IN THE COURT OF APPEALS OF IOWA

No. 3-468 / 92-1530

FILED
DEC 29 1993
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

SCOTT EDWARD KNUTSON,

Appellant.

Appeal from the Iowa District Court for Webster County, Allen L. Goode, Judge.

Knutson appeals his conviction for murder in the first degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and B. John Burns, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Richard J. Bennett, Assistant Attorney General; James J. Koll, County Attorney; and Robert Hansen, Assistant County Attorney, for appellee.

Heard by Schlegel, P.J., and Oxberger, C.J., and Sackett, J.

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OXBERGER, C.J.

Scott Edward Knutson physically abused his wife, Annette. After he assaulted her on September 15, 1991, he moved out of their residence. On the evening of December 9, 1991, Scott tragically stabbed Annette to death.

The State charged Scott with murder in the first degree in violation of Iowa Code sections 707.1 and 707.2 (1991). He objected to "bootstrapping" an underlying felony which causes death into first-degree murder under the felony murder rule. The court overruled the objection. He also objected to using willful injury as the underlying felony.

The State presented evidence of Scott's history of violence towards Annette. Her friends testified as to conversations they had with her shortly after episodes of violence. The police officer who investigated the September 15 assault testified Annette told him Scott had threatened to kill her.

The jury instructions allowed conviction for murder in the first degree if the jury found that the murder was premeditated or if they found Scott had stabbed Annette with malice aforethought while participating in the offense of willful injury.

Scott was convicted as charged and given a life sentence. He appeals.

I. Felony Murder Doctrine

Scott first contends the Iowa courts should adopt an independent felony rule to the felony murder doctrine of Iowa Code section 707.2(2) (1991). Specifically, he asks this court to rule that the felony murder doctrine should not apply where the underlying felony is a felonious assault, such as willful injury. He contends an independent felony rule should be adopted under which the appropriate predicate felonies would include robbery, burglary, sexual abuse, and other felonies which are not solely of an assaultive nature and which are not an integral part of the homicide.

The Iowa Supreme Court has previously and unequivocally rejected contentions similar to those made by Scott. See State v. Ragland, 420 N.W.2d 791, 793 (Iowa 1988) (willful injury may constitute basis for murder felony conviction); Heaton v. State, 420 N.W.2d 429, 430-31 (Iowa 1988) (willful injury may constitute underlying felony for felony-murder conviction); State v. Mayberry, 411 N.W.2d 677, 682 (Iowa 1987) (assault with intent to commit sexual abuse sufficient to support finding of felony murder); State v. Beeman, 315 N.W.2d 770, 777 (Iowa 1982) (legislature intended that felonious assaults, including willful injury, be felonies that may serve as the basis of a felony-murder and that the merger doctrine does not apply to such assaults).

In Beeman, the supreme court stated:

> Defendant contends that the giving of the felony-murder instruction based on willful injury was improper. The basis for defendant's contention is that the principle of merger prevents the use of felonious assault as the felony underlying a felony-murder instruction. We are not so persuaded.

Id. at 776. The supreme court reaffirmed its position in Ragland:

> Defendant challenges the application of the felony-murder rule to the instant case. He urges that the underlying felony of willful injury cannot be used to support the felony-murder charge under the merger doctrine and the independent felony rule. We do not believe that these arguments are consistent with our legislative scheme.
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> * * *
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> We see no reason to retreat from our previous decisions.

Ragland, 420 N.W.2d at 793.

The Iowa Supreme Court has clearly rejected the argument advanced by Scott that the elements of a felonious assault should be deemed to have merged with the elements of murder and that such an assault should not, therefore, be used as the predicate or underlying felony for a first-degree murder conviction based on felony murder. Iowa does not apply the "merger doctrine" or the "independent felony rule." We find the defendant's argument to be misplaced.

II. Admissibility of Hearsay Testimony

Scott next contends the district court erred in allowing hearsay testimony at trial. Specifically, he

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objects to the testimony of Annette's friends regarding statements she made to them after Scott had assaulted her. He also objects to the testimony of the officer who investigated the September 15 assault.

We review for an abuse of discretion. State v. Halstead, 362 N.W.2d 504, 506 (Iowa 1985). We reverse the trial court only when it is demonstrated that the ruling was clearly unreasonable or was based on wholly untenable grounds. Id.

Excited utterances are admissible hearsay when the statement relates to a startling event or condition and was made while the declarant was under the stress and excitement created by that event or condition. State v. Ogilvie, 310 N.W.2d 192, 196 (Iowa 1981); Iowa R. Evid. 803(2).

In both the statements made to her friends and to the police officer, Annette was under the stress created by the assault from Scott. We conclude the district court did not abuse its discretion in allowing the testimony.

AFFIRMED.