

**IN THE COURT OF APPEALS OF IOWA**

No. 8-610 / 07-1943  
Filed December 31, 2008

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

**vs.**

**ROBERT JOE MYERS, II,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg (suppression hearing) and Joel D. Novak (judgment and sentence), Judges.

A defendant appeals from his first-degree murder conviction. **AFFIRMED.**

Alfredo Parrish and Tammy Westhoff Gentry of Parrish, Kruidenier, Dunn, Boles, Gribble, Cook, Parrish, Gentry & Fisher, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Miller, J., and Zimmer, S.J.\*, but decided by Vogel, P.J., and Mahan and Miller, JJ.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**PER CURIAM**

Robert Myers appeals from his conviction of first-degree murder. He asserts that the district court erred in denying his motion to suppress. Because we find Myers's statements to police were voluntarily given, we affirm.

**Background Facts.** On September 2, 2006, Myers, accompanied by several friends, lured Matthew Stegman to Woodland Cemetery where Stegman was killed, after being brutally beaten, cut, and stabbed. Myers's stated purpose for the attack was that Myers believed Stegman was going to rape the thirteen-year-old daughter of Myers's girlfriend. On September 3, 2006, during the investigation into Stegman's murder, police officers received information that the individuals who were responsible for planning and carrying out the murder were located at a particular apartment near the cemetery. Officers went to the apartment where they found thirteen people. The officers informed the group that they were investigating Stegman's murder and asked the group to accompany them to the police station so that they could be individually interviewed. Everyone in the group agreed and they were all then transported to the station.

At 7:02 p.m., Myers and the others arrived at the police station. They were brought to offices that had couches, chairs, and a television set. Later, they were moved to a hallway with benches, a drinking fountain, and restrooms. At 7:35 p.m., two teams of two officers began the individual interviews. Because officers had information that Myers and Terry Williams were the ones who likely inflicted the fatal blows, Myers was the last one to be interviewed. His interview was audio and video tape-recorded.

At 1:21 a.m., Officer Bender and Officer Schafnitz began interviewing Myers. Eager to talk with the officers, Myers stated: "I know what you're looking for . . . . I can tell you just what you're looking for . . . . Why don't I just tell you guys my part in everything." The officers interrupted him and told him that they were tape-recording the interview and had to go through a form before the interview could begin. Officer Bender then read Myers his *Miranda*<sup>1</sup> rights, stopping after each right and asking "do you understand that?" To each Myers answered in the affirmative. Finally, Myers stated: "I know the *Miranda* rights off the top of my head" and he signed a written waiver of those rights. Myers then gave his version of how Stegman died, followed by the officers' questions. Myers freely admitted that he forced Stegman to the ground, and using the heel of his boot, kicked him several times in the head and stomped on Stegman to break his jaw, so he would stop talking. He denied that he used a knife in the attack, claiming Williams slashed Stegman's throat and stabbed him in the back of the skull.

The interview continued until 2:15 a.m., when a break was taken and Myers was given food and drink from a fast food restaurant. The interview resumed at 2:24 a.m. Eventually Myers admitted that "everything went haywire" and he plunged the knife into Stegman's upper chest. Later the following exchange took place:

SPO Bender: Let's finish this up Robert.

R. Myers: Inadvertently I aided in his death.

SPO Bender: Inadvertently you aided in his death? Is that what you said, I can't hear you with your hand in front of your mouth.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

R. Myers: Correct.

SPO Bender: Is there anything else you'd like to add?

R. Myers: How much time am I looking at?

SPO Bender: Probably life.

R. Myers: Any deals?

SPO Bender: Huh?

R. Myers: Deals?

SPO Bender: Deals? I'm not in a position to make any deal.

A second break was taken from 3:07 a.m. until 3:20 a.m., when officers returned to conclude the interview. Officers asked Myers: "Was this interview that you have given us given freely, voluntarily, and without any promises?" To which Myers answered "Yes." The interview was concluded at 3:22 a.m.

On October 11, 2006, Myers was charged with first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (2005). The following month, Myers waived his right to a speedy trial and his right to be tried within one year. On September 25, 2007, Myers moved to suppress his statements made during the September 4, 2006 interview alleging that his statements were involuntarily given. Following a hearing, the district court denied Myers's motion. On November 8, 2007, following Myers's waiver of trial by jury, the district court found Myers guilty as charged based upon the minutes of evidence. Myers appeals and contends the district court erroneously denied his motion to suppress because the inculpatory statements he made during the September 4, 2006 interview were not voluntarily given.<sup>2</sup>

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<sup>2</sup> Myers also asserts that he was under arrest when interviewed and he did not voluntarily waive his *Miranda* rights. The State responds that Myers did not preserve these claims because he did not raise either in his motion to suppress or at the suppression hearing. We agree with the State that these claims are not preserved. However, had they been preserved, we would find that the record clearly demonstrates that Myers was read his *Miranda* rights and then voluntarily waived those rights.

**Scope of Review.** As Myers asserts a violation of his constitutional rights, our review is de novo. Iowa R. App. P. 6.4; *State v. Hodges*, 326 N.W.2d 345, 347 (Iowa 1982). However, we recognize that the district court was able to listen to and observe the parties and witnesses. *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997). Consequently, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g); *Countryman*, 572 N.W.2d at 557.

**Voluntariness of Inculpatory Statements.** The State has the burden to prove by a preponderance of the evidence that the statements were voluntarily given. *Countryman*, 572 N.W.2d at 558.

We employ the totality-of-circumstances test in determining voluntariness: it must appear the statements 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.

*Id.* (citations omitted). Although no one factor is determinative, we examine (1) the defendant's age, experience, prior record, level of education, and intelligence; (2) the defendant's knowledge and waiver of his *Miranda* rights; (3) the length of time a defendant is detained and interrogated; (4) whether physical punishment is used, including the deprivation of food and sleep; (5) the defendant's physical and emotional condition and his reaction to the interrogation; (6) whether any deceit or improper promises were used in gaining admissions; and (7) any mental weaknesses the defendant possesses. *Hodges*, 326 N.W.2d at 348.

Myers specifically claims his statements were involuntary because of “the length of time he was detained and then interrogated, the hour of his interrogation, the deprivation of food and sleep, the use of deceit and promises of leniency.” The record indicates that Myers arrived at the police station at approximately 7:00 p.m. While officers interviewed others, Myers and his friends waited together. During their wait they had access to a drinking fountain and restroom. An officer was present, yet Myers did not express that he was either hungry or tired. At approximately 1:21 a.m., officers began interviewing Myers, who did not appear to be tired, but rather eager to talk with officers and tell his version of the events. Although Myers did not request food, at approximately 2:15 a.m. officers took a nineteen-minute break, provided him with food and beverage, and left him alone in the room. The interview was concluded at 3:22 a.m. Throughout this time, there was no evidence that officers deprived Myers of food or drink. While the hour was late, the psychological report indicates Myers had slept until 11:00 a.m. on the previous day.

At the time of the interview, Myers was twenty-four years old and had an extensive criminal history both as an adult and as a juvenile. At the start of the interview Myers was read his *Miranda* rights and provided with a written copy of the same. Due to his prior experience with the law, Myers stated his familiarity with the criminal justice system and his *Miranda* rights. He indicated that he understood each of his rights and after a careful reading, readily waived them. Throughout the interview, Myers appeared to understand the questions and responded accordingly.

Further, the record of the interview does not support Myers's assertion of deceit and promises of leniency. First, Myers points to a discussion where officers agreed with Myers that child molesters are "bad and evil people." As a professed "Druid," Myers claimed to be a protector of children, but that Stegman was boasting about his plans to rape a young girl. Officer Bender testified that they understood Myers had a particular animosity towards child molesters, and during the interview had agreed with Myers that child molesters were bad people. Officers Schafnitz and Bender both testified that their acknowledgement of a common disdain for child molesters was used to gain Myers's trust, in hopes of encouraging Myers to confess. However, as the State points out, Myers does not explain how this discussion overbore his will. "There is no law that prohibits the police from establishing a rapport with a suspect. A statement to a criminal suspect that implies empathy or understanding for the suspect does not amount to improper inducement or coercion." *State v. Jennett*, 574 N.W.2d 361, 366 (Iowa Ct. App. 1997).

Second, Myers asserts that the officers made a tacit promise that he would suffer a lesser punishment if he confessed. During the interview, officers discussed with Myers that Stegman had suffered both fatal and non-fatal wounds. They urged him to "come clean" and admit his involvement and "to own up to" his part in the murder. However, officers never promised nor inferred Myers would receive any benefit from confessing. See *State v. Mullins*, 85 N.W.2d 598, 601 (Iowa 1957) (stating that in order for an officer's statement to constitute a prohibited promise of leniency, the statement "must contain clear

inducements or inducements that could be reasonably inferred by the language used”).

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.

*Hodges*, 326 N.W.2d at 349. In this case, the record clearly indicated that officers encouraged Myers to be honest, but did not promise any benefit in exchange for his statements.

Upon our review of the totality of the circumstances, we find that Myers’s statements to police officers were voluntarily made. The district court properly denied his motion to suppress. Thus, we affirm.

**AFFIRMED.**