

IN THE COURT OF APPEALS OF IOWA

No. 8-935 / 08-0657
Filed March 11, 2009

STATE OF IOWA,
Plaintiff-Appellant,

vs.

JESSICA K. HILL,
Defendant-Appellee.

Appeal from the Iowa District Court for Boone County, David R. Danilson,
Judge.

The State seeks discretionary review of a district court ruling granting Hill's
motion to suppress statements she made to police. **AFFIRMED.**

Thomas J. Miller, Attorney General, Mary Tabor, Kevin Cmelik, and Scott
Brown, Assistant Attorneys General, and Jim Robbins, County Attorney, for
appellant.

Meredith K.E. Mahoney and John D. Jordan of Jordan & Mahoney Law
Firm, P.C., Boone for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Potterfield, JJ.

VAITHESWARAN, P.J.

The State seeks discretionary review of a district court ruling granting Jessica Hill's motion to suppress statements she made to police.

I. Background Facts and Proceedings

The district court made detailed fact-findings, which are essentially undisputed. To place the legal issue in context, we will summarize some of the key findings.

Shane Hill was discovered dead of a gunshot wound in rural Boone County. While investigating the shooting, Iowa Division of Criminal Investigation agents learned that Shane Hill's wife, Jessica, had an affair with Daniel Blair. They interviewed Hill twice. At the time of those interviews, they had reason to believe the affair occurred months or years earlier.

A day after the second interview, the Boone County sheriff learned that Hill's romantic relationship with Blair might be more recent. DCI agents decided they needed to interview Hill a third time. An agent called Hill's cell phone and asked her to come to the Boone County Sheriff's Office that afternoon. His pretext was that he needed to give her information she requested from Shane Hill's confiscated cell phones. The agent did not tell her that he would be interviewing her. He testified that he feared if she knew this, she would not come to the office.

On receipt of the call, Hill responded that she was in another town. The agent told her it was the end of the workday, he wanted to go home as soon as possible, and the sooner she came, the better.

Hill drove herself to the sheriff's office, parked directly in front, and proceeded to the lobby. She was greeted by a DCI special agent, who asked her if she would be willing to discuss some further questions. Hill agreed and was taken to a room off the lobby for a video-taped interview. Hill was at the station for seven hours and twenty-seven minutes.

The district court made the following findings with respect to the breaks Hill was afforded:

After approximately one and one-half hours, Jessica Hill was permitted a break and provided the freedom to use the restroom and go outside of the Boone County Sheriff's office to her vehicle. While in her vehicle, she was able to smoke a cigarette and use a cell phone and converse with her mother. She admitted that she had the keys to her vehicle and could have driven away at that time. A second break in the interrogation was taken about three and one-half hours after the interrogation began. Jessica Hill was offered to use the restroom but she declined. However, she did request to have another cigarette but Agent Braafhart stated, "Why don't you wait for just a few minutes." The second break in the interrogation also occurred after Jessica Hill had been crying for approximately twelve minutes

. . . [T]here was an approximate two-hour break. During the second break, Jessica Hill is left alone in the interview room with the door closed but unlocked. No guard was standing by the door, however, she was apparently being monitored to some degree through the monitoring window. During this break, Jessica Hill makes comments regarding being tired, freezing, and starving. At one point, an unknown man opens the door and hands Jessica Hill a blanket.

The court found that, during the second break, the agents offered Hill a coffee or pop so that she could wake up. The court further found that there were two additional short breaks during which Hill remained in the interview room with the door closed.

With respect to the manner of questioning, the district court found as follows:

The interview began that evening with Jessica Hill sitting in a chair in a corner of the room, Agent Braafhart sitting in another corner of the room and Agent Sauer sitting behind a desk. The agents were several feet from Jessica Hill and were not blocking the closed door. The interview began in a conversational tone in a somewhat relaxed atmosphere with everyone sitting back in their chairs. Agent Braafhart explains that he “just wanted to clarify a few things, okay?” He began with some background information questions and avoided leading or aggressive questioning

After the first break of approximately twenty minutes, Jessica Hill returned to her chair in the corner but Agent Braafhart moved a chair very near to Jessica Hill and leaned toward her with his hands held above Jessica Hill’s legs. Their faces appear to be approximately two to three feet apart. On one occasion he touched her leg. According to Agent Braafhart, he moved into close proximity to Jessica Hill to gain her trust and comfort and develop rapport with her.

Additionally, after the first break the agents asked leading questions and the conversation was no longer general in nature or informal. The agents repeatedly asked questions concerning inconsistencies in the facts as told by Jessica Hill. She was also asked questions calling for incriminating statements and questions that implicated her in the crime. There were also appeals to her family and to do the “right thing.”

Almost as soon as the questioning began after the first break, Agent Braafhart asked Hill who she had talked to on her cell phone while on break and shortly thereafter stated, “Well, obviously, the situation that we’re in right now is that the investigation has taken a turn.”

The district court also discussed other events that occurred during the interrogation:

Around 12:00 midnight, the agents asked Jessica Hill if she would be willing to telephone Daniel Blair by use of her cell phone with the conversation electronically recorded. She agreed and did use her cell phone to call Daniel Blair while in the interview room. The agents suggested comments she could make to Daniel Blair in hopes of gaining incriminating statements from him.

Before the telephone call to Daniel Blair, Agent Braafhart asked if they could move her vehicle so that Daniel Blair would not be able to drive by the Boone County Sheriff’s office and see it parked out front. Again, Jessica Hill agreed and someone other

than Jessica Hill drove her vehicle inside a sally port at the Boone County Sheriff's office.

With respect to Hill's ability to leave the interrogation room, the district court cited a reference by Agent Braafhart to "leaving" and "you cannot leave here." However, the court acknowledged the agents' testimony at the suppression hearing that Hill was not under arrest and was free to leave. Hill disputed this testimony, stating she did not feel free to leave during the interrogation. Hill left the station after 1:00 A.M. the following morning. By this time, the agents had concluded the interrogation.

The State charged Hill with first-degree murder and conspiracy to commit murder. Hill moved to suppress the statements she made in the third interview on the ground that the interview was a custodial interrogation triggering a right to *Miranda*¹ warnings, which she was not given. Following a hearing, the district court granted Hill's motion to suppress all the statements she made following the first break in her interview. The court denied the motion as it related to the statements made prior to that break.

The State filed an application for discretionary review and a request for immediate stay. The Iowa Supreme Court granted the application and stayed the district court proceedings.

The sole issue on appeal is whether the district court properly determined Hill was in custody following the second break. Our review of this issue is de novo. *State v. Heminover*, 619 N.W.2d 353, 356 (Iowa 2000), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601 (Iowa 2001). "We give

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

deference to the district court's fact findings due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings." *Turner*, 630 N.W.2d at 606.

II. Analysis

Under *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S Ct. 1602, 1612, 16 L. Ed. 2d 694, 706 (1966), the prosecution may not use statements stemming from a custodial interrogation of the defendant unless it follows procedural safeguards to secure the privilege against self-incrimination. Specifically, suspects subjected to "custodial interrogation" must first be warned that they have "a right to remain silent, that any statement . . . used as evidence against [them], and that [they have] a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612, 16 L. Ed. 2d at 706-07.

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." *Id.* at 444, 86 S. Ct. at 1612, 16 L. Ed. 2d at 706. 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).

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, 298 (1994). The appropriate test is whether a reasonable person in the defendant's position would understand himself or herself to be in custody. *State v. Countryman*, 572 N.W.2d 553, 558 (Iowa

1997). We have adopted a four-factor test as guidance in making such a determination.

These factors include: (1) the language used to summon the individual; (2) the purpose, place, and manner of interrogation; (3) the extent to which the defendant is confronted with evidence of her guilt; and (4) whether the defendant is free to leave the place of questioning.

Id.

As noted, the district court's fact findings are not disputed and, on our de novo review, we find them supported by the record. This brings us to the court's legal analysis. After examining each of the factors cited in *Countryman*, the court stated the following:

Although there are facts which tend to mitigate against a finding that Jessica Hill was in custody, considering the totality of the circumstances, this Court concludes that more facts, and more influential facts, support the conclusion that Jessica Hill was in custody immediately after the first break of the interview. However, initially the atmosphere was informal and conversational; the questions were more general in nature-not accusatory; and Jessica Hill was given freedom to use a restroom, go outside to her vehicle, smoke a cigarette, and use her cell phone to call her mother.

In support of these conclusions, certainly the length of the interrogation, the failure to inform Jessica Hill that she was free to leave at any time and the ruse used to get her to appear at the Boone County Sheriff's Office for a pre-planned videotaped interrogation are strong factors supporting the finding that Jessica Hill was in custody. These circumstances are further buttressed by additional factors or indicia of custody arising after the first break: the very close proximity that Agent Braafhart sat by Jessica Hill; Agent Braafhart's comment that the investigation has taken a turn; the denial of a cigarette break; constant monitoring of Jessica Hill; closing the door to the small interview room every time the agents exited; the fact that the agents knew she was tired and cold and her mind was a "blur"; their effort to keep her awake by offering her coffee or pop; the aggressive nature of the questioning, which primarily focused on her participation in the alleged murder; Jessica Hill's physical reaction to the aggressive interrogation—crying; the absence of any further contact with family or friends except the

staged call to Daniel Blair; Agent Braafhart's stern interrogation disapproving of Jessica Hill's use of her cell phone, and Agent Sauer's directions regarding the staged cell phone call that Jessica Hill that "obviously, you can't go see [Blair] right now." These facts support the conclusion that Jessica Hill was in custody after the first break as a reasonable person in those circumstances would understand that his or her freedom had been deprived and the agents would not have heeded a request to depart at the person's own choosing.

On appeal, the State argues that the court placed too much weight on the "deceptive strategy" used to get Hill to the sheriff's office. It asserts "deceptive stratagems as an indicator of custody seems inconsistent with precedent."

We disagree. In *United States v. Griffin*, 922 F.2d 1343, 1351 (8th Cir. 1990), the federal Eighth Circuit Court of Appeals stated,

Police deployment of strong arm tactics or deceptive stratagems during interrogation . . . is a practice widely condemned in American law Because such strong arm tactics are more generally associated with formal arrest than with an informal encounter with police, the use of such tactics is identified as an indicia of custody.

Our court cited this language with approval in *State v. Mortley*, 532 N.W.2d 498, 501 (Iowa Ct. App. 1995).

It is true that the Eighth Circuit has since exhorted courts not to follow the *Griffin* factors "ritualistically" in every *Miranda* case. See *State v. Czichray*, 378 F.3d 822, 827 (8th Cir. 2004). But it is also true that the district court acknowledged this advice and followed it.² Far from mechanically applying the *Griffin* criteria, the court mentioned a host of factors in addition to the initial deception to support its conclusion that the interrogation after the first break was custodial. For this reason, we are not persuaded by the State's argument.

² The court cited *Czichray* and subsequent Eighth Circuit precedent. See *United States v. Ollie*, 422 F.3d 1135, 1140 (8th Cir. 2006) (noting criteria are only "useful tools.").

The State next asserts that the district court erroneously differentiated the post-break interrogation from the interview prior to the first break. The State points out that Hill had just been allowed to leave, an indication that she was there voluntarily.

The district court found this factor significant in its determination that the first part of the interrogation was non-custodial. The court explained in detail, however, that the entire atmosphere and tenor of questioning changed after the break.

On our de novo review, we agree with the court's finding. In addition to the more aggressive questioning after the first break, the DVD of the interrogation shows one of the agents leaning toward Hill for significant lengths of time. Additionally, the second agent, at times, either leaned against the only exit from the room or was situated immediately adjacent to it. And, while the door to the interview room was unlocked, neither the agents nor other officers provided any indication that Hill could leave during the interrogation or during subsequent breaks. This fact alone distinguishes Hill's situation from the scenario in *Czichray*, cited by the State. The court there stated:

We have observed that “[t]he most obvious and effective means of demonstrating that a suspect has not been taken into custody . . . is for the police to inform the suspect that an arrest is not being made and that the suspect may terminate the interview at will.” *United States v. Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990) (internal quotation omitted). The FBI agents who interviewed Czichray exercised this “obvious and effective” means of demonstration in spades.

Czichray, 378 F.3d at 826; see also *United States v. LeBrun*, 363 F.3d 715, 722 (8th Cir. 2004) (“The agents told LeBrun before the interview commenced

that he was free to leave. LeBrun testified that he understood that he was free to terminate the interview and leave at any time.”).

The district court thoughtfully and thoroughly analyzed all the relevant circumstances surrounding the agents’ third interview with Hill and came to a measured conclusion that only the portion of the interrogation after the first break was custodial. On our de novo review, we find no reason to quarrel with the court’s conclusion that Hill’s “statements after the first break (beginning at p. 76, line 14 of the Transcript) are hereby suppressed.”

AFFIRMED.