . recite the facts relevant to the issues presented for review"). We hold that no claim of ineffective assistance of counsel has been presented to this court. The postconviction court will decide if defendant has carried his burden to show a sufficient reason for not pursuing the issues on this appeal. State v. White, 337 N.W. 2d at 520.

AFFIRMED.