IN THE COURT OF APPEALS OF IOWA

No. 0-426 / 09-1363
Filed August 11, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTONIO SABRE DANTZLER,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris (motion to suppress) and Jon C. Fister (trial), Judges.

Defendant appeals from his convictions for robbery in the first degree, assault while participating in a felony, and possession of a firearm as a felon. **AFFIRMED.**

Nicholas A. Sarcone, Stowers Law Firm, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General (until withdrawal), Thomas Tauber, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., Eisenhauer and Mansfield, JJ. Tabor, J., takes no part.

SACKETT, C.J.

Defendant, Antonio Sabre Dantzler, appeals from his convictions for two counts of robbery in the first degree, and one count each for assault while participating in a felony, and possession of a firearm as a felon. He contends the trial court erred in (1) denying his motion to suppress statements he made during interrogation, and (2) admitting certain photographic evidence. We affirm.

I. BACKGROUND. On the afternoon of June 11, 2008, a Prime Mart convenience store and Dollar General store in Waterloo were robbed. Witnesses to the robberies reported the incidents by calling 911. Patrol officer, Brad Walter, testified that he responded to a call from dispatch reporting that suspects of the robbery fled in a dark colored SUV. As Walter drove toward the Dollar General store, he saw a black SUV with passengers matching the witnesses' description of the suspects. When Walter turned on his lights to perform an investigative stop of the SUV, a chase ensued. The SUV crashed into a house and the driver and passenger fled on foot through a residential neighborhood. Dantzler was arrested when a resident alerted officers that he was sitting on her front steps, she did not know him, and he matched the description of the suspects.

Dantzler was taken into custody and interrogated by officers. During the interrogation, Dantzler repeatedly told an officer he was drunk. An officer recovered $577 dollars from Dantzler. A customer from Dollar General, Shirley Clemens, had reported that the perpetrator stole between $500 and $600 from

her. She also reported that the cash was damp and at least one bill was tinted pink.[1] Dantzler was arrested and charged with two counts of robbery in the first degree, assault while participating in a felony, and possession of a firearm as a felon. When the cash was examined by lab technicians at the department of criminal investigation, they noted the bills were cool or damp to the touch and one bill was tinted pink. No fingerprints were recovered from the bills. Clemens repeatedly requested return of the money. After discussion with the prosecuting attorney, the police photographed the bills and gave the money confiscated from Dantzler, to Clemens.

Prior to trial, Dantzler's attorney filed a motion to suppress contending Dantzler's statements made during the interrogation were not admissible because he did not make a valid waiver of his *Miranda* rights and his statements were not voluntary because he was intoxicated. The court overruled this motion. Dantzler also urged, through a motion in limine, and by objection at trial, that photographs of the money were not admissible. He claimed that the prosecution's return of the actual money to Clemens violated his due process rights. He urged that the prosecution intentionally suppressed potentially exculpatory evidence because he could have had the actual money tested to prove the stained money was from the dye of the red pants he was wearing, and not from paper as Clemens testified. This would support his

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[1] The customer testified at trial that at the time of the robbery, she was displaced by a flood and the money had been in a purse that was damaged from the flooding. She was able to recover the money and washed it. She testified she wrapped the bundle of money in pink paper to dry. She stated that the money was still damp when she went to Dollar General and some bills were tinted pink from the paper.

defense that the money was his and he was not the perpetrator in the Dollar General robbery. The district court rejected this motion and admitted the evidence at trial. It agreed to give a spoliation instruction to the jury. The jury returned guilty verdicts on all counts.

II. STANDARD OF REVIEW. A motion to suppress evidence obtained through illegal interrogation implicates constitutional rights and therefore our review on this issue is de novo. *See State v. Ortiz*, 766 N.W.2d 244, 249 (Iowa 2009); *State v. Bowers*, 656 N.W.2d 349, 352 (Iowa 2002). We evaluate the totality of the circumstances and consider evidence presented both at the suppression hearing and during trial. *State v. Orozco*, 573 N.W.2d 22, 24 (Iowa 1997); *State v. Jackson*, 542 N.W.2d 842, 844 (Iowa 1996). Our standard of review on a claim that the State violated a defendant's due process rights by destroying evidence is also de novo. *State v. Dulaney*, 493 N.W.2d 787, 790 (Iowa 1992).

III. MOTION TO SUPPRESS STATEMENTS. Dantzler first claims the court erred in overruling his motion to suppress the statements he made during interrogation. He claims he did not make a valid waiver of his *Miranda* rights and his statements were involuntary because he was intoxicated.

> In *Miranda v. Arizona*, 384 U.S. 436, 473, 86 S. Ct. 1602, 1627, 16 L. Ed. 2d 694, 723 (1966), the United States Supreme Court determined the Fifth and Fourteenth Amendments require the police to inform a suspect he has a right to remain silent and a right to counsel during a custodial interrogation.

State v. Effler, 769 N.W.2d 880, 886 (Iowa 2009). The *Miranda* warnings "'ensur[e] that a suspect knows that he may choose not to talk to law enforcement officers, to talk only with counsel present, or to discontinue talking

at any time.'" *Ortiz*, 766 N.W.2d at 249 (quoting *Colorado v. Spring*, 479 U.S. 564, 574, 107 S. Ct. 851, 857, 93 L. Ed. 2d 954, 966 (1987)). The State bears the burden to prove by a preponderance of the evidence that a defendant made a knowing, voluntary, and intelligent waiver of these rights. *State v. Washburne*, 574 N.W.2d 261, 265 (Iowa 1997). This first requires a showing that the defendant was adequately informed of his *Mirand*a rights, understood them, and waived them with full awareness of the nature of the right being abandoned and the consequences of doing so. *Ortiz*, 766 N.W.2d at 249 (citing *Moran v. Burbine*, 475 U.S. 412, 421, 106 S. Ct. 1135, 1141, 89 L. Ed. 2d 410, 421 (1986)). Next, the State must prove the defendant's statements were voluntary. *Washburne*, 574 N.W.2d at 265. The test for voluntariness is whether 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. Bowers*, 656 N.W.2d 349, 353 (Iowa 2002); *State v. Payton*, 481 N.W.2d 325, 328 (Iowa 1992). The factors we consider in determining whether the statements are voluntary include, (1) the defendant's age and prior experience with the criminal justice system, (2) whether *Miranda* warnings were given, (3) whether the defendant was mentally abnormal or under the influence of drugs or alcohol, (4) whether deception was used in the interrogation, (5) whether the defendant showed an ability to understand and respond to questions, (6) the length of time of the detention and interrogation, (7) any physical or emotional reaction the defendant displays, and (8) whether physical punishment or deprivation of

sleep or food was used. *Payton*, 481 N.W.2d at 328–29; *State v. Hibdon*, 505 N.W.2d 502, 504 (Iowa Ct. App. 1993).

Dantzler claims his waiver was not made with full awareness of the nature of his *Miranda* rights and the consequences of abandoning those rights because he was intoxicated and he was never given a written waiver to read and sign. Although Dantzler told an officer during the interrogation that he was drunk numerous times, the officer noted that Dantzler displayed no signs of being under the influence of alcohol or drugs. The district court noticed from the interrogation that Dantzler's speech was clear and coherent throughout the interview. The interrogating officer testified that Dantzler's eyes were clear during the interrogation. Intoxication alone does not render inculpatory statements involuntary. *State v. Edman*, 452 N.W.2d 169, 170 (Iowa 1990); *State v. Wilson*, 264 N.W.2d 614, 614–15 (Iowa 1978).

We agree the circumstances before us show that if Dantzler was intoxicated, he was not under the influence to an extent that his will was overborne by the questioning. *See Hibdon*, 505 N.W.2d at 504–05 (finding that defendant's claim that he was intoxicated did not make his statements involuntary when recording of the interrogation showed officers stating defendant's eyes were not red, he didn't stumble or stutter, and his answers were appropriate and responsive to the questions). The fact that Dantzler was not given a form to waive his *Miranda* rights in writing also does not show the waiver was involuntary. *Miranda* rights may be explained orally and the waiver of those rights may be inferred from the surrounding facts. *Bowers*, 656

N.W.2d at 353. Nearly all of the factors, when applied to the circumstances of the interrogation, weigh in favor of finding Dantzler's waiver and statements were voluntary. Dantzler was thirty-one and had prior experience with the criminal system. The *Miranda* warnings were given to him twice. Although he claimed he was intoxicated, his responses to questions were appropriate. The length of the interrogation was not unusually long, and although Dantzler did not have on a shirt, he was not deprived of food or sleep or punished during the interrogation. We agree with the district court's determination that Dantzler's waiver and statements were voluntary.

IV. DUE PROCESS. Dantzler also contends the district court erred in admitting photographs of the money confiscated from Dantzler and testimony about the money. He argues the State's failure to preserve the actual money for examination by Dantzler for his defense and use at trial was a violation of his due process rights. He claims the actual money could have been tested to determine whether the pink tint came from the dye of his pants rather than the paper as Clemens asserted. He contends if the testing showed the money was tinted from his pants, it would support his claim that the money was in fact his, and not obtained through a robbery. Dantzler further asserts that fingerprint or DNA testing of the money may have also supplied exculpatory information.

The district court admitted the evidence finding it met the foundation for admissibility of photographs. The court gave the reqested spoliation instruction, giving the jury the option to conclude from the State's disposal of the money, that the actual money would have contained favorable evidence for

Dantzler.[2] The State contends, among other things, Dantzler's due process claim fails because the State did not act in bad faith. It also contends the spoliation instruction provided a sufficient remedy for the State's disposal of the evidence.

In *Arizona v. Youngblood*, 488 U.S. 51, 57, 109 S. Ct. 333, 337, 102 L. Ed. 2d 281, 289 (1988), the court dealt with a situation where the State failed to preserve evidence that, while not apparently exculpatory, may have exonerated the defendant had the evidence been tested, and the tests produced results favorable to the defendant. It held, when the evidence is only potentially exculpatory, "that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Youngblood*, 488 U.S. at 58, 109 S. Ct. at 337, 102 L. Ed. 2d at 289. Our state supreme court has adopted the same test. *See State v. Atley*, 564 N.W.2d 817, 821 (Iowa 1997) ("Failure of the State to preserve potentially useful evidence does not constitute a denial of due process unless the defendant can show bad faith."); *Whitsel v. State*, 525 N.W.2d 860, 864 (Iowa 1994); *Dulaney*, 493 N.W.2d at 791.

"The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed."

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[2] The instruction stated,

> If you find that $577.00 in cash existed and the State knowingly and intentionally destroyed the cash, you may, but are not required to conclude that the information or evidence contained in or on the cash would be unfavorable to the State and favorable to the defendant.

Youngblood, 488 U.S. at 56 n.1, 109 S. Ct. at 336 n.1, 102 L. Ed. 2d at 288 n1. Another indicator of bad faith is whether the circumstances show that the State acted to gain a tactical advantage or to harass the defendant. *See id.* at 57, 109 S. Ct. at 337, 102 L. Ed. 2d at 289 (citing *United States v. Marion*, 404 U.S. 307, 325, 92 S. Ct. 455, 466, 30 L. Ed. 2d 468, 481-82 (1971)); *see Foster v. State*, 378 N.W.2d 713, 719 (Iowa Ct. App. 1985) (stating, "this is not an instance where the evidence was intentionally destroyed so that the State's case would be strengthened and the defendant's case weakened," where the clothing in a sexual abuse case was returned to the victim because she wanted it back and no arrest had been made in the case). A court might also consider whether the State disposed of the evidence after making a good faith determination that the evidence was not favorable to the defendant. *Youngblood*, 488 U.S. at 57, 109 S. Ct. at 337, 102 L. Ed. 2d at 289 (citing *U.S. v. Valenzuela-Bernal*, 458 U.S. 858, 872, 102 S. Ct. 3440, 3449, 73 L. Ed. 2d 1193, 1206 (1982)). There is no showing of bad faith if the evidence is disposed of in accordance with department policy. *See, e.g.*, *Dulaney*, 493 N.W.2d at 791. Inadvertent or negligent destruction also does not support a finding of bad faith. *See State v. Hulbert*, 481 N.W.2d 329, 334 (Iowa 1992); *State v. Waters*, 515 N.W.2d 562, 568 (Iowa Ct. App. 1994).

We conclude Dantzler has failed to show bad faith on the part of the police in disposing of the money. The officers gave the money to a flood victim who was in immediate need of the funds and to whom they believed was the rightful owner of the money. The officers did not gain any tactical advantage by

disposing of the money. The police did have the money examined for fingerprints but none were identified. There is no indication that the police knew of any potential exculpatory value of the evidence though they did recognize its relevance by having photographs taken of the money. The photographs were equally valuable to the State and Dantzler. The State was able to argue that the tint came from the paper through Clemens's testimony and Dantzler was able to argue that the tint came from the dye of his pants.

Dantzler requests we adopt a broader definition of bad faith under the due process clause of the Iowa Constitution. We decline to do so. Our supreme court adopted the *Youngblood* analysis and requirement of bad faith in *State v. Dulaney*, 493 N.W.2d at 790–92, and has determined that Iowa's due process clause affords the same protections as the Fourteenth Amendment. *State v. Klawonn*, 609 N.W.2d 515, 519 (Iowa 2000). Because we find no violation of Dantzler's due process rights, we need not decide whether the spoliation instruction is a sufficient remedy when such a violation occurs.[3]

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[3] In *State v. Hartsfield*, 681 N.W.2d 626, 629 (Iowa 2004), the court noted that previous decisions apply due process law on issues concerning spoliation instructions, and apply spoliation principles when analyzing due process claims. It "reaffirm[ed] the distinction between the proof required for a spoliation instruction and the proof necessary to establish a constitutional violation of due process rights." It only needed to evaluate the issue of whether a spoliation instruction was required in *Hartsfield*, and did not further expound on the proof required to establish a violation of due process or whether a spoliation instruction cures a violation.

We affirm Dantzler's convictions. His waiver of *Miranda* rights was valid and his statements were made voluntarily. He suffered no denial of due process rights by the State's disposal of potentially exculpatory evidence.

AFFIRMED.