State v. Dorris

2000 | Cited 0 times | Court of Appeals of Iowa | June 28, 2000

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

Defendant appeals his conviction and sentence for first-degree murder.

AFFIRMED.

Dan Dorris appeals his conviction and sentence for first-degree murder. Dorris contends the district court erred in (1) denying his motion to suppress statements he made without the benefit of a Miranda warning, and (2) overruling his motion to suppress the results of a search of his home. He also alleges he was provided ineffective assistance of counsel. We affirm the conviction and preserve the ineffective assistance of counsel claim for post-conviction relief.

Timothy Osbourn (Osbourn) was walking near his home in Council Bluffs on May 12, 1998, when he was shot and killed. Several witnesses who lived in the area reported they heard two gunshots, a pause, and then a third shot while one witness said he heard one shot, a pause, and then two shots. The witnesses saw a Cadillac with Nebraska plates parked the wrong way on the street and someone lying down on the side of the street. It was reported by these witnesses that two men approached the car. The one that got into the driver's side was described as tall with long dark hair while the passenger had lighter hair. Some of the witnesses observed the driver carrying a gun.

Osbourn's uncle, James Hanisch, gave officers a list of potential suspects at the scene. The list included Dan Dorris, Mike Shada, and Chris Lewis.

Officers immediately questioned Shada because he had filed a complaint the day before the shooting alleging Osbourn had been involved in a break-in at his home at which time his girlfriend, Danielle Schmidt, had been beaten. After speaking with his attorney, Shada told officers he had been present at the shooting. Shada claims he arrived at Dorris's home earlier on the evening of the shooting and together they drove along D Street. When Shada saw Osbourn, he asked Dorris to pull over and let him out. Shada jumped out and confronted Osbourn. Osbourn threw a pop can at him and ran. It was then that Shada claims he heard two shots, hesitation, and then a third shot. He turned and saw a gun in Dorris's hand, and he heard Dorris yell, "let's go". They got in the car and drove to Terry Dunlap's house.

Shada testified at trial that Dorris said, "I guess that answers who the first person is I'm going to shoot," and Dorris also said something about being surprised Osbourn did not go down after the first

two shots.

Carrie Schiesow, who was living at Dorris's house at the time of the shooting, claims Dorris said to her that evening, "I hope Mike Shada is a for real mother fucker because I just shot somebody today." Schiesow went with Dorris that evening on the motorcycle to the bridge where Dorris threw a gun into the river.

On or about May 17, 1998, officers drove to Dorris's home intending to pick him up for questioning about this case and for an outstanding warrant he had on a theft charge. They saw a white male, whom they identified to be Dorris, run down the alley toward the rear of the residence. He then got on a motorcycle and drove across the lawn at a reckless speed. The officers were unable to stop him. Dorris told Kim Bovee he was in trouble and was wanted. He picked her up in a Cadillac and they drove to Arizona.

Arizona Officer Vincent Shelzo responded to a call on June 1, 1998, about a man with a coat hanger trying to get into a Cadillac. Officer Shelzo approached the man, who identified himself as Dan Dorris. Officer Shelzo was unable to assist Dorris in getting the car unlocked. He took some personal information from Dorris and returned to his vehicle.

Officer Shelzo discovered the outstanding warrant for Dorris's arrest for murder in Iowa when he ran his name through dispatch. He then followed Dorris back to his apartment and called for backup. Officer Shelzo and Officer McCluskey went to the apartment and asked Dorris to come out. They got Dorris's social security number and verified the warrant was indeed for him.

Dorris was handcuffed and placed on the curb while the officers confirmed the warrant. At the time Dorris was handcuffed and put in the car, Officer Shelzo asked him if he knew what this was about and his response was he was wanted for questioning about a murder in Iowa. Officer Shelzo informed him he was not wanted just for questioning but was wanted for murder. Dorris told the officer he shot someone trying to rob his house.

Detective Mark Stuart, who was investigating the shooting, presented an application for a search warrant on May 15, 1998, to search Dorris's residence. The application was approved by an associate district court judge, and the warrant was executed on May 16, 1998.

On July 7, 1998, Dorris was charged by trial information with murder in the first degree and willful injury. Dorris filed a motion to suppress on September 4, 1998. He contends he was not read his Miranda rights by officers in Arizona, and therefore his statements made to them were involuntary and a violation of his constitutional rights. He further challenged the results of the search of his residence pursuant to the search warrant claiming the warrant was improperly procured and executed.

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After a hearing on Dorris's motion to suppress, the court denied the motion. A trial was held on September 22, 1998, and the jury convicted Dorris on both counts as charged on September 30, 1998. Dorris appeals.

I. Standard of Review.

In assessing alleged violations of constitutional rights, our standard of review is de novo; we make an independent evaluation of the totality of the circumstances as shown by the entire record. State v. Breuer, 577 N.W.2d 41, 44 (Iowa 1998). We give weight to the fact findings because of the district court's opportunity to assess the credibility of witnesses. State v. Countryman, 572 N.W.2d 553, 557 (Iowa 1997). The adverse ruling on the defendant's motion to suppress preserved error for our review. Breuer, 577 N.W.2d at 44.

II. Statements.

Dorris contends the district court erred when it denied his motion to suppress statements that were made involuntarily to Arizona officers without the benefit of Miranda warnings. This was in regard to the two statements he made after being handcuffed and placed in the officer's vehicle.

A person questioned by law enforcement after being "taken into custody or otherwise deprived of his freedom of action in any significant way" must first "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney either retained or appointed." State v. Astello, 602 N.W.2d 190, 195 (Iowa App. 1999) (citing Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694, 706 (1966)).

In determining the admissibility of a defendant's inculpatory statements over a Fifth Amendment challenge, we utilize a dual test. Countryman, 572 N.W.2d at 557. We first determine whether Miranda warnings were required and, if so, whether they were properly given. Id. Second we ascertain whether the statement is voluntary and satisfies due process. Id. Miranda warnings are not required unless there is both custody and interrogation. Id.

The State does not argue the custody issue. Therefore, we turn to the issues of whether the statements Dorris made were voluntary and whether Miranda warnings were required under these circumstances.

The first statement at issue was Officer Shelzo's inquiry as to whether Dorris knew what this was about after being placed in handcuffs. Dorris replied he was wanted for questioning for a murder in Iowa. Dorris claims he implicated himself by responding to a direct question by Officer Shelzo.

An argument can be made that the preliminary comment by Officer Shelzo was not an attempt to

illicit any incriminating evidence from Dorris. However, even if we were to assume Dorris's first statement was made in violation of Miranda, it was harmless error beyond a reasonable doubt. Most constitutional errors do not automatically require reversal of a conviction if the error is harmless. State v. Hensley, 534 N.W.2d 379, 382 (Iowa 1995). In order for a constitutional error to be harmless, the court must be able to declare it harmless beyond a reasonable doubt. State v. Mortley, 532 N.W.2d 498, 503 (Iowa App. 1995). Where the State has otherwise overwhelming evidence of a defendant's guilt, the erroneous admission of a defendant's incriminating statement may be harmless beyond a reasonable doubt. Id. If substantially the same evidence is in the record, erroneously admitted evidence is not considered prejudicial. State v. Deases, 518 N.W.2d 784, 791 (Iowa 1994).

The erroneous admission of a defendant's statements does not require reversal if the State shows this error was harmless beyond a reasonable doubt. Astello, 602 N.W.2d at 196. In this case the State laid out overwhelming evidence of Dorris's guilt.[1] Therefore, even if we were to find Dorris's statement was erroneously admitted, the State has met its burden of proof such error was harmless beyond a reasonable doubt.

We will now turn our attention to the second statement which Dorris claims should have been suppressed. This was the statement that was made after Dorris was placed in the patrol car. Officer Shelzo clarified to Dorris he was wanted for murder, not just for questioning. Dorris's response was, "Yes, I shot someone breaking into my home".

Officer Shelzo testified he was only explaining to Dorris so he was clear he was not wanted for questioning but he was actually being charged with murder. We find Officer Shelzo's comment was not an attempt to elicit any incriminating statements from Dorris, and the response from Dorris was made purely on a voluntary basis. We have held statements are voluntary if they 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. State v. Washburne, 574 N.W.2d 261, 265 (Iowa 1997).

However, even had this second statement been admitted in error, we find such error to be harmless beyond a reasonable doubt for the same reasons discussed previously.

III. Search Warrant.

At oral argument, counsel for Dorris informed this court Dorris was withdrawing his claim the district court erred in denying his motion to suppress the results of the search of his home based on a search warrant. Therefore, we will not discuss this issue further.

IV. Ineffective Assistance of Counsel.

We review claims of ineffective assistance of counsel de novo. State v. Brooks, 555 N.W.2d 446, 448

(Iowa 1996).

Ordinarily we reserve claims of ineffective assistance of counsel raised on direct appeal for post-conviction proceedings to allow full development of the facts surrounding counsel's conduct. State v. Atley, 564 N.W.2d 817, 833 (Iowa 1997). "Even a lawyer is entitled to his day in court, especially when professional reputation is impugned." State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). We will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. State v. Arne, 579 N.W.2d 326, 329 (Iowa 1998). However, only in "rare circumstances will the trial record alone be sufficient to resolve the claim." State v. Rawlings, 402 N.W.2d 406, 408 (Iowa 1987).

Dorris claims he received ineffective assistance of counsel. He asks this court to preserve all issues involving such claim for post-conviction relief. Because there was a conflict of interest that developed between Dorris and his original appellate attorney, we find the request for additional time to adequately investigate this claim to be proper. We, therefore, preserve the ineffective assistance of counsel claim for possible post-conviction relief action. See State v. Bass, 385 N.W.2d 243, 245 (Iowa 1986).

We affirm the conviction and preserve the ineffective assistance of counsel claim for post-conviction relief.

AFFIRMED.

1. The State discusses the overwhelming nature of the evidence against Dorris in over eight and one-half pages of its brief. We accept that statement of the evidence as accurate.