

**IN THE COURT OF APPEALS OF IOWA**

No. 6-815 / 05-1521  
Filed January 18, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**KEVIN KAWANZEL HARRIS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman (motion to suppress) and Douglas S. Russell (trial and sentencing), Judges.

Defendant appeals the district court's denial of his motion to suppress evidence as a violation of his constitutional rights as well as his rights pursuant to Iowa Code section 804.20 (2003). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Harold Denton, County Attorney, and Susan Nehring, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**SACKETT, C.J.**

Defendant Appellant Kevin Kawanzel Harris appeals his conviction following a bench trial on charges of arson in the second degree, in violation of Iowa Code sections 712.1 and 712.3 (2003), and obstruction of justice, in violation of section 719.3. Harris contends the district court erred in failing to suppress certain statements he made while in police custody. We affirm.

**BACKGROUND.**

On January 6, 2003, the partially burned body of Joseph Harris was found in a 1995 Lincoln Continental. The Lincoln had been set on fire, and Harris had three bullet holes in his head. Defendant was a passenger in a Jeep Cherokee seen leaving the Lincoln close to the time the car started to burn. The Jeep was stopped and it was noted that defendant had singed hair and a reddish brown discoloration on his shirt.

Defendant was arrested on August 23, 2004, and questioned by Cedar Rapids police officer Douglas Larison. Defendant made incriminating statements to Larison including admitting he was present when Harris was shot and that he participated in burning the Lincoln. The district court in finding defendant guilty relied on his statements as well as other evidence.

Defendant contends the district court erred in failing to suppress the challenged statements. He contends the detective violated (1) his Fifth Amendment right to silence and counsel, (2) his Sixth Amendment right to counsel, and (3) his statutory rights under Iowa Code section 804.20. The State contends, among other things, the district court did not err.

Because it is a constitutional challenge, we review defendant's contention that his Fifth and Sixth Amendment rights were violated de novo. See *State v. Howard*, 509 N.W.2d 764, 767 (Iowa 1993). We review defendant's challenge under Iowa Code section 804.20 for correction of errors at law. *State v. Moorehead*, 699 N.W.2d 667, 670 (Iowa 2005).

The State has the burden of establishing by the preponderance of evidence the confession is voluntary. *State v. Payton*, 481 N.W.2d 325, 328 (Iowa 1992); *State v. Oliver*, 341 N.W.2d 25, 28 (Iowa 1983); *State v. Cullison*, 227 N.W.2d 121, 127 (Iowa 1975). In determining whether a confession is voluntary, we look at all the circumstances under which it was given. See *State v. Smith*, 546 N.W.2d 916, 926 (Iowa 1996). No one factor is determinative. *State v. Hodges*, 326 N.W.2d 345, 348 (Iowa 1982).

At the beginning of the interview the defendant was advised of his rights under *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694 (1966). Defendant agreed to answer questions and did on a number of occasions request a lawyer or an opportunity to talk to his brother. However, after such requests he initiated conversation. A suspect's request for an attorney must be unequivocal. *Davis v. United States*, 512 U.S. 452, 462, 114 S. Ct. 2350, 2356, 129 L. Ed. 2d 362, 371 (1994). Defendant's was not.

The district court in a well-reasoned opinion considered all of defendant's arguments, concluded the statements should not be suppressed, and denied the motion. On our review of the record we find no reason to disagree with the district court's ruling and affirm. Having done so, we need not address the

defendant's contention that his trial attorney was ineffective in not timely filing the motion.

**AFFIRMED.**