IN THE COURT OF APPEALS OF IOWA

No. 9-322 / 08-0792
Filed July 2, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL ALAN BLAIR,
Defendant-Appellant.

Appeal from the Iowa District Court for Boone County, David R. Danilson, Judge.

A defendant appeals his judgment and sentence for first-degree murder, contending that the district court erred in denying his motion to suppress his confession and raising multiple ineffective-assistance-of-counsel claims. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney General, Jim Robbins, County Attorney, and Adria Stonehocker, Assistant County Attorney, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

Daniel Blair appeals his judgment and sentence for first-degree murder. He contends that the district court erred in denying his motion to suppress his confession. He also raises two ineffective-assistance-of-counsel claims.

I. Background Facts and Proceedings

Shane Hill called a 911 dispatcher twice to report that he accidentally shot himself while at a Boone County farm. He died shortly thereafter.

An ensuing investigation revealed that Hill was in fact gunned down. The investigation focused on Hill's wife and Daniel Blair, the man with whom she was having an affair.

Deputy Boone County Sheriff Kenny Kendall was one of the officers involved in the investigation. He knew Blair from the time Blair was a minor in foster care. He served as Blair's temporary foster parent for approximately two to three weeks in the late 1980s or early 1990s and, a decade later, hired Blair to perform some work around his home. Kendall also helped Blair by paying his outstanding legal fines and car insurance costs at one point.

After Hill's death, Deputy Kendall contacted Blair and arranged to pick him up and escort him to the police station for an interview. The interview lasted for roughly an hour. Kendall later picked Blair up for a second interview that lasted a little more than two hours. During the interviews, Kendall made reference to his prior association with Blair. Blair eventually confessed to his involvement in the death of Shane Hill.

The State charged Blair with first-degree murder. Prior to trial, Blair moved to suppress his confession. The district court denied the motion and, following trial, a jury found Blair guilty as charged. Blair appealed.

II. Suppression Ruling

Blair asserts that the district court should have granted his motion to suppress the confession. He maintains that (A) Kendall's tactics rendered his confession involuntary and (B) the interrogating officers improperly promised leniency if he confessed. Our review is de novo. *State v. Morgan*, 559 N.W.2d 603, 606 (Iowa 1997).

A. Deputy Kendall's Tactics—Voluntariness of Confession

"Statements are voluntary if they were the product of an essentially free and unconstrained choice, made by the defendant whose will was not overborne or whose capacity for self-determination was not critically impaired." *State v. Payton*, 481 N.W.2d 325, 328 (Iowa 1992). Blair maintains that his confession was not voluntary because Deputy Kendall used his prior paternal relationship to extract it. Blair concedes that the last time Kendall saw him before the interrogation "was eight or nine years previous," but suggests that Kendall's several references to their past association showed an "improper paternal attitude."

Kendall did indeed remind Blair of that association, stating,

> You know I think over the years I've—I know I've booted your butt to go get your traffic fines paid. I know I booted your butt, in fact, I even gave you money once to get your auto insurance, am I right?

During the second interview, Kendall again reminded Blair of their past association stating, "You were my foster child for how long, a while anyway?"

Kendall then asked whether he had always been honest with Blair, and asked whether he tried to get Blair to "do things the right way." Later in the interview, Kendall twice urged Blair to be a "big boy." The first time he stated,

> I'm not going to think less of you, Dan, in fact, I'll probably think more of you because, you know what, you were a big boy and you stood up and you told me what you did.

The second time, he stated,

> You were on the farm, this is where you need to step up to the plate and be a big boy. I think it's pretty damn sad, Dan, when you can take somebody's life and not stand up and be accountable for it?

Kendall also demanded that Blair look at him and not the floor. He scolded Blair for nodding instead of answering verbally and sat close to him during the second interview.

Deputy Kendall admitted that he brought up the foster relationship as an investigative tool to get Blair to tell the truth. He also testified that he interviewed Blair because he knew him, was familiar with his demeanor and background, and it was common in his training to have interviews conducted by someone with prior knowledge of the suspect.

While Kendall used his prior relationship with Blair to elicit a confession, we agree with the district court that these tactics did not render the confession involuntary. As the court concluded:

> [T]here was not a close relationship between Deputy Kendall and Blair and their relationship was not akin to that of a father and son. There is also no requirement that an interrogating officer have no prior knowledge or contact with the suspect. In fact, it is likely that in many instances an officer will have had some prior contact with the suspect. This prior contact is not a concern unless the contact rises to the level of a close relationship or strong bond akin to relationships such as parent-child, close friends, or close relatives such as an aunt or uncle. If every prior contact between an

> interrogating officer and suspect was a concern, a slippery and treacherous slope would be traversed . . . . In sum, Deputy Kendall's prior contact with Blair as a respite caretaker or very short-lived, respite foster parent, and subsequent interrogation of Blair does not, by itself, rise to the level of coercive police activity.

We adopt this analysis and conclusion.

B. Promise of Leniency

Blair next contends that his motion to suppress should have been granted because the interviewing officers improperly promised leniency if he confessed. The law on promissory leniency is as follows:

> An officer can ordinarily tell a suspect that it is better to tell the truth. The line between admissibility and exclusion seems to be crossed, however, if the officer also tells the suspect what advantage is to be gained or is likely from making a confession. Ordinarily the officer's statements then become promises or assurances, rendering the suspect's statements involuntary.

State v. Hodges, 326 N.W.2d 345, 349 (Iowa 1982); *see also State v. McCoy*, 692 N.W.2d 6, 28 (Iowa 2005).

Blair points to the following statements by an agent of the Department of Criminal Investigation:

> This situation that you're in, okay? It's like a weight weighing down on your shoulders. That is not going to go away. That weight will not go away. You will carry that around unless you allow us to help you get it off your shoulders. Okay? Unless you allow us to walk you through this process and talk about why this thing went down the way it did. You understand that?

These statements do not contain a promise of leniency. *See McCoy*, 692 N.W.2d at 28–29 (finding officer's statement, "If you didn't pull the trigger, you won't be in any trouble," was a promise of leniency); *Hodges*, 326 N.W.2d at 349 (finding officer's statement that a lesser charge would be much more likely if he gave "his side of the story" was in clear violation of the rule). As the district

court stated, "The record in this case is completely devoid of any express or implied promises or assurances of leniency." Accordingly, we affirm the district court's denial of Blair's motion to suppress on this ground.

III. Ineffective Assistance of Counsel

Blair claims that trial counsel was ineffective in (A) failing to argue that the issue raised in the motion to suppress could be decided on an evidentiary basis, and (B) failing to object and move for a mistrial when a witness for the State identified him in "[t]he pictures of the people that committed the crime." We find the record adequate to address both issues. *See State v. Nitcher*, 720 N.W.2d 547, 553 (Iowa 2006).

With respect to the first claim, the Iowa Supreme Court has stated that confessions provoked by promises of leniency must be evaluated on an evidentiary basis. *McCoy*, 692 N.W.2d at 28. As we have already concluded that the officers made no promise of leniency, we further conclude that trial counsel had no obligation to raise and discuss the appropriate test for evaluating promissory leniency claims.

As for the second claim, it is established that "a witness may not express an opinion on the defendant's guilt or innocence." *State v. Smith*, 522 N.W.2d 591, 593 (Iowa 1994). In this case, the witness who initially testified that Blair "committed" the crime later clarified that Blair had simply been accused of the crime. The pertinent testimony is as follows:

> Q. Mr. Lindahl, just one question. That is, sir, at the beginning of your testimony that you said that you recognized the pictures of the guys who had committed the murder; right? A. On TV.

> Q. Yes, sir. Really what you meant to say is that you recognized the photographs of the people who have been charged with the murder? Nobody's been convicted and it hasn't been proven. Would you agree with that, sir? A. Yes, sir.

As defense counsel quickly and appropriately corrected the witness's misstatement, he did not breach an essential duty in failing to also request a mistrial.

We affirm Blair's judgment and sentence for first-degree murder.

AFFIRMED.