

**IN THE COURT OF APPEALS OF IOWA**

No. 9-589 / 08-1596  
Filed October 7, 2009

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**RANDY LEROY CUE,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith III, Judge.

The State appeals from the district court's ruling suppressing statements of the defendant. **AFFIRMED.**

Thomas J. Miller, Attorney General, Mary Tabor and Kevin Cmelik, Assistant Attorneys General, Matthew D. Wilber, County Attorney, and Jon Jacobmeier, Assistant County Attorney, for appellant.

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, and Frank E. Robak, Robak Law Office, Council Bluffs, for appellant.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**DOYLE, J.**

The State appeals from a district court ruling which suppressed statements made by defendant Randy Cue to Council Bluffs police officers during two separate interviews. The State contends the *Miranda*<sup>1</sup> warnings were not required and thus the statements were admissible because Cue was not in custody when he made statements on the street and at the police station, and because Cue was not interrogated at the police station. Additionally, the State argues Cue's statements made at the police station before, during, and after the *Miranda* warnings were volunteered and not obtained in violation of the Fifth Amendment. Upon our review, we affirm.

***I. Background Facts and Proceedings.***

Randy Cue is Florence Cue's son and was a close friend of Rodney Deville. On March 24, 2008, at approximately 10:40 p.m., Florence reported a stabbing at her residence in Council Bluffs. Police officers were dispatched and found Deville dead at the scene in a pool of blood. After a preliminary investigation, the officers suspected Deville was stabbed by the defendant.

The officers spoke to several individuals in attempting to locate Cue. One individual told the investigators that she did not know where Cue was, but indicated he might be found at the residence of his friend, Bill Hanson, in Omaha, Nebraska. The individual also stated that Cue was mentally and physically disabled. During their investigation, the officers were also told Cue was illiterate and could not read or write.

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<sup>1</sup> See *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612. 16 L. Ed. 2d 694, 706 (1966).

The Council Bluffs Police Department requested assistance from the Omaha Police Department, and a total of six police officers in three squad cars, from both departments, converged on the Hanson residence to apprehend Cue. In the early morning hours of March 25, 2008, Omaha officers first arrived at the Hanson residence and found Cue lying in the street in front of the residence. Cue was highly intoxicated and could not stand or sit up without assistance. Council Bluffs Detective Steve Andrews testified that Cue was their key suspect. Detective Andrews also testified that he would not have considered Cue free to leave the scene, though he testified that Cue “would not have [had] any idea of that.”

Detective Andrews began talking with Cue. Detective Andrews had a pocket digital recorder and recorded a portion of his conversation with Cue.<sup>2</sup> Without advising Cue of his *Miranda* rights, Detective Andrews questioned Cue about Deville’s death, specifically asking him: “You want to tell me about tonight?” “So you say [Deville] got violent with you?” “Where is your car at . . . ?” “Where did you park?” “You got blood on your hands?” “So what brought it all on tonight?” “You said you stabbed him?” “How many times [do] you think you stabbed [Deville]?” “Where did you stab him at?” and “You know where the knife is at?” Cue gave incriminating responses to these questions. Detective Andrews testified that the other officers at the scene were somewhere behind him and did not participate in his conversation with Cue.<sup>3</sup>

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<sup>2</sup> The audio recording of the street conversation is approximately six minutes in length and begins with Cue responding to an unrecorded question.

<sup>3</sup> Detective Andrews testified he could overhear the officers behind him and that they can be heard in the background of his audio recording.

After being requested to do so, Cue eventually agreed to go to the Omaha police station for another interview.<sup>4</sup> He was not formally arrested or put in handcuffs at that point. He was transported to the Omaha police station in a squad car accompanied by two Omaha police officers, and the squad car's video camera recorded his transport. During the trip, Cue was handcuffed after he became rowdy and unruly in the car. They arrived at the police station at about 3:48 a.m. where Cue was taken to an interrogation room.

In the interrogation room, Detective Andrews and another officer began interviewing Cue. Cue talked over many of Detective Andrews's statements and Cue's responses were often slurred or inaudible. Cue was also extremely emotional during the interview.

Detective Andrews recorded the beginning of the interview with his pocket digital recorder.<sup>5</sup> The audio recording begins:

DETECTIVE ANDREWS: I don't know, why would I have a reason to be upset?

THE DEFENDANT: Because my friend what, what happened.

Detective Andrews then attempted to give Cue the *Miranda* warnings, and the following exchange<sup>6</sup> occurred:

DETECTIVE ANDREWS: I just got some technical stuff I got to go through here, alright? This . . . just basically states before we ask you any questions that you got to understand your rights,

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<sup>4</sup> Cue's agreement to go to the police station was not captured on the audio recording.

<sup>5</sup> This audio recording lasts approximately eighteen minutes. Although the interrogation room had video-recording capabilities, the video recording did not start until approximately nine minutes into the audio recording.

<sup>6</sup> An unofficial transcript of the audio recordings was submitted into evidence at the suppression hearing; however, after reviewing the audiotapes and the transcripts, it is clear the transcripts often do not accurately reflect the statements heard on the audiotapes. We therefore rely only on the audio recordings.

right? . . . Okay, it says, before we talk to you, . . . you have the right to remain silent. You understand that?

THE DEFENDANT: (Inaudible) yea, whatever.

DETECTIVE ANDREWS: Okay. It says anything you say can be used against you in court. You understand that? You have the right to talk to a lawyer.

THE DEFENDANT: What am I arrested for, killing my best friend or what?

DETECTIVE ANDREWS: (Inaudible).

THE DEFENDANT: Is that what happened? Tell me.

DETECTIVE ANDREWS (and other officer(s)): You're not under arrest.

(Inaudible).

THE DEFENDANT: Tell me, is that what happened?

DETECTIVE ANDREWS: You're not under arrest.

THE DEFENDANT: Did he die?

DETECTIVE ANDREWS: I don't know.

. . . .

DETECTIVE ANDREWS: It says if you can't afford an attorney, that one will be appointed (inaudible), okay?

THE DEFENDANT: (Inaudible).

DETECTIVE ANDREWS: You understand those rights?

THE DEFENDANT: (Inaudible).

DETECTIVE ANDREWS: Can you sign this for me?

THE DEFENDANT: (Inaudible).

DETECTIVE ANDREWS: Huh?

THE DEFENDANT: What happened, did he die?

DETECTIVE ANDREWS: I don't know, Randy.

THE DEFENDANT: (Inaudible). I ain't signing nothing (inaudible).

DETECTIVE ANDREWS: Okay, can you sign this for me (inaudible)?

THE DEFENDANT: No (inaudible).

[OTHER OFFICER]: You understand your rights, don't you?

THE DEFENDANT: I got no rights man, I ain't got a lawyer right now.

[OTHER OFFICER]: You wanna talk to us?

THE DEFENDANT: What happened, what happened, what?

[OTHER OFFICER]: You don't have to talk to us.

DETECTIVE ANDREWS: Randy, Randy, we can't talk to you unless you agree to talk to us.

THE DEFENDANT: No (inaudible) no, no. What happened, why am I here?

[OTHER OFFICER]: You tell us.

THE DEFENDANT: You tell me. (Inaudible).

. . . .

DETECTIVE ANDREWS: I mean, I would love to be able to talk to you Randy, but—

THE DEFENDANT: (Inaudible) you didn't tell me why I'm here for (inaudible).

DETECTIVE ANDREWS: Well, you're here because you talked to the officer out there that brought you down here and said you wanted to come down here and talk to us.

THE DEFENDANT: No (inaudible) you make me feel I need a lawyer now.

DETECTIVE ANDREWS: I don't, you know, that's up to you. . . .

THE DEFENDANT: (Inaudible) freak thing that happened.

DETECTIVE ANDREWS: You seen TV, right? You have to be read your rights and all that stuff?

THE DEFENDANT: Read my rights, got a lawyer, I got five of them.

. . . .

DETECTIVE ANDREWS: I can't understand what you're saying, Randy.

THE DEFENDANT: Yeah I talk to my lawyer. (Inaudible). I want to talk to my lawyer. (Inaudible). My head (inaudible) my brain is like really slow. . . . (Inaudible).

DETECTIVE ANDREWS: Excuse me?

THE DEFENDANT: I don't like fucking lawyers anyways.

DETECTIVE ANDREWS: Okay.

. . . .

THE DEFENDANT: (Inaudible). Okay. Frank Ro-fucking-bak. Okay?

DETECTIVE ANDREWS: Mm hmm.

THE DEFENDANT: Talk to him, alright?

DETECTIVE ANDREWS: Frank?

THE DEFENDANT: Yes.

DETECTIVE ANDREWS: Who's that?

THE DEFENDANT: Frank Robak.

DETECTIVE ANDREWS: Who is Frank Robak?

THE DEFENDANT: My fucking lawyer, talk to him from now on. Anything you say to me, can say to him, okay?

DETECTIVE ANDREWS: I'm not saying anything to you Mr. Cue.

THE DEFENDANT: I'm saying to you right fucking straight, fucking now, you got something to say what the fuck I did (inaudible) Robak. (Inaudible) two or three other lawyers, talk to them too. (Inaudible) . . . I'm not gonna say another fucking thing until you talk to my lawyer. . . . I want something to drink, that'd be really nice. My head hurts, got a bad neck and bad back . . . .

The video of the interview starts right after Cue asks for a drink and continues for approximately fifty-three minutes. The video initially shows another officer coming into the room after Cue told the officers to talk to his lawyer. The officer sat down, and Detective Andrews and the officer converse shortly. The officer passed Detective Andrews a paper, and Detective Andrews then told the officer, "Mr. Cue talked to me out on the street before we came in." Cue then interrupted with incriminating statements. Thereafter, officers responded to various statements made by Cue, asking questions not specifically related to the investigation, including questions about Cue's back pain and Wiccan religion. After Cue made more incriminating statements, the officers asked him, "What exactly happened?" Cue made more incriminating statements. Cue then stated he had nothing to say and again asked for a drink of water. The officers told Cue they would see what they could do, but the "guys out there have to get it."

Detective Andrews left the interrogation room, and the other officer remained with Cue. Cue and the officer talked about various subjects, including the Harley-Davidson motorcycle Cue recently purchased, Cue's genealogy, and his family. Cue often responded to questions with unrelated answers. While conversing on these subjects, Cue regularly interjected with incriminating statements and asking why he was there and if Deville had died. Cue also asked for a drink of water two more times; he was finally given a cup of water approximately twenty-eight minutes into the video of the interview.

Towards the end of the interview, the officers took Cue's clothing, asked him to put on an orange jumpsuit, and photographed him. Approximately forty-two minutes into the video of the interview, Cue stated he was really tired and

tried to lie down on the floor of the interrogation room. The officers asked him to sit up and then took swabs from his feet for blood and DNA analysis. Cue was then placed under arrest. The officers never re-attempted to give Cue the *Miranda* warnings and never communicated with him about his request that they contact his attorney.

On April 10, 2008, Cue was charged with murder in the first degree. He filed a motion to suppress the statements he made to the police officers. Among other things, he claimed that his *Miranda* rights and Fifth Amendment right to counsel were violated. Following a hearing on the motion, the district court granted Cue's motion to suppress the audiotape of his statements on the street and the audio and videotapes of his statements at the Omaha police station.

The State filed an application for discretionary review. The Iowa Supreme Court granted the application and stayed the district court proceedings. The matter was then transferred to this court for review.

## ***II. Scope and Standards of Review.***

Our review of the constitutional issues raised is *de novo*. *State v. Ortiz*, 766 N.W.2d 244, 249 (Iowa 2009). We independently evaluate the totality of the circumstances shown by the record and “give deference to the district court’s fact findings due to its opportunity to assess the credibility of witnesses.” *State v. Miranda*, 672 N.W.2d 753, 758 (Iowa 2003) (citation omitted). However, we are not bound by the district court’s findings. *State v. Simmons*, 714 N.W.2d 264, 271 (Iowa 2006).



### **III. Discussion.**

The State contends the district court erred in suppressing the audio and video recordings containing statements made by Cue on the street and at the police station. The State argues *Miranda* warnings were not required because Cue was not in police custody when he made statements on the street and at the police station, and he was not interrogated at the police station. Additionally, the State argues Cue's statements made at the police station before, during, and after the *Miranda* warnings were volunteered and not obtained in violation of the Fifth Amendment. We address the State's arguments in turn.

#### **A. Miranda Analysis.**

The Fifth Amendment of the United States Constitution, made applicable to the states through the Fourteenth Amendment, promises that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V; *Miranda*, 672 N.W.2d at 758. This constitutional guarantee applies when one is subject to “custodial interrogation” by police. *Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694, 706-07 (1966). To safeguard this right, prior to custodial interrogation, a person must be informed of the right to remain silent, the right to obtain or be appointed an attorney, and that any statements can be used against the person in court. *Id.* at 478-79, 86 S. Ct. at 1630, 16 L. Ed. 2d at 726. “The requirement that police officers advise suspects of their *Miranda* rights is more than a mere procedural nicety or legal technicality.” *Ortiz*, 766 N.W.2d at 251 (citing *Miranda*, 384 U.S. at 476, 86 S. Ct. at 1629, 16 L. Ed. 2d at 725). “Absent a recitation of the *Miranda* warnings and a valid waiver of the right to remain silent and the right to the

presence of an attorney, any statement made by an individual in response to custodial interrogation is inadmissible.” *State v. Harris*, 741 N.W.2d 1, 5 (Iowa 2007) (citations omitted).

“[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.” *Edwards v. Arizona*, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884-85, 68 L. Ed. 2d 378, 386 (1981). In other words, “an accused, . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication, exchanges, or conversations with the police.*” *Id.* at 484-85, 101 S. Ct. at 1885, 68 L. Ed. 2d at 386 (emphasis added).

*Id.* at 6. The bright line rule announced in *Edwards* reflects the Supreme Court’s concern that

if a suspect believes that he is not capable of undergoing [custodial] questioning without advice of counsel, then it is presumed that any subsequent waiver that has come at the authorities’ behest, and not at the suspect’s own instigation, is itself the product of the “inherently compelling pressures” and not the purely voluntary choice of the suspect.

*Arizona v. Roberson*, 486 U.S. 675, 681, 108 S. Ct. 2093, 2097-98, 100 L. Ed. 2d 704, 713 (1988) (citations omitted).

“[E]ven if a conversation . . . is initiated by the accused, where reinterrogation follows, the burden remains upon the prosecution to show that subsequent events indicated a waiver of the Fifth Amendment right to have counsel present during the interrogation.” *Oregon v. Bradshaw*, 462 U.S. 1039, 1044, 103 S. Ct. 2830, 2834, 77 L. Ed. 2d 405, 412 (1983). A valid waiver under these circumstances requires the individual to “evinced [ ] a willingness and a desire for a generalized discussion about the investigation.” *Id.* at 1045-46, 103 S. Ct. at 2835, 77 L. Ed. 2d at 412.

*Harris*, 741 N.W.2d at 6. While the officers may inquire if the suspect has decided to retract his request for counsel, they may not use subtle, coercive

means to achieve a change of mind. See *Brewer v. Williams*, 430 U.S. 387, 399, 405, 97 S. Ct. 1232, 1241, 1243, 51 L. Ed. 2d 424, 436-37, 440-41 (1977).

A critical question to the analysis is whether the suspect was subject to “custodial interrogation,” as the “*Miranda* requirements do not come into play unless both custody and interrogation are present.” *Simmons*, 714 N.W.2d at 274 (citation omitted). Custodial interrogation is “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612, 16 L. Ed. 2d at 706; see also *Simmons*, 714 N.W.2d at 274. The fact police officers are involved in questioning a person does not make it a custodial interrogation. *State v. Astello*, 602 N.W.2d 190, 195 (Iowa Ct. App. 1999). Similarly, the mere fact an individual is questioned at a law enforcement center does not render the interview a custodial interrogation. See *State v. Schwartz*, 467 N.W.2d 240, 245 (Iowa 1991).

[A] noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a “coercive environment.” Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person’s freedom as to render him “in custody.” It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited.

*Astello*, 602 N.W.2d at 195 (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S. Ct. 711, 714, 50 L. Ed. 2d 714, 719 (1977)).

The custody determination depends on the objective circumstances of the interrogation, not on subjective views harbored either by the officer or the person being questioned. *Stansbury v. California*, 511 U.S. 318, 323, 114 S. Ct. 1526, 1529, 128 L. Ed. 2d 293, 2998 (1994). The appropriate test is whether a reasonable person in Cue's position would understand himself or herself to be in custody. See *State v. Countryman*, 572 N.W.2d 553, 558 (Iowa 1997).

In making this determination, we may consider “the language used to summon the individual, the purpose, place and manner of the interrogation, the extent to which the defendant is confronted with evidence of his guilt, and whether the defendant is free to leave the place of questioning.”

*Simmons*, 714 N.W.2d at 274-275 (citations omitted). We note that when “the confrontation between the suspect and the criminal justice system is instigated at the direction of law enforcement authorities, rather than the suspect, custody is more likely to exist.” *Miranda*, 672 N.W.2d at 759 (citation omitted).

As for the interrogation determination:

[T]he term “interrogation” under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

*Harris*, 741 N.W.2d at 5 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 1689-90, 64 L. Ed. 2d 297, 308 (1980)). As one court aptly stated, “interrogation . . . is not limited to direct inquisitorial repartee[;] it includes the various approaches police have available to obtain an incriminating statement.” *State v. Johnson*, 586 P.2d 811, 814 (Or. Ct. App. 1978).

### **1. Statements Made in the Street.**

The State concedes that Cue was interrogated by the Council Bluffs police officers when they interviewed him in the street. However, the State argues that Cue was not in custody at the time of the interrogation by the officers when he made the statements in the street. The State urges that Cue was not in custody because he was not summoned to the location of the first interview, the first interview took place in a public location where he could have declined to answer the detective's questions, he was not placed under arrest or told he was under arrest, he agreed to return to Omaha with the officers to finish talking to them, and he was not placed in handcuffs until he became unruly and created the possibility of injuring himself.

After reviewing the principles demanded by *Miranda*, the guiding factors, and all of the circumstances surrounding the questioning evidenced by the record, we find Cue was in custody when he was interrogated on the street, and therefore *Miranda* warnings were required. Although Cue was not summoned to the street where he was first questioned, he was first found lying in the street, highly intoxicated, and unable to stand or sit up without assistance, and thus was unable to simply walk away from the interview. At the time he was interviewed on the street, Cue was the prime suspect in Deville's murder. Although Cue was only interviewed by Detective Andrews, five other officers were on the scene, several of which were standing close behind Detective Andrews and Cue such that they can be heard on Detective Andrews's audio recording of the street interview. Furthermore, Detective Andrews asked Cue specific questions about the murder and Cue's involvement in the crime. Detective Andrews also testified

that Cue was not free to leave the scene, although he qualified his testimony stating that Cue would not have known that. Based on the foregoing, we find a reasonable person in Cue's position would understand himself or herself to be in custody, and thus *Miranda* warnings were required. Consequently, we conclude the district court did not err in suppressing the audio recording containing Cue's statements made on the street.

**2. Statements Made at the Police Station.**

**a. Custody.**

The State argues that Cue was not in custody at the time of the interview at the Omaha police station. The State urges that Cue was not in custody because he had agreed to speak with the officers at the police station, he was not placed under arrest or told he was under arrest, and the interview did not reflect a police-dominated atmosphere. We disagree.

After being requested to do so, Cue agreed to go to the Omaha police station. Cue ultimately arrived at the police station in handcuffs, and the handcuffs were not removed until he promised to be good and behave. Cue repeatedly asked why he was there. Although he was told he was not under arrest, Cue was never told he was free to leave, and even the officers did not believe he was free to leave. See *Ortiz*, 766 N.W.2d at 252 (citations omitted). Although Cue asked for a lawyer and told the officers to talk to his lawyer, the officers made no movements or communications with Cue to honor the assertion of his right. We find this suggests a police-dominated atmosphere. Based on the foregoing, we find a reasonable person in Cue's position would understand

himself or herself to be in custody when he was interviewed at the police station, and therefore *Miranda* warnings were required.

**b. Interrogation.**

The State also argues that although the officers intended to interrogate Cue at the police station, an interrogation never occurred because Cue voluntarily gave incriminating statements before, during, and after the *Miranda* warnings were given. We disagree.

The audio recording begins with Detective Andrews asking, “I don’t know, why would I have a reason to be upset?” The purpose of the question clearly was to elicit an incriminating response from Cue, of which the officers were aware, therefore satisfying the definition of interrogation. Additionally, we agree with the district court’s conclusion that the officers’ remaining in the interrogation room and engaging in “small talk” after Cue asserted his right to counsel was “undoubtedly designed to illicit statements from [the defendant].” Because Cue was subject to custodial interrogation, the *Miranda* warnings were required.

**c. Waiver of Miranda.**

At the police station, the officers attempted to give Cue the *Miranda* warnings. The State argues that Cue effectively waived his *Miranda* rights thereafter by reinitiating a dialogue with the officers about the investigation after he was advised of his *Miranda* rights, and therefore those statements made after the *Miranda* warnings are admissible. Upon our review, we disagree.

For Cue’s statements to be admissible, the State must first prove he “was adequately informed of his *Miranda* rights, understood them, and knowingly and intelligently waived them.” *Ortiz*, 766 N.W.2d at 249 (citations omitted). Second,

the State must prove Cue “gave his statement voluntarily.” *Id.* (citation omitted). It is the State’s burden to prove Cue knowingly, intelligently, and voluntarily waived his *Miranda* rights by a preponderance of the evidence. *See id.*

A court looks at the totality of the circumstances to determine voluntariness. *State v. Payton*, 481 N.W.2d 325, 328 (Iowa 1992).

The ultimate test is whether, under the totality of circumstances, the statements were the product of an essentially free and unconstrained choice, made by the subject at a time when that person’s will was not overborne or the capacity for self-determination critically impaired.

*State v. Bowers*, 656 N.W.2d 349, 353 (Iowa 2002). The court considers several factors, including the intellectual abilities of the defendant, whether the interrogator acted in a deceptive manner, whether the subject appeared to understand and respond to questions, and whether the subject was physically abused or deprived of food or sleep. *Id.* (citations omitted).

After reviewing the entire record, including the audio and videotapes, with the factors set forth above in mind, we conclude the totality of the circumstances demonstrates Cue’s inculpatory statements at the police station were not made voluntarily. We find it very troublesome that after Cue unequivocally and repeatedly asserted his right to counsel, the officers did nothing to accommodate his request. Rather, the officers stayed in the room and conversed with each other without ever acknowledging Cue’s clear assertion of his right. However, even assuming without deciding Cue’s statements made at the police station were the product of an essentially free and unconstrained choice, the totality of the circumstances clearly establishes the statements were made by Cue at a time when his capacity for self-determination was critically impaired.



A review of the audio and videotapes evidences Cue's inability to understand the officers' questions as well as the *Miranda* warnings. Cue was highly intoxicated during his interviews with the officers, and he often responded to questions with unrelated answers. Although intoxication is not conclusive on the issue of voluntariness, Cue's intoxication is "one factor to be considered" in the totality of the circumstances surrounding the statements made. *State v. Edman*, 452 N.W.2d 169, 170 (Iowa 1990). Additionally, Cue's physical and emotional reaction to the interrogation weighs in favor of finding his statements were not voluntarily made. Cue was extremely emotional, often times rambling and confused, sobbing, and very difficult to understand, further evidencing his mental state was so disabling as to render him unable to make a voluntary statement. See *State v. Countryman*, 572 N.W.2d 553, 559 (Iowa 1997). The record also shows Cue's requests for water were ignored for a substantial period of time. The interview took place at approximately four in the morning, and although Cue told officers he was really tired and tried to lie down on the floor of the interrogation room, the interview continued. Additionally, a witness had previously stated to the officers that Cue was mentally and physically disabled. For these reasons, we conclude the totality of the circumstances clearly establishes the statements were made by Cue at a time when his capacity for self-determination was critically impaired and thus were not voluntarily made. Accordingly, the district court did not err in suppressing his recorded statements.

***B. Voluntary Statements.***

We note that even if *Miranda* warnings are not required, a suspect's statements are still subject to suppression at the suspect's criminal trial if those

statements were not made voluntarily. See *State v. Trigon, Inc.*, 657 N.W.2d 441, 445 (Iowa 2003) (citation omitted). The State again has the burden of proving voluntariness. *Id.* Factors bearing on the issue of voluntariness where *Miranda* warnings were not required include:

the defendant's age, experience, prior record, level of education and intelligence; the length of time defendant is detained and interrogated; whether physical punishment was used, including the deprivation of food or sleep; defendant's ability to understand the questions; the defendant's physical and emotional condition and his reaction to the interrogation; whether any deceit or improper promises were used in gaining the admissions; [and] any mental weakness the defendant may possess.

*Id.* (internal citations omitted).

Even if Cue was not subject to custodial interrogations and *Miranda* warnings were not required, for the reasons stated above, we conclude his statements were not voluntarily given. Therefore, even if the court erred in determining Cue was subject to custodial interrogations, the district court did not err in suppressing his statements.

#### ***IV. Conclusion.***

We find Cue was subject to custodial interrogation at the times of his interviews and *Miranda* warnings were not given prior to his incriminating statements. Additionally, we find Cue's statements made after officers attempted to give him the *Miranda* warning and after he asserted his to right to counsel were not voluntarily made. We therefore conclude the district court did not err in suppressing Cue's recorded statements and accordingly affirm the district court's ruling.

**AFFIRMED.**