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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-428 / 88-1093

487

STATE OF IOWA,

Appellee,

vs.

RANDALL N. STEINKUEHLER,

Appellant.

Appeal from the Iowa District Court for Crawford County, Dewie J. Gaul, Judge.

Appellant appeals from his conviction and sentence of first-degree murder, in violation of Iowa Code sections 707.1, 707.2 (1987). **AFFIRMED.**

William L. Wegman, State Public Defender, and B. John Burns, Assistant State Public Defender, for appellant.

Thomas J. Miller, Attorney General; Mark J. Zbieroski, Assistant Attorney General; and Thomas Gustafson, Crawford County Attorney; for appellee.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

SCHLEGEL, P.J.

The defendant, Randall Steinkuehler, appeals his conviction and sentence on the charge of first-degree murder, in violation of Iowa Code sections 707.1 and 707.2 (1987). He contends that the overruling of his motion to suppress and the admission into evidence at trial of statements made by him while in police custody, violated his fifth and sixth amendment guarantees. He claims that he did not make a knowing, intelligent, and voluntary waiver of his Miranda rights. We affirm the trial court.

Randall Steinkuehler was charged with first-degree murder in connection with the shooting death of DeWayne Mohr at the "It'll Do" bar in Denison on December 9, 1987.

On the night of the murder, Steinkuehler and his girlfriend, Judy Comstock, and Judy Comstock's ex-husband of twenty-three years, DeWayne Mohr, met at the "Circle K" bar. The three engaged in an argument concerning Steinkuehler's abusive behavior and drinking. Comstock and Mohr informed Steinkuehler that he would have to vacate the apartment he shared with Comstock. Mohr, his new wife, Faye, and Comstock subsequently left Steinkuehler passed out on the bar at the "Circle K." Later, as Comstock and the Mohrs were sitting in the "It'll Do" bar, Steinkuehler entered, leveled a shotgun at Mohr, shot him to death and left.

Steinkuehler went to a friend's house and, in the company of the friend, went to the Denison police station and turned himself in. Police Chief Robert Schroeder advised Steinkuehler of his Miranda rights, and Steinkuehler signed a waiver form. Schroeder then questioned Steinkuehler as to the location of the murder weapon, to which Steinkuehler replied it "was over behind--in the parking lot behind Johnson Drug." Chief Schroeder's interrogation stopped at this point.

Thomas Gustafson, the county attorney of Crawford County, arrived and again advised Steinkuehler of his Miranda rights. When asked if he understood his rights, Steinkuehler initially stated that he did. He requested that he be allowed to speak to his brother by telephone. That was permitted, and upon the completion of the call, the interview with Gustafson was resumed. At that point, Gustafson stated:

> Randy is there anyone else you would like to speak to an Attorney or any relative or friend or anyone else you would like to speak to before you visit with us and are involved in this questioning?

To this question, Steinkuehler answered, "No there isn't." Gustafson then asked him again if he understood his Miranda rights, "as I stated to you earlier?" Steinkuehler answered, "Yes I do." In spite of that answer, Gustafson again read the rights one more time, and explained them as he gave them. At the conclusion of that reading, he

asked: "Do you understand those rights Randy?" Steinkuehler responded: "Yes I do." Gustafson then presented a written Waiver of Rights form to Steinkuehler and asked him to sign it. Steinkuehler willingly signed it.

The interview was then interrupted again, and upon it being resumed, the county attorney described the situation and then stated:

> Again I am going to ask you Randy you understood your constitutional rights you still remember what those were and what was marked as Exhibit 1. What I am going to do Randy is I am going to hand this to Chief Schraeder [sic] and he is going to have it next to you so that you are aware of what we are talking about when we say our Constitutional Rights, or Miranda Rights you understand . . . what those are?
>
> That means that you do not have to talk to us if you don't want to talk to us and you want to have an attorney here you can have an attorney here and it also means that you can end this interview at any time that you want to end it if that is your choice. Do you understand those rights?

To that question, Steinkuehler answered: "Not really." He indicated he didn't understand "About the Attorney." Gustafson then stated:

> That means that if you want to have an attorney you can have an attorney here. This doesn't mean that you aren't entitled to an attorney any time later on. If you want to talk to us and give an interview now without having an attorney present you certainly can. If you want to have an attorney later you are obviously entitled to an attorney. All that means is that if you want to talk to us without an attorney present you certainly can. But you aren't waiving your right to an attorney later on. Do you follow what I am saying? You aren't giving up your right to be represented by an attorney at a later stage in the proceedings. Do you understand that?

When Steinkuehler indicated he didn't understand, Gustafson stated:

> Okay. The law allows that or provides that if you want to have an attorney represent you or be here I should say. Have an attorney be here right now before you talk to anybody you can. It doesn't mean that you have to. It means that you can if you want to. But what it doesn't mean is that if you say that you are willing to talk to us without an attorney now, I will talk to you now. That doesn't mean that you can never have an attorney represent you. All that means is that just for right now you are talking to us without an attorney being present. Without you first visiting with an attorney. Do you understand that?

Steinkuehler nodded his assent. After a further explanation by Gustafson, Steinkuehler indicated that he thought he understood about the attorney. Gustafson advised Steinkuehler that he could stop the interview at any time, or could speak to an attorney at any time during the interview.

Steinkuehler filed a motion to suppress the statements given to the police, on grounds that the statements were made without a knowing, intelligent, and voluntary waiver of his constitutional rights, and were made involuntarily. The motion was heard by the court and was overruled. Steinkuehler's statements to the police and the county attorney were introduced at trial. The jury found him guilty of first-degree murder. On appeal, Steinkuehler contends he could not have knowingly and intelligently waived his Miranda rights, and that the admission into evidence of statements made to the authorities violated his fifth and sixth amendment rights.

Generally, our review of criminal proceedings is for correction of errors only. On issues concerning violation of constitutional safeguards, however, this court is obliged to make an independent evaluation of the totality of the relevant circumstances shown by the record under which the ruling on those constitutional rights was made. State v. Jeffries, 417 N.W.2d 237, 239 (Iowa App. 1987).

Steinkuehler contends that the admission of the evidence violates his sixth amendment right to counsel and his fifth amendment guarantees under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L Ed.2d 694 (1964).

In the determination of whether Steinkuehler's sixth amendment right to counsel was violated, a two-step inquiry is involved. The first inquiry is whether the right to counsel had attached at the time of the statements, and the second is, if so, whether the defendant effectively waived that right. State v. Johnson, 318 N.W.2d 417, 432 (Iowa 1982).

Steinkuehler contends the right to counsel under the sixth amendment to the U.S. Constitution attached when he was interviewed at the police station, since it was clear that attention was focused upon him as the only suspect in the case, even before he arrived at the police station.

The Iowa Supreme Court, in State v. Jackson, 380 N.W.2d 420, 423 (Iowa 1986), described when the right to counsel attaches, as follows:

> This court recognized in Johnson that an individual's sixth and fourteenth amendment right to counsel attaches at the time that "adversary judicial criminal proceedings" are initiated against the person, "whether by way of formal charge, arraignment, preliminary hearing, information, or indictment.

State v. Johnson, 318 N.W.2d 417, 432, (Iowa 1982).

In Iowa, a criminal proceeding is commenced "by the filing of a complaint before a magistrate." Iowa Code § 804.1 (1987). In Johnson, the court held that the right to counsel attached upon the filing of a complaint by the county attorney followed by the issuance of a warrant and the arrest of the defendant. The court noted that the significant level of prosecutorial involvement showed the arrest could not be characterized as "purely investigatory in nature." State v. Jackson, 380 N.W.2d at 423.

As stated in Jackson, the teaching of Johnson is that the filing of a complaint and procuring of a warrant will constitute a formal charge against the defendant for purposes of the sixth amendment when the circumstances show a state commitment at that time to prosecute the individual. State v. Jackson, 380 N.W.2d at 423.

We find no Iowa authority that the interrogation of a party at a police station, prior to the filing of any complaint, invokes the sixth amendment right to counsel. In this case, the defendant had not been charged with any offense, had not been arrested, and had voluntarily "turned himself in" to report that he had done something. We do

not hold that a right of counsel under the sixth and fourteenth amendments can never attach under similar circumstances, but we here hold that Steinkuehler's sixth amendment right to counsel had not attached.

We must, however, address the claim by appellant that the statements were taken in violation of his fifth amendment guarantees. He argues that his failure to understand the Miranda warnings given to him precluded any questioning and cause statements taken during that questioning to have been taken in violation of his right against self-incrimination. It is from his stated lack of understanding of his right to have counsel present or to speak to counsel that the claim of the denial of his right to counsel under the sixth amendment seems to arise. As we have discussed that issue above, no sixth amendment right to counsel had attached. The right to counsel, as discussed in the Miranda context, is held to be for the purpose of assisting the person in custody to determine whether the right to remain silent should be waived. The person is, it is held in Miranda, entitled to the presence of counsel during interrogation, or the right to be advised by counsel whether to remain silent or not. In the sixth amendment context, the right to counsel arises, if at all, as a result of the language: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."

The only question for our consideration is whether the appellant made a knowing, intelligent, and voluntary waiver of his fifth amendment rights. There is no question that Steinkuehler was entitled to a Miranda warning, and that any waiver of his rights under Miranda must have been made voluntarily. The ultimate question is: Did Steinkuehler receive a clear and understandable warning of his rights and was his waiver a truly voluntary one? State v. Blanford, 306 N.W.2d 93, 96 (Iowa 1981).

We have set out, in detail, the exchange that took place between the county attorney, Gustafson, and Steinkuehler, concerning the right to an attorney. Whether Steinkuehler waived his right to the assistance of counsel under the direction of the Miranda warning is a fact question. Since it addresses a constitutional question, we review the totality of the circumstances to find the facts anew.

We do not have the case here where, as stated in State v. Blanford, 306 N.W.2d at 96:

> As pointed out in Coyote, 380 F.2d at 308, [Coyote v. United States, 380 F.2d 305, 308 (10th Cir. 1967) cert. den. 389 U.S. 992, 88 S. Ct. 489, 19 L. Ed. 2d 484 (1967)] "[I]t is always open to an accused to subjectively deny that he understood the precautionary warning and advice with respect to the assistance of counsel." However, we should reject such protestations when the surrounding circumstances clearly demonstrate that cannot be true. We believe this is such a case.

Stated another way, the court in Blanford stated that it is always easy, after conviction, for a defendant to claim

that he did not understand the Miranda warnings, but we should be vigilant to avoid giving that claim credence when it is not warranted. In this case, there is no claim that simply since conviction, Steinkuehler has realized that he didn't understand the warnings. The lack of understanding is a part of the record of the conversation between Steinkuehler and Gustafson. He didn't understand the right to have counsel and said so then. Gustafson proceeded to explain that he could, if he wanted to, talk to him and the police chief, and that he still would have the right to have an attorney later. Gustafson seemed to believe that Steinkuehler was concerned that if he didn't have an attorney at that interview he would waive his right to have an attorney at later stages of the proceedings. Steinkuehler's lack of understanding is not a late claim.

In examining the totality of the circumstances, we must also examine the condition of Steinkuehler when the conversation took place. The record shows that a short time before he went to the police station, Steinkuehler was passed out with his head on the bar of the Circle K tavern. The record shows that during the greater part of the day, he had been drinking beer and other alcoholic drinks. The transcript of the conversation between the defendant and Gustafson indicates that there were numerous times that the defendant had no recollection of events. Perhaps most telling of all, the county attorney treated

the defendant as if it was most difficult to make him understand what he was telling him concerning his rights. Upon no less than four occasions, the county attorney repeated the Miranda warnings, each time after the defendant had answered that he understood them. This abundance of caution seems to have been caused by some special consequence, and may have been because of the severe intoxication of the defendant.

On the other hand, Gustafson constantly warned the defendant that he did not need to talk to them, and that he could stop the conversation at any time he wanted to. Although his explanation of the right to an attorney added no clarity to that problem, it seems that defendant understood that he could remain silent, if he chose.

Our examination of the whole record and consideration of the totality of the circumstances leads us to the finding that Steinkuehler did, in fact, waive his right to remain silent and his rights under the fifth amendment to the United States Constitution.

While we consider this a close case on the issue of Steinkuehler's knowing, intelligent, and voluntary waiver of rights, we affirm the district court's ruling on defendant's motion to suppress the statements of the defendant, and we affirm the conviction of the defendant.

AFFIRMED.