

IN THE COURT OF APPEALS OF IOWA

No. 9-702 / 08-2033
Filed September 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MATTHEW DELMAR PIES,
Defendant-Appellant.

Appeal from the Iowa District Court for Plymouth County, Jeffrey A. Neary (suppression) and Edward A. Jacobson (trial), Judges.

Matthew Pies appeals his conviction arguing the district court erred in denying his motion to suppress statements he made to the police. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Darin J. Raymond, County Attorney, and Amy Oetken, Assistant County Attorney, for appellee.

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

EISENHAUER, J.

Matthew Pies appeals his conviction for burglary. He contends the district court erred in denying his motion to suppress evidence of involuntary statements he made to the police. We agree and reverse and remand for a new trial.

I. Background Facts and Proceedings.

After a burglary was reported, the police suspected Pies. A police inspection found some of the stolen items in his garbage. Pies agreed to go to the police department for questioning on February 12, 2008. Two police officers questioned Pies and, during a tape-recorded interview, Pies eventually confessed to the burglary. Pies moved to suppress his statements asserting his inculpatory statements were not voluntary because they were induced by promissory leniency. The district court, noting “law enforcement came dangerously close to committing overt promissory leniency,” and applying a totality of the circumstances/constitutional test, denied the motion to suppress. Pies was convicted of burglary following a bench trial.

Pies appeals contending the court erred in admitting his statements over his evidentiary reliability objections.

II. Standard of Review.

“[W]here there is no dispute as to the words used or their obvious meaning, and the circumstances surrounding the expressions,” then the court determines as a matter of law whether the police gave “some assurance that the accused might gain in some manner” by admitting guilt. *State v. Mullin*, 249 Iowa 10, 15, 85 N.W.2d 598, 601 (1957). In cases involving the *Mullin* circumstances,

Iowa courts decide admissibility on an evidentiary basis and not a constitutional basis. See *State v. McCoy*, 692 N.W.2d 6, 27-28 (Iowa 2005); *State v. Quintero*, 480 N.W.2d 50, 52 (Iowa 1992) (holding involuntary confession inadmissible, “not on the basis of a constitutional principle, but as a matter of the law of evidence”). Involuntary confessions are inadmissible evidence because of their “inherent lack of reliability.” *McCoy*, 692 N.W.2d at 28. This evidentiary rule developed because “the law has no way of measuring the improper influence or determining its effect on the mind of the accused.” *Quintero*, 480 N.W.2d at 52.

Here the Pies interview was recorded and there is no dispute regarding the exact words used by the police officers. Therefore, the record is sufficiently clear to analyze this issue on an evidentiary basis as a matter of law.

III. Voluntariness of Inculpatory Statements.

Pies claims the record shows his statements were involuntary because they were made in exchange for promises of leniency. The test for determining the admissibility of inculpatory statements is voluntariness. *State v. Munro*, 295 N.W.2d 437, 440 (Iowa 1980). “[T]he statement must freely emanate from the mind of the speaker. If the [defendant’s] statement . . . results from a promise of help or leniency by [the police] it is not considered voluntary and is not admissible.” *State v. Hodges*, 326 N.W.2d 345, 348 (Iowa 1982).

During questioning, an “officer can tell a suspect that it is better to tell the truth without crossing the line between admissible and inadmissible statements from the defendant.” *McCoy*, 692 N.W.2d at 28. However, the line between admissibility and exclusion is crossed “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." *Hodges*, 326 N.W.2d at 348-349.

With these principles in mind, we detail portions of the interrogation:

Officer R: OK. Now, now we are going to shift gears. And I am going to tell you right now I have got enough right now to arrest you and take you to jail for burglary of that hardware store. I am offering you an option here to come clean and lessen the charge and work with us on this thing At this point, if you choose not to cooperate, we will take you, I will charge with the full boat of the crime and you will suffer the consequences.

. . . .
Officer R: We are offering you a break here. To come clean.

Officer S: Let's take care of this problem and lessen the charge or take the full boat of this.

Officer R: Matt, you work with us – the county attorney – we will indicate . . . in our report to him, that you . . . were very cooperative. Do you want to fight this thing and work against us, then you are going to get charged and it is going to be very serious. Do you want me to read you what the penalty is on that?

Pies: Burglary?

Officer R: Long time jail. Probably up to ten years. . . .

Pies: Oh jees. . . .

. . . .
Officer R: . . . Why are you shaking your head?

Pies: I just feel like I am being backed against the wall here I mean. Whether I did or didn't do it. You are telling me that you got my garbage.

Officer R: No, no, no, no, no, no. There is no back against the wall. Absolutely none.

Officer S: You know you did it.

Officer R: You know you did it. You are the only one that is going to try to help yourself. If you don't want to help yourself . . . that's fine. You say the word, we will cease the conversation. I'll cuff you and take you over and book you in. If you want to help yourself you are going to talk to . . . try to lower this penalty down a little bit. . . .

[Silence]

. . . .
Officer R: . . . The thing is now we know you did it, you know you did it, help yourself on this thing without burying yourself.

Because believe you me, a theft charge versus a burglary charge maybe, maybe looks just a little bit better than burglary.

Officer S: Do you have any of the cash left?

Pies: Are you going to put this deal in writing?

Officer R: What deal?

Pies: Understand that you are going to drop the charge.

Officer R: Matt.

Pies: If I pled guilty.

Officer R: Matt. I can not put anything in writing. It is up to the county attorney. But what I can do is indicate in the report that you . . . helped with this thing. And that you were honest. If you don't want to be honest, then that is when it is going to get serious. Mike and I will do everything we can to put in a good word for you to lessen your penalty on this thing, but you got to help us out.

Officer S: You know I know times are hard.

Officer R: You got a family. The county attorney will take that into consideration.

Officer S: We can make a recommendation that the charges be lessened. We told you already that we have enough to charge with your burglary. We are giving you the opportunity to help yourself.

Officer R: How much of the money do you have left? . . .

Pies: It's all gone.

Officer R: What did you do with it?

Pies: I bought groceries.

Under the evidentiary test articulated in *Mullin*, utilized in *Quintero*, and reaffirmed in *McCoy*, we conclude the trial court erred in ruling the officers did not make improper promises. Pies's inculpatory statements were improperly induced by the not-so-subtle threat of a long burglary sentence and by the promise of a potential lesser penalty upon confession. Thus, the inculpatory statements were not voluntarily given and "should not have been admitted in evidence because of [the statements'] lack of reliability." See *Quintero*, 480 N.W.2d at 52. Accordingly, the district court erred in denying Pies's motion to suppress. Additionally, "[w]e need not speculate whether admission of a coerced confession could ever be harmless. It certainly cannot be said to be harmless in

this case.” See *id.* Pies is entitled to a new trial at which the State will not be allowed to use his involuntary, inculpatory statements against him.

REVERSED AND REMANDED.