IN THE COURT OF APPEALS OF IOWA

No. 2-586 / 91-1431

FILED
MAR 30 1993
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

DWIGHT MURRAY,

Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas and Kristin L. Hibbs, Judges.

The defendant appeals from his convictions, following a jury trial, for robbery in the first-degree and burglary in the second-degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Robert P. Ewald, Assistant Attorney General, Denver D. Dillard, County Attorney, and Jerry Vander Sanden, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

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OXBERGER, C.J.

On March 22, 1991, at about 6:00 p.m., an employee of a convenience store became suspicious of a man exchanging twenty-three dollars worth of dimes and quarters. The employee had the man, who was later identified as the defendant, Dwight Murray, sign a receipt after the exchange. The employee then watched Murray cross the street, walk behind a taco restaurant and drive away in a tan Ford. The vehicle was later identified as belonging to the robbery victim.

Nick Gloe discovered the residence of his eighty-one-year-old mother, Blanche Gloe, had been burglarized. Missing from her house, among other things, was a T.V., five rings and a large quantity of dimes and quarters from the laundry of the apartment building she owned. Blanche was eventually found in the basement of one of her apartments lying in a pool of blood, bound and unconscious from a head wound.

A subsequent police investigation revealed bloody shoeprints on a piece of linoleum under her body and similar shoeprints on the tile in the kitchen of Blanche's residence. The shoeprints had a distinctive pattern of dots and lines.

Thereafter, the police asked Murray, who was a resident of one of Blanche's apartments, to come to the police station to give a statement relating to any knowledge he

might have had of the burglary or robbery. Murray consented.

Once at the police station, the police questioned him about the crime. Whether the detectives read Murray his Miranda rights before or after they began questioning him is in dispute. Sometime during the interview, an officer asked to see the bottoms of his shoes. The officer noticed they had the same distinctive pattern of dots and lines as the shoeprints found at the apartment building and at Blanche's residence. Murray claims the officer ordered him to remove his shoes. The officer claims Murray willingly complied with his request. In any event, the officer seized the shoes. The officer arrested Murray on an outstanding theft warrant.

Prior to trial, Murray filed a motion to suppress the tennis shoes seized on the day of his arrest. The State resisted the motion, stating Murray freely and voluntarily surrendered his shoes. The district court overruled the motion to suppress. The case proceeded to a jury trial.

The jury returned a verdict of guilty on all counts. The court sentenced Murray to two consecutive indeterminate sentences of twenty-five and ten years. Murray appeals.

Discussion

Murray contends the district court erred in overruling his motion to suppress evidence. He claims his tennis shoes were illegally seized by police detectives while he was

being questioned at the police station. He argues all evidence relating to his tennis shoes and shoeprints were fruits of the alleged illegal search and, accordingly, should be suppressed. The State argues Murray consented to the search and seizure. We affirm.

Consent to search is a valid exception to warrant requirement. State v. Myer, 441N.W. 2d 762, 765 (Iowa 1989). The State carries the burden of establishing voluntariness or "consent" by a preponderance of the evidence. State v. Garcia, 461N.W. 2d 460, 462 (Iowa 1990). When reviewing the issue of voluntariness, we make an independent evaluation of the totality of the circumstances and determine whether the consent was voluntarily given. Id. In this evaluation, our review of the evidence is de novo. Polly v. State, 355, N.W.2d 849, 854 (Iowa 1984). The mere fact a defendant is being questioned at a police station is insufficient to demonstrate a coerced consent to search. See, e.g., United States v. Watson, 423 V.S. 411, 424, 96 S. Ct. 820, 828, 46 L.Ed. 2d 598, 609 (1976).

In this case, Murray testified he voluntary accompanied officers to the station. He admitted he was "asked", not ordered, to the police station. He also testified he did not believe he was under arrest. He testified he knew of other residents in the apartment building being asked to go to the police station for questioning. Once at the station, Murray testified he voluntarily answered the officers'

questions. Finally, he testified he raised his foot when the officer asked to see the bottom of his shoes.

Based on our review of the circumstances, we conclude Murray consented to the search and seizure of his tennis shoes.

We affirm the decision of the trial court denying Murray's motion to suppress evidence.

AFFIRMED.