State v. Chavez

2006 | Cited 0 times | Court of Appeals of Minnesota | August 29, 2006

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Considered and decided by Willis, Presiding Judge; Lansing, Judge; and Randall, Judge.

UNPUBLISHED OPINION

Appellant argues that his conviction of second-degree assault should be reversed because (1) he was denied effective assistance of counsel and (2) law enforcement and the district court failed to follow "long-standing law" regarding the proper use of interpreters. We affirm.

FACTS

On October 1, 2004, Rodolfo Lara, and his wife, Diane Hernandez, drove past appellant Juan Arturo Chavez, as Chavez was walking in Albert Lea. Lara testified that as they were driving by, Chavez called out to Hernandez and made a comment about one of Hernandez's sons; Chavez had been friendly with Hernandez's two sons until a recent falling-out. Lara testified that he stopped his vehicle, stepped out, and approached Chavez, asking him what he wanted with Hernandez's son. Lara testified that Chavez then pulled out a knife, cut Lara on the stomach, and ran away.

Chavez was charged with second-degree assault, in violation of Minn. Stat. § 609.222, subd. 1 (2004) (describing second-degree assault as assault with a dangerous weapon). Chavez was convicted following a jury trial. This appeal follows.

DECISION

I.

Chavez argues that he was denied effective assistance because his trial counsel offered evidence that rebutted Chavez's defense and failed to raise a claim of self-defense. To prove that he received ineffective assistance of counsel, an appellant must affirmatively show that his "counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Gates v. State, 398 N.W.2d 558, 561 (Minn. 1987) (quoting Strickland v. Washington, 466 U.S. 668, 688, 694, 104 S.Ct. 2052, 2064, 2068 (1984)). This court need not address both the

performance and prejudice prongs if one is determinative. Strickland, 466 U.S. at 697, 104 S.Ct. at 2069; Hale v. State, 566 N.W.2d 923, 927 (Minn. 1997). Because claims of ineffective assistance of counsel involve mixed questions of law and fact, we review them de novo. Strickland, 466 U.S. at 698, 104 S.Ct. at 2070; see also Barger v. United States, 204 F.3d 1180, 1181 (8th Cir. 2000).

Generally, a claim of ineffective assistance of counsel should be raised in a post-conviction petition for relief, rather than on direct appeal. See Robinson v. State, 567 N.W.2d 491, 495 n.3 (Minn. 1997); Black v. State, 560 N.W.2d 83, 85 n.1 (Minn. 1997). A post-conviction hearing provides the court with "additional facts to explain the attorney's decisions," in order to properly consider whether defense counsel's performance was deficient. Black, 560 N.W.2d at 85 n.1. But when the record is sufficient to allow review of the claim, the issue of ineffective assistance of counsel may be raised on direct appeal. See Voorhees v. State, 627 N.W.2d 642, 649 (Minn. 2001) (determining that a "post-conviction hearing is necessary only when the record is not sufficient to allow proper review of the ineffective assistance of trial counsel claim"). Chavez maintains that because there was no reasonable explanation for his trial counsel's actions, the record provides sufficient grounds for a determination that he received ineffective assistance of counsel.

To prove second-degree assault, in violation of Minn. Stat. § 609.222, subd. 1 (2004), the state must show that, using a dangerous weapon, the defendant acted "with intent to cause fear in another of immediate bodily harm or death" or intentionally inflicted or attempted to inflict bodily harm on another. See Minn. Stat. § 609.02, subd. 10(1), (2) (2004) (defining "assault"). Chavez asserts that it was the defense's theory that Hernandez's and Lara's accounts were not credible and that Chavez did not cut Lara with his knife. Thus, Chavez argues, it was objectively unreasonable for his trial counsel to introduce evidence that contradicted this defense.

The record shows that Chavez's trial counsel asked to play for the jury a recording of Chavez's statement to the police; in that statement, Chavez says that he opened the knife in front of Lara. Chavez further maintains that because "defense counsel offered into evidence Chavez's statement that he opened the knife in Lara's presence after Lara aggressively approached and tried to punch Chavez," his trial counsel's failure to raise a self-defense argument was also objectively unreasonable. But because we determine that there could have been a reasonable explanation for trial counsel's actions and additional facts are needed to explain counsel's decisions, we decline to reach the merits of the claim. See State v. Barnes, 713 N.W.2d 325, 335 (Minn. 2006) (declining to reach merits of appellant's ineffective-assistance-of-counsel claim on direct appeal when additional facts were needed to review the issue). Chavez may pursue an ineffective-assistance-of-counsel claim in a petition for post-conviction relief. See id.

II.

Chavez argues that this court should exercise its "supervisory power" and reverse his conviction because of law enforcement's and the district court's failure to follow "long-standing law" regarding

the proper use of interpreters. The Minnesota Supreme Court has recognized that there are some cases that, without a determination of prejudice, require reversal under the supreme court's supervisory power to serve the "interests of justice." See, e.g., State v. Salitros, 499 N.W.2d 815, 820 (Minn. 1993) (reversing a conviction "prophylactically" in the exercise of the court's supervisory power); State v. Kaiser, 486 N.W.2d 384, 387 (Minn. 1992) (same). Chavez asserts that this court's use of its "supervisory power" to reverse his conviction is "necessary" to make law enforcement and the district courts aware of "Minnesota appellate courts' directives on the proper use of interpreters" and to improve "citizens' equal access to justice." But this court has declined to exercise supervisory powers when the request involves issues that squarely fall within the supreme court's rulemaking powers. See State v. Gilmartin, 535 N.W.2d 650, 653 (Minn. App. 1995) (determining that "[a]s an intermediate appellate court," this court will not "exercise supervisory powers reserved to this state's supreme court"), review denied (Minn. Sept. 20, 1995). We conclude that we do not have the supervisory powers that Chavez asks us to exercise because the issue of interpreters is governed by the supreme court in its rulemaking supervisory powers. See, e.g., State v. Dominguez-Ramirez, 563 N.W.2d 245, 257 (Minn. 1997). Thus, to show entitlement to relief in this court, Chavez must demonstrate prejudice.

Minnesota has declared a policy that the constitutional rights of persons "handicapped in communication" cannot be fully protected unless qualified interpreters are available to assist them in their defense. Minn. Stat. § 611.30 (2004). A person is "handicapped in communication" if, inter alia, he cannot fully understand the proceedings or charges made against him because of "difficulty in speaking or comprehending the English language." Minn. Stat. § 611.31 (2004). Following such a person's arrest, the arresting officer must obtain a qualified interpreter and explain to the person, with the assistance of the interpreter, the charges against him. Minn. Stat. § 611.32, subd. 2 (2004). A qualified interpreter must be readily able to communicate with the person, must interpret and accurately repeat statements, must take an oath, and must not disclose any privileged information. Minn. Stat. § 611.33 (2004).

As an initial matter, we note that Chavez did not argue in the district court that either law enforcement's failure to use a qualified interpreter or the district court's use of an interpreter was error. This court will generally not consider matters not argued and considered in the district court. Roby v. State, 547 N.W.2d 354, 357 (Minn. 1996). "[R]review of unobjected-to errors is discretionary" and is limited to review for plain error. State v. Griller, 583 N.W.2d 736, 742, 740 (Minn. 1998). Plain error requires: (1) error; (2) that is plain; and (3) that affects substantial rights. Id. at 740. The third prong is satisfied if the error affected the outcome of the case. Id. at 741. After reviewing Chavez's claims, we conclude that there is no plain error.

Chavez argues that there are four incidents in which law enforcement and the district court failed to follow the law regarding the proper use of interpreters and that together, these incidents require the reversal of Chavez's conviction.

A.

Chavez asserts that law-enforcement officers improperly used Lara's stepson, who is not a qualified interpreter, as an interpreter when taking Lara's statement. But because Lara was not a person apprehended or arrested, there is no statutory requirement that law enforcement use a qualified interpreter when taking his statement. See Minn. Stat. § 611.32, subd. 2 (requiring qualified interpreter when interrogating or taking statement of person apprehended or arrested who has difficulty in speaking or comprehending English).

B.

Chavez maintains that law-enforcement officers violated Minn. Stat. § 611.32, subd. 2, when they executed a search warrant at Chavez's residence without having a qualified interpreter available to read the search warrant to Chavez. Section 611.32, subdivision 2, provides that if the property of an arrestee who has difficulty speaking or comprehending English is seized, law-enforcement officers shall, upon request, make available to the arrestee "a qualified interpreter to assist the person in understanding the possible consequences of the seizure and the person's right to judicial review." But because the record does not show that Chavez requested an interpreter, we conclude that Minn. Stat. § 611.32, subd. 2, was not violated.

C.

Chavez asserts that the "most egregious" incident occurred when Officer Kohl failed to request an interpreter while taking Chavez's statement "after it became clear that they were having difficulty communicating." But Officer Kohl testified that, although he and Chavez "were having some difficulty communicating with each other," he believed that Chavez understood him. Thus, we conclude that Officer Kohl determined that Chavez was not "handicapped in communication" and did not require a qualified interpreter.

The record shows that when Officer Kohl asked Chavez whether he spoke English, Chavez replied that he spoke a "little bit" of English. The record further shows that when Officer Kohl gave Chavez his Miranda rights, Chavez told him that he did not understand the right to remain silent and that he did not know what a lawyer was. Officer Kohl testified that he then provided explanations to Chavez, and it appeared that Chavez understood his rights. A review of the transcript shows that Chavez answered most of Officer Kohl's questions appropriately. Although it is clear that English is not Chavez's first language, we conclude that Chavez understood that he was being interrogated and what he was being asked and, thus, was not "handicapped in communication" and did not require a qualified interpreter.

D.

At Chavez's rule 5 hearing, at Chavez's request, the district court obtained an interpreter for him. The district court then determined that Chavez qualified for a public defender and issued an order appointing one. The record shows that the following exchange then took place at the hearing:

Court: Señor Alvear, did you get a chance to visit with Mr. Chavez before you came into court today?

Interpreter: Yes, I did, Your Honor.

Court: Are you satisfied he understands his rights in regard to a trial and so forth?

Interpreter: I think he does, but I think I will ask him.

Chavez (through interpreter): Yes.

Chavez asserts that the district court "misused the interpreter" at Chavez's rule 5 hearing because the interpreter, who was not an attorney, "in effect, represented Chavez" and had the "responsibility" of explaining to Chavez his various trial rights. Chavez asserts that there is no record of what the interpreter told Chavez in Spanish and that it is possible that Chavez was not advised of all his rights. But because Chavez cannot point to any misstatement or omission by the interpreter and the record shows that Chavez was thereafter at all times represented by counsel, we determine that any "misuse" of the interpreter by the district court does not warrant reversal.

Because we find no plain error, we affirm Chavez's conviction.

Affirmed.

RANDALL, Judge (concurring specially).

I concur in the result. I do not find that Chavez's trial was subject to a substantial error, and, thus, I conclude, like the majority, he is not entitled to a new trial. I disagree somewhat with the majority's reasoning concerning Chavez's argument requesting a reversal of his conviction because of a claimed denigration of his right to interpretative services. I am not sure where the unicorn of "supervisory power" got started and I am not sure why we pretend to perpetuate the myth, but it is time to put it to bed and put the unicorn out to a well-deserved pasture.

The problem is the mislabeling. The idea sprung, like Topsy, that we cannot hear "that issue" because it is somehow reserved for the Minnesota Supreme Court. I conclude the issue of "supervisory power" is for the district court, the Minnesota Court of Appeals, and the Minnesota Supreme Court. In State v. Salitros, No. C9-92-1105, 1993 WL 19693 at *2 (Minn. App. Jan. 25, 1993), rev'd, 499 N.W.2d 815 (Minn. May 1993), the Minnesota Supreme Court reversed a criminal conviction because of an egregious closing argument by the state. That is all. Trial courts can do the

same thing. District courts have the inherent judicial authority to administer their own courtroom and for improper conduct by the state in a criminal case it can give curative instructions, grant motions by defense counsel, instruct the jury, grant a mistrial with no right by the state to reprosecute (double jeopardy), and can give the ultimate sanction, take the case away from the jury and enter a judgment of not guilty. In civil trials it is the same thing. For particularly egregious violations of discovery or improper conduct during a trial, district court judges, under the rules, can sanction parties. The sanctions can include, without limitation, limiting discovery, striking with prejudice certain offered evidence, denying the right to call particular experts, monetary fines, etc. An aggrieved party can appeal those sanctions to our court and we hear them on the merits. Those sanctions are classic examples of "supervisory powers." Anything a district court can do, a higher court, such as an intermediate appellate court, can review. It is a fallacy to argue that the district courts can do things, and the supreme court can do things, but an intermediate court of appeals cannot do the same thing.

The term "supervisory power" is unique to the Minnesota Supreme Court only when it is an issue of an ethical complaint being lodged against an attorney (it can be in the setting of office practice, a civil case, or a criminal case; it doesn't matter). After the Board of Professional Responsibility hears it and makes its recommendation, it is agreed that the Minnesota Supreme Court alone reviews the decision of the Board of Professional Responsibility. Those issues are not trial court issues. Chavez's issues, however, are trial court issues and, thus, our issues.

The correct use of the term "supervisory power," if the term is meant to limit the jurisdiction of the Minnesota Court of Appeals, is limited to ethical complaints lodged against attorneys that are heard by the Minnesota Board of Professional Responsibility.

What is raised in this case, as was raised in State v. Porter, No. C8-93-358, (Minn. App. Dec. 28, 1993) (Randall, J., dissenting), rev'd, 526 N.W.2d 359 (Minn. 1995), is the simple claim of "prosecutorial/state misconduct."

The majority in the Court of Appeals' Salitros did not state that we do not have the power to reverse based on an issue of prosecutorial misconduct, but simply found that the conduct in Porter did not rise to the issue of the misconduct in Salitros. See Porter, 1993 WL 539097 at *3 (citing Salitros, 449 N.W.2d at 820). I dissented and said the prosecutorial misconduct in the closing argument did constitute substantial prejudice, was egregious error, and I found that the appellant "was denied a fair trial by virtue of prosecutorial misconduct." Id. at *6 (Randall, J., dissenting). The Minnesota Supreme Court agreed, reversed the conviction, and remanded for a new trial.

The second and even more compelling argument as to why we have to immediately abandon the myth that we do not have "supervisory power" over claimed issues of prosecutorial misconduct is that if we do not exercise our jurisdiction to hear all the issues in all criminal appeals, excluding a murder in the first degree, Minn. Stat. § 480A.06, subd. 1, we violate our own oath of office.

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This court has a constitutional mandate and the jurisdiction to hear all criminal appeals anywhere in the State of Minnesota from any conviction, excluding murder in the first degree. If we take the position that we cannot hear an issue of claimed prosecutorial misconduct because, somehow, it got mislabeled as "supervisory power," we are making the most fundamental unconstitutional error that any court can make, meaning we are denying a defendant his right under the Minnesota Constitution and the U.S. Constitution to a fair trial. In Minnesota, inherent in the definition of a "fair criminal trial" is the right to have at least one guaranteed appeal.

Let me explain. There is absolutely no duty on the Minnesota Supreme Court to take any case from our court. It is all on discretionary review. We have no power to force the Minnesota Supreme Court to take an issue of prosecutorial misconduct where it has been mislabeled "supervisory power" and then direct the Minnesota Supreme Court to take the case and rule on that issue because we claim we can't. Just the laying out of the issue shows the fallacy. After a criminal conviction, a defendant has the constitutional right to raise any issue upon which he feels he might get relief. He is not guaranteed relief, but he is entitled to a hearing and the Minnesota Court of Appeals has to give him a hearing. The Minnesota Supreme Court has every right to deny a petition for discretionary review and that would mean our decision to pass on the issue of "supervisory power" means the Court of Appeals has denied a defendant in the criminal case a full and fair appeal. We do have lots of power, but that is a power we do not have.

Any intimation to that effect by any case of the Minnesota Court of Appeals is just plain wrong for the above reasons.

To straighten this mess out, it is simple. When a criminal defendant alleges an issue of prosecutorial misconduct, even if his attorney mislabels it as a "supervisory power" issue, just ignore the mislabeling and move on to examine the issue on its merits, as we have done here with Chavez.

When an ethical complaint is lodged against an attorney for misconduct during the course of a trial, it is never decided during the trial by either the district court or the jury. It is simply set on for a later review by the Minnesota Lawyers Board of Professional Responsibility and then whatever recommendation they make is reviewed only by the Minnesota Supreme Court. That review is not part of the trial or the appeal. Trial issues of claimed prosecutorial misconduct are considered by the district court, our court, and the Minnesota Supreme Court. Between trial issues and issues of unethical conduct by an attorney, there is a clear distinction.

I concur in the result because an examination of the record does not convince me that Chavez is entitled to a new trial based on the interpreter issue. I believe the majority's reasoning when they did get into the merits of the interpreter issue was correct. The majority could have stopped there rather than go on to dig further into the mythical black hole of "supervisory power." There can never be a conclusion that the Minnesota Court of Appeals is powerless to examine an issue in an appeal from a criminal conviction when the charge is less than murder in the first degree.

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We have that power, we have to exercise that power, and we violate our own standards and the Minnesota Constitution and the U.S. Constitution when we duck an issue and leave a criminal defendant to the uncertain remedy of a petition for discretionary review.