State v. Metz

2001 | Cited 0 times | Court of Appeals of Iowa | April 11, 2001

Appeal from the Iowa District Court for Webster County, Joel E. Swanson, Judge.

Defendant appeals from the judgment and sentence entered upon his conviction for first-degree murder.

REVERSED AND REMANDED FOR NEW TRIAL.

Raymond Metz appeals from the judgment and sentence entered upon his conviction for first-degree murder. He contends the court erred in: (1) failing to grant a mistrial due to the prosecutor's comments on his post-arrest silence; (2) failing to give requested jury instructions regarding mistake of fact; (3) allowing hearsay testimony; and (4) allowing the death photos into evidence. We reverse and remand for new trial.

I. Factual Background and Proceedings.

On the evening of September 15, 1998, Metz and Donald Rundall (a/k/a "Gypsy") were together at the apartment of Rundall's girlfriend. After drinking beer together, Metz and Rundall left and went to Metz's apartment to drink more beer. At approximately 8:00 the next morning, Richard Hogan, one of Metz's co-workers, arrived at Metz's apartment to pick him up for work. Hogan testified when Metz opened the door, he was covered with blood and stated, "I think I killed a man." Hogan entered the apartment and observed Rundall's body on the floor. He went to take a pulse and noticed Rundall's arm was stiff and he did not have a pulse. Hogan then left the apartment and told Metz the man in the apartment was dead. Metz returned to the apartment, changed his shirt, and went to a nearby bar to get a drink. Hogan called the police from his car. After arriving at the apartment, the police discovered Rundall had been badly beaten and severely injured. His neck, breastbone, nose, jaw, and most of his ribs were broken. He also suffered a broken voice box, torn liver, bruised lungs, injuries to his brain, and numerous cuts and bruises during the attack. The autopsy revealed the cause of his death was cranial, cerebral, and cervical trauma due to blunt force injuries. Police officers arrested Metz later the same morning in a bar near his apartment, and a Miranda warning was administered. A lengthy interview of the defendant was conducted on the day of the arrest over a period of approximately eight hours. Although a portion of this interview was recorded, the conversation between the officers and Metz is circular, difficult to understand, and essentially non-productive. Metz seems to have been under the influence of alcohol during the recorded portion of the interview. He discussed problems he had been having with crime near his apartment building and his perceived lack of response from the police department. Although the tape is of very poor

quality, it is sufficient to clearly establish after receiving the Miranda warning, Metz repeatedly shunned the officers' invitations to tell them about what had happened in his apartment the evening before[1] .

The State filed trial information on September 21, 1998, charging Metz with first-degree murder. Jury trial commenced on September 28, 1999. Metz testified at trial as to his version of the events on the evening of the murder. He indicated after he and Rundall left the girlfriend's apartment, they walked to a convenience store to purchase beer and then walked to Metz's apartment. After drinking more that evening, Metz testified Rundall left the apartment and then he passed out or fell asleep. Metz claimed he was awakened early in the morning by several men in his apartment, one of whom was lying on top of him. According to Metz's version of the incident, a fight ensued between himself and one of the intruders. Metz claimed he fought with the person until he was sure he was safe. When the intruder stopped struggling, Metz turned on the light and realized the other person was Rundall. He testified he sat in the apartment with Rundall's body for some time and then passed out or fainted until Hogan woke him up at 8:00 a.m. Metz then changed his shirt, left his apartment, and went to a bar where he consumed more alcohol.

Metz testified in his own defense at the trial. During cross-examination, the prosecutor asked him the following questions:

Q [Prosecutor]: I just want you to answer my question, did you tell the police what you've told us here in this courtroom today, did you ever tell them that?

A: No.

Q: Never did? You had an opportunity to do that; didn't you? Didn't you talk to Detective Webb and Guthrie?

A: I never really talked to them, no.

Q: Okay. But you were with them at the police department, correct, for quite a long time?

A: For about nine hours, wasn't it?

Q: You never told them what we've just heard here in the courtroom today?

A: No.

Q: Never told them about the silhouettes or about Don Rundall jumping on you at the apartment, never told them that?

A: I don't believe I told them anything. As a matter of fact, I believe I told them I didn't want to talk to them.

The prosecutor returned to the same subject during his rebuttal argument when he reminded the jury Metz had failed to tell the police officers about his version of the incident when he spoke to them prior to trial. The jury returned a verdict of guilty on October 1, 1999. Metz appeals.

II. Standard of Review.

We generally review a district court's ruling on a motion for mistrial based on prosecutorial misconduct for abuse of discretion. State v. Greene, 592 N.W.2d 24, 30 (Iowa 1999). However, to the extent this claim has constitutional implications, our review is de novo. State v. Astello, 602 N.W.2d 190, 195 (Iowa Ct. App. 1999). We review challenges to jury instructions for correction of errors of law. State v. Walker, 600 N.W.2d 606, 608 (Iowa 1999). Our standard of review concerning the admission of hearsay evidence is for correction of errors of law.[2] State v. Tornquist, 600 N.W.2d 301, 303 (Iowa 1999). We review the court's decision to admit gruesome crime scene photographs for an abuse of discretion. State v. Liggins, 524 N.W.2d 181, 189 (Iowa 1994).

III. Mistrial.

Metz argues the district court erred in permitting the prosecutor to conduct cross-examination and make a closing argument on the subject of his silence. We agree. The challenged testimony and argument fell within the proscription explained in Doyle v. Ohio, 426 U.S. 610, 617-20, 96 S. Ct. 2240, 2244-45, 49 L. Ed. 2d 91, 97-98 (1976), and State v. Porter, 283 N.W.2d 351, 352 (Iowa 1979). Metz clearly received the implicit assurance from the Miranda warning that silence would carry no penalty. "In such circumstances, it [is] fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial." Doyle, 427 U.S. at 619, 96 S. Ct. at 2245, 49 L. Ed. 2d at 98. However, the violation of Metz's due process right does not require reversal if the district court's error was harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 830, 17 L. Ed. 2d 705, 710-11 (1967).

The State asserts Metz suffered no prejudice as a result of the prosecutor's conduct. We are unable to conclude beyond a reasonable doubt, however, the evidence against Metz was so overwhelming so as to preclude all reasonable doubts about the effect of the prosecutor's questions and argument. Metz was the only eyewitness to the incident who testified at trial. His trial testimony was the only evidence supporting his claim he believed Rundall was one of a group of intruders who gained entrance to his apartment on the night of the incident; and he engaged in the ensuing fight to protect himself. The prosecutor's attack on Metz's post-Miranda warning silence was therefore a frontal assault on the only evidence available to the defense on the fighting issues of specific intent and malice aforethought. "The question on review is not whether we would believe the defendant's guilt was proved beyond a reasonable doubt. The question rather is whether it appears beyond a

reasonable doubt the error did not affect [Metz's] right to a fair trial." Porter, 283 N.W.2d at 353. We are unable to find the State's burden to prove malice aforethought and specific intent in this case was unaffected by the prosecutor's improper questions during cross-examination and closing argument. The district court erred in overruling the motion for mistrial and reversal is required. Because other issues raised by Metz in this appeal will likely recur during retrial, we will address them here.

IV. Jury Instructions.

Metz claims the district court erred by refusing to give a jury instruction regarding a mistake of fact. Defense counsel requested the following instruction in writing:

The State has the burden of proving the defendant was not acting under ignorance or mistake of fact as it applies to the question of whether defendant acted with malice aforethought, willfully, deliberately, premeditatedly, and with a specific intent to kill Donald Rundall.

Generally, a court is required to instruct the jury as to the pertinent issues, the law, and the definition of the crime. State v. Oetken, 613 N.W.2d 679, 686 (Iowa 2000). The district court denied the request finding there was no evidence in the record that would support a theory of a mistake of fact. The defense of mistake of fact stems from Iowa Code section 701.6, which provides:

All persons are presumed to know the law. Evidence of an accused person's ignorance or mistake as to a matter of either fact or law shall be admissible in any case where it shall tend to prove the existence or nonexistence of some element of the crime with which the person is charged. Iowa Code § 701.6; State v. Swartz, 601 N.W.2d 348, 352 (Iowa 1999).

Mistake of fact is a defense to a crime of scienter or criminal intent only where the mistake precludes the existence of the mental state necessary to commit the crime. State v. Freeman, 450 N.W.2d 826, 828 (Iowa 1990).

The trial court did not err in rejecting this instruction. Although intent is an element of the crime of murder in the first degree, knowledge of the identity of one's victim is not an element of the crime. See Iowa Code §§ 707.1, 707.2(1), 707.2(2) (defining murder as when a person kills another person). Whether Metz knew the victim of his crime is irrelevant if he had the intent to kill him. The proposed instruction was unnecessary and likely to confuse the jury. See Saadiq v. State, 387 N.W.2d 315, 324 (Iowa 1986). We affirm the district court's decision not to give an instruction to the jury regarding mistake of fact.

V. Hearsay Claims.

Metz asserts the district court erred by admitting the testimony of Agent Chari Paulson regarding her conversation with a witness during the course of the investigation. Soon after Metz's arrest,

Paulson spoke with Judy Leaym, an employee of the pawnshop Metz visited on the morning of the murder. Leaym told Paulson Metz entered the pawnshop and stated, "I did it, I killed somebody," and "I really did it this time, I slipped." Leaym died before trial. The district court admitted the evidence pursuant to rule 804(b)(5) which states:

b. Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: . . .

(5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will be best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant. Iowa R. Evid. 804(5)(b).

"Aside from the requirement that the declarant be unavailable, the requirements of this rule are identical to the requirements of Rule 803(24)." State v. Nance, 533 N.W.2d 557, 559 (Iowa 1995). Therefore, we apply the five-part test applicable to rule 803(24) inquiries to situations involving rule 804(5)(b). See id. The five elements for admitting hearsay under the catch-all provision are: (1) trustworthiness; (2) materiality; (3) necessity; (4) service of the interests of justice; and (5) notice. State v. Kone, 562 N.W.2d 637, 638 (Iowa Ct. App. 1997). The district court must make specific findings on the record regarding the five elements. State v. Weaver, 554 N.W.2d 240, 247 (Iowa 1996).

(1) Trustworthiness.

There are several factors to consider when assessing the trustworthiness of a statement including the witness's propensity to tell the truth, the witness's personal knowledge, the amount of time between the event and the witness's statement, corroboration, credibility of the witness, and the motivation of the witness to make the statement. Id. at 248. Several of these factors are applicable in this case. Leaym had personal knowledge of Metz's statements because she was in the room when they were allegedly made. Two other witnesses, Nozey Habhab and Gary Edgerton, were present in the pawnshop on the morning in question and confirmed Leaym was there when Metz came in. No significant amount of time passed between the time Leaym heard Metz's statements and the time when Leaym reported them to Paulson. Paulson interviewed Leaym on September 17, 1998, the day after the murder, and memorialized the interview in a report dated September 28, 1998. Leaym's statements were corroborated by Edgerton's observations of Metz at the pawnshop that morning. Although Edgerton interpreted Metz's statements somewhat differently than Leaym, the substance is

the same. In addition, the record does not indicate Leaym had a personal motivation to fabricate evidence against Metz and it contains no evidence Leaym was untruthful in her interview with Paulson.

(2) Materiality.

The statements made by Leaym to Paulson were material to this case as they relate directly to the charge of murder in the first-degree and are a possible admission by Metz.

(3) Necessity.

As noted above, Leaym was not the only person present in the pawnshop when Metz made the statements in question. However, the other two witnesses lacked credibility and both were friends of Metz. Habhab had a very poor memory of the morning and Metz had been his employee at one time. Edgerton had also worked for Habhab with Metz and indicated he shared a friendship with Metz. Leaym, however, had no personal relationship with Metz and no apparent memory problems. Paulson's testimony of Leaym's statements was an unequivocal version of the events of that morning and was therefore necessary to the State's case.

(4) Service of the Interests of Justice.

The admission of evidence under rule 804(5)(b) must advance the goal of truth seeking expressed in Iowa Rule of Evidence 102. See State v. Rojas, 524 N.W.2d 659, 663 (Iowa 1994). We conclude admission of statements made by Metz shortly after the murder indicating his culpability in the matter adequately advances the interests of justice in this case.

(5) Notice.

Metz was given notice of the State's intention to use the evidence by the State's notice of intent to use the testimony filed on June 17, 1999. Furthermore, the district court held a hearing on the issue and filed its order admitting the evidence before the beginning of the trial. See Kone, 562 N.W.2d at 639. The five criteria for admitting hearsay evidence under the residual exception have been satisfied. We conclude the district court did not err by admitting Paulson's testimony of Leaym's statements under rule 804(5)(b).

VI. Crime Scene Photographs.

At trial, the State introduced several photographs of the victim, both of the body in Metz's apartment and of the body in various stages of the autopsy. The photographs were used during the medical examiner's testimony and the testimony of the officers who arrived at the scene the morning of the murder. Metz argues the trial court abused its discretion in admitting these photographs. He

contends the prejudicial effect of the photographs outweighed any probative value they may have had. We disagree. Photographs are admissible to illustrate medical testimony and demonstrate viciousness in connection with the State's claim of malice. State v. Plowman, 386 N.W.2d 546, 550 (Iowa Ct. App. 1986). The test for admitting photographs is two-fold: (1) the photographs must be relevant and (2) if relevant, whether the probative value of the photographs outweighs the prejudice which would be caused by their admission into evidence. State v. Fetters, 562 N.W.2d 770, 778 (Iowa Ct. App. 1997). The gruesome nature of the photographs does not render them inadmissible. "Murder is often a gruesome affair giving rise to equally gruesome evidence. That alone is not sufficient reason to exclude that evidence." State v. Brown, 397 N.W.2d 689, 700 (Iowa 1986).

We find the photographs were relevant as they illustrated the medical testimony and made it comprehensible for the jury. See Fetters, 562 N.W.2d at 778. They also demonstrated the violent nature of the altercation resulting in Rundall's death, therefore supporting the State's claim of malice. Furthermore, the probative value of the photographs was not outweighed by their prejudicial effect. The photographs are also necessary to rebut Metz's claim he was acting with justification and reasonable force under the facts and circumstances of the situation. We find the district court did not abuse its discretion in admitting photographs of the victim.

REVERSED AND REMANDED FOR NEW TRIAL.

Vaitheswaran, J., concurs; Zimmer, P.J., dissents.

ZIMMER, J. (dissenting)

I respectfully dissent from division III of the court's opinion and the result. Otherwise, I concur in the court's opinion.

I believe the trial court was correct in refusing to grant defendant's motion for a mistrial based on his claim the prosecutor impermissibly questioned him and made improper comments during closing argument regarding his right to remain silent. On the morning of September 16, 1998, Metz made incriminating statements to several people, including his employer, three co-workers and a bartender. A short time later, he was arrested in a bar near his apartment. A Miranda warning was administered. I find no indication in the record that Metz formally invoked his right to remain silent.

Metz was interviewed off and on for approximately eight hours on the day of his arrest. The interview was, for the most part, unproductive. However, Metz did make two arguably incriminating statements to the police after being taken to the police station. Metz asked the question "how's Gypsy," and stated that he had "popped someone in the jaw." The victim, Donald Rundall, was nicknamed "Gypsy." The record reveals the State agreed not to offer any statements Metz made to police in its case in chief, but reserved the right to introduce Metz's statements for the purpose of impeachment. In a pretrial ruling regarding the voluntariness of Metz's statements, the trial court

ruled his statements to police were unsolicited, voluntary statements that could be used for impeachment purposes. The State did not offer any of defendant's comments to police in its case in chief.

Metz testified at trial. He claimed he was awakened from a sound sleep by someone struggling on top of him. He claimed he saw the silhouette of others in his apartment. According to Metz it was only after a terrible fight that he discovered his adversary was his good friend Mr. Rundall.

In cross-examining Metz, the State did not bring up the substance of his comments made to the police at the police station. Instead, the prosecutor's questions and later comments during closing argument were designed to impeach defendant's credibility by pointing out the differences between his comments made following the incident and his testimony at trial. On September 16th, Metz told others he thought he had killed a person, that he did something stupid, and that he did not mean to do it. He did not indicate that he had been attacked in his own apartment and had to use force to defend himself. It was reasonable for the State to contend defendant's theory of defense was inconsistent with his statements to others following the incident. I do not believe the record supports the conclusion that the prosecutor's questions and comments amounted to an improper comment on any post arrest silence by defendant.

Assuming for purposes of argument that the majority is correct in its conclusion that defendant's due process rights were violated by the prosecutor's questions and comments, I believe Metz suffered no prejudice under the circumstances presented here. A violation of Metz's right to remain silent without fear of being chided at trial for doing so is the violation of a fundamental right. State v. Porter, 283 N.W.2d 351, 353 (Iowa 1979). I agree with the majority's conclusion that any error predicated on a fundamental right can be harmless only if it is shown to be harmless beyond a reasonable doubt.

Upon review of this record, I conclude any error was harmless beyond a reasonable doubt. The only elements in dispute at trial were those concerning malice aforethought and specific intent. Under the instructions given in this case, the jury clearly rejected Metz's claim that he did not intend to kill or seriously injure Rundall and that he acted in self-defense. The extent of the victim's injuries is relevant to determining the defendant's intent. State v. Bell, 223 N.W.2d 181, 184 (Iowa 1974). The record reveals that Rundall suffered the following injuries: a broken neck, numerous broken ribs, a broken sternum or breast bone, a broken jaw, a broken nose, a broken voice box, a torn liver, brain injuries, bruised lungs, and numerous cuts and bruises. The injuries were caused primarily by blunt force. The evidence reveals Rundall was a skinny, frail, and unhealthy person. In contrast to Rundall's injuries, Metz suffered only slight injuries including abrasions to his knuckles. Defendant's apartment did not show signs of a significant struggle. Metz made no effort to call the police or an ambulance after the incident; instead, he changed his shirt and went to a bar. I believe the severity and extent of Rundall's injuries and Metz's conduct following the incident amply demonstrate the specific intent and malice aforethought required for conviction. See State v. Escobedo, 573 N.W.2d

271, 279 (Iowa Ct. App. 1997). On this record, I would conclude the error that the majority has found did not affect Metz's right to a fair trial and accordingly was harmless beyond a reasonable doubt. I would affirm the conviction.

1. The State contends Metz did ask the investigating officers about Gypsy's condition. We note this question posed by Metz during the interview could be reasonably interpreted as consistent with his apparently inebriated condition during the recorded portion of the interview. Evidence at trial tended to prove before his arrest Metz told several people he had killed a man. The State also contends Metz told the interviewers he had "popped someone." This statement was consistent with his trial testimony he had engaged in a fight with an intruder in his apartment.

2. Although our supreme court has used an abuse of discretion standard to review claims of hearsay violations in the past, the court's decision in State v. Ross, 573 N.W.2d 906, 910 (Iowa 1998) made clear all hearsay violations should be reviewed for errors at law. State v. Wixom, 599 N.W.2d 481, 484 (Iowa Ct. App. 1999).