



[U]02/10/98 STATE MINNESOTA v. RANDALL JOSEPH RICHTER

1998 | Cited 0 times | Court of Appeals of Minnesota | February 10, 1998

Appellant Randall Joseph Richter challenges his convictions for first-degree burglary, second-degree burglary, theft, and criminal damage to property. Richter argues: (1) prosecutorial misconduct; (2) abuse of discretion in ordering reasonable restitution; and (3) improper sentencing on the criminal damage to property conviction. We affirm.

FACTS

Appellant Randall Joseph Richter (husband) and Sherry Richter (wife) were divorced on March 24, 1995. The judgment and decree awarded the Richters' lake home, and various personal property in the home, to wife. Pursuant to the order, wife was to sell the lake home and give husband a specified portion of the proceeds.

On May 14, 1995, wife asked Susan and Robert Rampi to go to the lake home to change the door locks so she could secure the property and prepare it for sale. Wife gave the Rampis a key to the home and a copy of the divorce order so the Rampis would have proof that the lake home belonged to wife. Later that evening, the Rampis, their children, and the Richters' eldest son, Joshua, drove to the lake home to fish and change the locks.

After their arrival, the Rampis and Joshua noticed that electrical wiring was hanging down from the ceiling and many light fixtures were missing. They also noticed that someone jammed the door locks, the new refrigerator was replaced with an older and smaller refrigerator, the built-in dishwasher was gone, the ceiling fans in the bedrooms were missing, and some of the window screens were missing.

Shortly after the Rampis' arrival, husband and approximately seven other people arrived at the lake house. Four separate witnesses, including husband himself, testified that husband was extremely angry that evening. Husband screamed at the Rampis to get out of the house, and yelled that the house belonged to him.

The Rampis showed the divorce order to husband and told him the house now belonged to wife and she gave them permission to be there. Husband ignored the order, stating it was "bogus." Husband then announced that the Rampis were not going to use the electricity as long as he was paying for it; whereupon husband went to the basement and, by his own testimony, "shut down the main breaker." Robert Rampi testified that he later went to the basement to see if he could re-start the electricity, but discovered that the entire electrical panel, including the circuit breaker, had been ripped out. At trial, both Robert Rampi and Joshua testified that they saw husband take the circuit breaker out of



[U]02/10/98 STATE MINNESOTA v. RANDALL JOSEPH RICHTER

1998 | Cited 0 times | Court of Appeals of Minnesota | February 10, 1998

the house on May 14, 1995.

About the same time, Joshua saw people running away from the well that was outside in the yard. Although he couldn't see what they did, Ronald Cichy, a well repairman, testified that when he inspected the well shortly after the incident, both the pressure tank and the control box were missing. Shortly after Joshua saw the people running from the well, he observed them pulling wires out of the phone box, which was also located directly outside the home.

Susan Rampi became concerned that the police had not yet arrived, so she sent Joshua to a neighbor's house to call the police again. Approximately 15 minutes later, a deputy sheriff arrived. Upon arrival, Officer Ray Polensky questioned all the parties, and specifically questioned husband about the divorce order. At trial, husband admitted that he was served with the order and he had read its contents. Nevertheless, when questioned about the order by Officer Polensky on the evening of May 14, he denied knowing about the order and continued to maintain that the house was his. Unable to resolve the matter, Officer Polensky ordered all parties to leave the premises.

On May 16, 1995, wife went back to the lake home to survey the damage and to finish replacing the locks. Once there, she took pictures of the home. Wife testified that the home was nearly demolished.

On May 22, 1995, wife returned to the lake home and discovered even more damage. By this time, the water heater and water softener were gone and the faces on the kitchen cabinets were missing. In addition, the medicine cabinet in the master bedroom was gone. On or about this day, wife contacted David Wenzel, a real estate broker, and asked him to provide a market analysis of the lake home. Wenzel appraised the home at \$109,000; but advised wife to list it at \$80,000 given the damage to the property.

Husband was charged with multiple counts of burglary, theft, and one count of criminal damage to property arising out of the incidents occurring on May 14, 15, and 22, 1995. At trial, husband represented himself and testified in his own defense. Husband denied damaging the home or removing any property from the premises. Over constant objections, nearly all of which were sustained, husband repeatedly refuted the validity of the divorce order, claiming that his rights had been violated and that the Hennepin County District Court had perpetuated a fraud against him. The trial lasted four days and a jury returned guilty verdicts on all counts. This appeal followed.

DECISION

I. Prosecutorial Misconduct

The determination of whether the prosecutor acted improperly normally rests within the sound discretion of the district court. *State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984). Even where misconduct is established, the misconduct by itself does not require a new trial; the determination



[U]02/10/98 STATE MINNESOTA v. RANDALL JOSEPH RICHTER

1998 | Cited 0 times | Court of Appeals of Minnesota | February 10, 1998

must still be made whether the defendant was denied a fair trial. *State v. Porter*, 526 N.W.2d 359, 365 (Minn. 1995).

Husband argues that the prosecutor's repeated questioning about his political beliefs constituted prosecutorial misconduct. Record evidence reveals that husband persistently and repeatedly told the jury that the judicial system had wronged him and that the system was in direct conflict with his political beliefs and the common law rules of "The One Supreme Court." He encouraged the jury to excuse his behavior and embrace his position that he was a victim of an unjust judicial system and that he was merely protecting his home on the evening of May 14, 1995. Accordingly, the tenets of "The One Supreme Court" were an appropriate line of inquiry for the prosecutor on cross-examination. Having himself introduced the topic, husband's anger with the current judicial system was relevant. The prosecutor asked questions to show husband's intent and motive with respect to his actions in burglarizing and damaging wife's home.

Husband called eight witnesses on his behalf. Each witness testified about husband's character. Husband laid the foundation for the witnesses' knowledge of and relationship to him. In doing so, many of the witnesses stated that they knew husband from the weekly meetings of a group called "Justice in Our One Supreme Court." Since husband opened the door to evidence of his character and to his affiliation with this group, the prosecutor's cross-examination into relevant specific instances was proper. See Minn. R. Evid. 405(a).

Even if there were prosecutorial misconduct, it was not serious, nor did it likely play a major role in the jury's decision to convict. See *State v. Caron*, 300 Minn. 123, 128, 218 N.W.2d 197, 200 (1974) (if prosecutorial misconduct is less serious, reviewing will determine if new trial is necessary by asking "whether the misconduct likely played a substantial part in influencing the jury to convict"). The majority of the prosecutor's questions on direct and cross-examination related to the witnesses' first-hand knowledge of husband's actions on the days in question. Based on the record evidence, the prosecutor never once mentioned husband's affiliation with "The One Supreme Court" in his closing argument. The cumulative effect of any improper argument by the prosecutor, therefore, is not so inflammatory or prejudicial that reversal is warranted. See *State v. Stufflebean*, 329 N.W.2d 314, 318 (Minn. 1983).

Where the evidence against the defendant is strong, it is unlikely that any improper comments would have influenced the jury. See *State v. Brown*, 348 N.W.2d 743, 747 (Minn. 1984) (court found prosecutorial misconduct serious, but held harmless error in light of strong evidence of guilt). Here, the evidence is overwhelming. Wife testified, and husband conceded, that all of the damage to the property occurred after the divorce decree was issued on March 28, 1995. Husband was angry about the divorce decree because he lost possession of a home he built himself and because he lost custody of his two sons. He did not agree with the divorce decree and he felt he had been denied due process in the manner in which the stipulation was executed. Several witnesses saw him take property from the house on May 14, 1995, in addition to cutting off the electricity and instructing and/or allowing



[U]02/10/98 STATE MINNESOTA v. RANDALL JOSEPH RICHTER

1998 | Cited 0 times | Court of Appeals of Minnesota | February 10, 1998

others acting on his behalf to cut telephone wires, damage the well, and otherwise ransack wife's lake home.

The prosecutor was responding to husband's theory of defense. The prosecutor's cross-examination questions were relevant and constituted prosecutorial advocacy. Even if there was misconduct, it did not rise to the level that is so "inexcusable and so serious and prejudicial that [husband's] right to a fair trial was denied." *State v. Wahlberg*, 296 N.W.2d 408, 420 (Minn. 1980).

II. Restitution

It is well established that a district court "has wide discretion in ordering reasonable restitution." *State v. O'Brien*, 459 N.W.2d 131, 133 (Minn. App. 1990). Accordingly, the standard of review on appeal is whether the sentencing court abused its broad discretion.

Husband challenges the district court's award of \$79,433 in restitution to wife based on wife's inability to sell the lake home. Husband contends that the district court abused its discretion by ordering husband to pay restitution for costs associated with the sale of the house because the state did not prove that her inability to sell the house was the direct result of the husband's conduct.

Minnesota law provides that a sentence for a criminal offense may include "payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both." Minn. Stat. § 609.10(5) (1996); see also Minn. Stat. § 611A.04, subd. 1(a) (1996) (victim has right to receive restitution as part of Disposition of criminal charge if offender is convicted). In determining whether to order restitution and the amount of restitution, the court is required to consider the economic loss sustained by the victim as well as the defendant's income, resources, and obligations. See Minn. Stat. § 611A.045, subd. 1 (1996).

The district court ordered husband to pay wife \$76,000 based on an offer wife received on August 30, 1995. According to a letter from wife's real estate agent, the buyers withdrew their offer later that day after viewing notices posted on the property by husband. The notices warned potential buyers that husband had filed a lien on the property and disputed wife's ownership of the property. Potential buyers were also informed that they would be involved in civil litigation if they attempted to purchase the property.

The district court properly calculated the amount of restitution owed to wife. The district court also guaranteed husband that he would not be responsible to pay for the house twice. Since husband will have paid wife for her full value of the house, he is entitled to ownership of the house.

III. Criminal Damage To Property Sentence

Husband received the following sentences for his conduct on May 14, 15, and 22, 1995: count 1,



[U]02/10/98 STATE MINNESOTA v. RANDALL JOSEPH RICHTER

1998 | Cited 0 times | Court of Appeals of Minnesota | February 10, 1998

first-degree burglary, 21 months; count 2, theft, one year and one day; count 3, criminal damage to property, 90 days; and second-degree burglary, 23 months. Husband claims that the sentence he received for count 3 must be vacated because the offense arose out of the same behavioral incident as count 2.

Minnesota law prohibits multiple punishment for the same act or acts arising from the same behavioral incident. Minn. Stat. § 609.035 (1996). There is an exception to this rule: "a prosecution for or conviction of the crime of burglary is not a bar to conviction of or punishment for any other crime committed on entering or while in the building entered." Minn. Stat. § 609.585 (1996). Thus, the court had the authority to sentence husband for the burglary in addition to "any other crime committed" during the offense. Husband's conviction on the theft charge was, therefore, appropriate.

Additionally, husband's theft of property from wife's lake home and criminal damage to property in the home, occurred on two or three separate days, May 14, 15, and 22, 1995. The state's complaint, and the jury instructions, illustrate that the theft convictions stemmed primarily from property husband removed from the home on May 14 and 15, 1995. Husband's criminal damage to property conviction stems primarily from property he damaged on or about May 22, 1995.

While both offenses were committed on May 14, the record demonstrates that husband also engaged in criminal damage to property on an entirely separate day, May 22, 1995. Accordingly, although these charges are related, the district properly concluded that they are not a single behavioral incident.

Affirmed.

1 Retired Judge of the district court, serving as Judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

