

IN THE COURT OF APPEALS OF IOWA

No. 9-640 / 88-1513

FILED

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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

RALPH BEN REYNOLDS,

Appellant.

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Appeal from the Iowa District Court for Polk County,
Harry Perkins, Judge.

The defendant appeals his conviction and sentence for
first-degree murder. **AFFIRMED.**

Thomas J. Miller, Attorney General of Iowa; Mark Joel
Zbieroski, Assistant Attorney General; James Smith, County
Attorney; and Nan Horvat, Assistant County Attorney; for
appellee.

Raymond Rogers, State Appellate Defender; James F.
Whalen and B. John Burns, Assistant Appellate Defenders;
for appellant.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

On August 26, 1988, a Polk County jury found Ralph Ben Reynolds guilty of murdering Shelley Nickens in the first degree. Nickens' body had been found in her sister's apartment on April 20, 1988. She had been stabbed at least twenty-one times.

Reynolds was identified as the man parked in front of the apartment where the victim was staying. His car was seen again the next morning parked in the driveway. Blood, consistent with the defendant's blood type and different from that of Nickens, was discovered at the crime scene.

Reynolds was arrested shortly after 2:00 p.m. on April 20. After he invoked his right to counsel, an officer noted the defendant had a cut on his hand. He said to Reynolds, "You're bleeding." The defendant responded, "Yes, I hurt my hand working on my car." It was later established the repair work on the defendant's car was done at a nearby gas station.

The defendant was examined by a medical doctor after his arrest. The doctor saw a fresh, three-quarter inch cut above the thumb joint on the defendant's right hand. On his left hand was a fresh T-shaped stab wound at least three-quarters of an inch long. There were also fresh cuts on the left thumb and little finger, and the back of his hand was purple and swollen.

The defendant filed a motion to suppress statements made to police following his arrest. After a hearing, the court overruled the defendant's motion to suppress. The case was submitted to the jury at 11:30 a.m., August 25. On August 26, at 10:10 a.m., the jury returned a verdict of guilty of first-degree murder. The defendant appeals.

Reynolds argues the trial court erred in refusing to suppress his statement to the police made after invocation of his Miranda rights. He argues the lieutenant's remark about the cut on his hand constituted interrogation. Defendant asserts the lieutenant should have known his statement was reasonably likely to elicit an incriminating response.

Secondly, the defendant argues the trial court abused its discretion in admitting the medical examiner's opinion that the number of stab wounds suggests the perpetrator was sexually involved with the victim. The defendant maintains Dr. Bennett was neither a psychiatrist nor a psychologist and, therefore, was not qualified to give an opinion on the motive or intent of another person.

The State argues the lieutenant's remark to the defendant was not the functional equivalent of interrogation. It asserts the officer's remark was nothing more than an innocent observation to which no response from the defendant was invited. The officer testified he made the remark in order to alert other officers to take

precautionary measures regarding the dangers of handling a bleeding prisoner, i.e., the transmission of hepatitis and acquired immune deficiency. Also, the lieutenant testified they were concerned about the injury to the defendant. After the arrest the defendant was taken to a local hospital where an emergency room physician attempted to treat him for the wound.

The State further argues Dr. Bennett's testimony was not on the specific intent or motive of the defendant. He testified, based on his specialized knowledge, experience, and education as a forensic pathologist, that in multiple stab wound cases it may be generally inferred the assailant and victim had a close relationship, i.e., family members or sexual partners.

We affirm the conviction.

1. **Suppression of Statement.** Our review of the trial court's denial of the motion to suppress is de novo. State v. Crooks, 378 N.W.2d 722, 724 (Iowa App. 1985).

Defendant contends the trial court erred in refusing to suppress his statement to Lieutenant Fitzgerald. The gist of the suppression motion was the lieutenant's statement was designed to elicit a response from the defendant and, therefore, violated his right to counsel under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 297 (1980), and Edwards v. Arizona, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981).

As pointed out by both the defendant and the State, the fighting issue is whether Fitzgerald's remark, "You're bleeding," is interrogation. After a de novo review of the record, we conclude it is not interrogation.

Once an accused is in police custody and has invoked the right to counsel, all interrogation must stop until the person consults with counsel or initiates further communication, exchange, or conversation. Edwards v. Arizona, 451 U.S. at 484-85, 101 S. Ct. at 1884-85, 68 L. Ed. 2d at 386; Miranda v. Arizona, 384 U.S. at 436, 86 S. Ct. at 1602, 16 L. Ed. 2d at 297.

However, not all statements obtained by the police after a person has been taken into custody are viewed as the products of interrogation. Rhode Island v. Innis, 446 U.S. 291, 299, 100 S. Ct. 1682, 1689, 64 L. Ed. 2d 297, 307 (1980); State v. Cain, 400 N.W.2d 582, 584 (Iowa 1987); State v. Crooks, 378 N.W.2d 722, 725 (Iowa App. 1985).

Interrogation under Miranda has been further defined by the United States Supreme Court:

That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Rhode Island v. Innis, 446 U.S. at 300-301, 100 S. Ct. at 1689-90, 64 L. Ed. 2d at 307-8.

In this case defendant's statement did not result from interrogation or its functional equivalent. When defendant invoked his right to counsel, all questioning stopped. While handcuffing Reynolds, one of the officers noticed blood oozing from between defendant's fingers and remarked on it.

Justice Stewart's analysis in Innis is applicable here.

The case thus boils down to whether, in the context of a brief conversation, the officers should have known that the respondent would suddenly be moved to make a self-incriminating response. Given the fact that the entire conversation appears to have consisted of no more than a few offhand remarks, we cannot say that the officers should have known that it was reasonably likely that Innis would so respond.

Rhode Island v. Innis, 446 U.S. at 303, 100 S. Ct. at 1691, 64 L. Ed. 2d at 309.

We agree with the State this remark was nothing more than an innocent observation. It is not a statement which the police should anticipate would be reasonably likely to elicit an incriminating response from the defendant. Defendant does not convince us the officer should have known it was reasonably likely Reynolds would respond in an incriminating way.

2. Forensic Pathologist's Testimony. Defendant raises as error the trial court's admission of the medical examiner's testimony that the twenty-one stab wounds suggested the perpetrator was a family member or sexually involved with the victim. Because the witness was neither

qualified to advance such an opinion nor had a sufficient factual basis, defendant maintains the testimony was prejudicial.

The State claims defendant waived this issue because at trial the objection was not specific. Contrary to the State's assertion defendant merely claimed the testimony was speculative, the record shows otherwise. Defendant objected to the testimony "about what was going on in the mind or heart of the assailant in that he's clearly not qualified to testify to that." This issue is preserved for appeal.

Iowa is committed to a liberal rule allowing opinion testimony if it will aid the jury in screening the properly-admitted evidence to ascertain the truth. State v. Myers, 382 N.W.2d 91, 93 (Iowa 1986). When a trial court has exercised its discretion to admit expert testimony, we will reverse only if we find an abuse of that discretion and prejudice. Id. An abuse of discretion occurs when the trial court's ruling is based on untenable grounds. Id.

When a timely and specific objection under rule 702 challenges the propriety of expert testimony on a particular subject, the proponent has the burden to establish that the testimony is admissible. Id.

The State maintains the pathologist's testimony was not offered to explain the assailant's motive or intent.

Rather, the witness stated that, based on his specialized knowledge, experience, and education as a forensic pathologist, in multiple stab wound cases it may be generally inferred an assailant and victim had a close relationship. We do not think admission of this opinion evidence was clearly untenable. The court, in overruling the objection, stated the jury would determine the weight to be given to the testimony.

AFFIRMED.