

IN THE COURT OF APPEALS OF IOWA

No. 1-486 / 90-1609

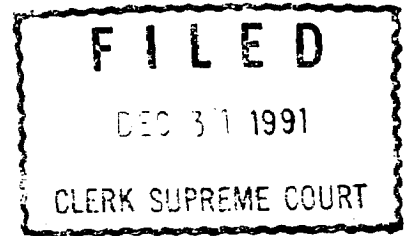
STATE OF IOWA,

Appellee,

vs.

VICTOR GREGORY McDANIEL,

Appellant.



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Appeal from the Iowa District Court for Polk County,
Ray Hanrahan and George W. Bergeson, Judges.

McDaniel appeals his convictions, after a jury trial,
of first-degree murder and attempt to commit murder.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

John P. Messina, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, Julie Ann
Halligan, Assistant Attorney General, John P. Sarcone,
County Attorney, and Nan Horvat, Assistant County Attorney,
for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

OXBERGER, C.J.

Victor McDaniel allegedly stabbed his father to death and tried to stab his mother to death. He was charged with one count of first-degree murder and one count of attempt to commit murder. He relied on defenses of insanity and diminished responsibility.

Prior to trial McDaniel, who was indigent, filed an application for appointment of a psychiatrist to act as an expert witness at public expense. Specifically, McDaniel requested the appointment of Dr. Michael Taylor. The district court granted this motion and appointed Dr. Taylor. However, after Dr. Taylor examined McDaniel, defense counsel learned that Dr. Taylor's testimony would not support the defenses of insanity or diminished capacity. Accordingly, McDaniel applied for the appointment of a different expert psychiatric witness, Dr. Vernon Varner. This application was granted, and Dr. Varner was appointed.

After these events, the prosecutor apparently realized that Dr. Taylor's testimony might be favorable to the State. The State filed an application to obtain Dr. Taylor's report concerning his psychiatric examination of McDaniel. The State later supplemented this request by applying for permission to "consult or retain" Dr. Taylor as a rebuttal witness. After a hearing, the district court granted the State's application to consult or retain Dr. Taylor as a rebuttal witness.

At McDaniel's trial Dr. Varner testified for the defense that on the date of the stabbings McDaniel was unable to differentiate right from wrong, was unable to understand the nature and quality of his acts, and was unable to form the specific intent to kill. Dr. Michael Taylor then testified as a rebuttal witness for the State, as permitted by the earlier court order. Dr. Taylor agreed that McDaniel suffered from psychiatric illness but expressed the view that on the date of the crimes McDaniel was able to differentiate right from wrong, was able to understand the nature and quality of his acts, and was able to form specific intent.

After the trial, a jury found McDaniel guilty of first-degree murder and attempt to commit murder. McDaniel has appealed from the resulting convictions.

McDaniel challenges the district court order allowing the State to discover and use the findings and conclusions of Dr. Michael Taylor, and allowing the State to call Dr. Taylor as a rebuttal witness.

ASSISTANCE OF COUNSEL: We review de novo, where a constitutional right is at issue. McDaniel contends this court order infringed his constitutional right to assistance of counsel by giving the State access to material prepared solely for his defense. He analogizes Dr. Taylor's report to an attorney's work product, arguing that Dr. Taylor was a member of the defense "team" when the

report was prepared and that the report should be covered by the same confidentiality accorded to other trial preparations.

On this issue McDaniel asks that State v. Craney, 347 N.W.2d 668, 676-677 (Iowa 1984) be overruled. We decline to do so. In State v. Craney, the Iowa Supreme Court considered this issue. The argument underlying McDaniel's assertion was similarly considered as well. In substance the argument suggests that effective assistance of counsel means counsel has confidential assistance of experts in that field. The right to counsel therefor "cloaks" the defendant's communication to the expert with confidentiality in order to make the right to counsel effective. See Id. at 676. This argument has been expressly rejected in Iowa. It is in the interests of both the government and the defendant that there be full access to the reports and conclusions of all psychiatric witnesses' in order to enable the trial court to present a complete exploration of the mental state of the accused to the jury. See Id. at 676. Relying upon the reasoning set forth in State v. Craney, we find no violation of effective assistance of counsel. We affirm the trial court on this matter.

LIMITATION ON STATE'S RIGHT TO DISCOVERY: McDaniel contends the district court's order violated Iowa Rule of Criminal Procedure 13(3)(b), which limits the State's right

to discover material within a criminal defendant's possession or control. We agree. Iowa R.Crim. P. 13(3)(b) provides:

[If the court grants the defendant's request to inspect and copy materials made in connection with the particular case within the possession, custody or control of the state], the court may, upon motion of the State, order the defendant to permit the State to inspect and copy the results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant and which the defendant intends to introduce in evidence at the trial or which were proposed by a witness whom the defendant intends to call at trial when such results or reports relate to his or her testimony. (emphasis added).

The State argues that any discovery restrictions contained in rule 13(3)(b) are inapplicable because Dr. Taylor's identity was not within McDaniel's possession or control. The State asserts that Dr. Taylor's name had become a matter of public record once McDaniel applied to the court as an indigent seeking appointment of the doctor at public expense. As a result of this public record, the State asserts there was no need to rely on Iowa R.Crim P. 13(3)(b) for discovery of the doctor. In effect, the information the State wanted was not in the "possession or control of the defendant."

There is no apparent dispute that, absent the public record, the State would have been required to rely upon Iowa R.Crim. P. 13(3)(b). The State argues that because of the public record, it was not required to rely upon rule 13(3)(b).

COURT APPOINTED PSYCHIATRIST: We consider the nature and circumstances of McDaniel's court appointment of Dr. Taylor. In State v. Collins, 236 N.W.2d 376 (1975), the Iowa Supreme Court considered whether statements made by a defendant to a state psychiatrist examining him pursuant to a court order entered upon the defendant's application were admissible against the defendant. Similar to our present case, the defendant in Collins was an indigent. Justice Rawlings, concurring specially, distinguished between "defense invited" psychiatric analysis and "compelled evaluation" by the court of a defendant's mental status which stemmed from the prosecution's request or sua sponte court order. See Collins at 381-382. In drawing the distinction, Justice Rawlings noted in the circumstance where there is a compulsory psychiatric examination of an accused, either upon request by the prosecution or sua sponte order of the court, the psychiatrist becomes an agent for the State. See, Id. at 382. He noted that where the psychiatrist is "defense invited", the agency relationship is different and a doctor-patient privilege becomes applicable. Id. at 381. We find merit to this distinction.

The trial court in granting the discovery and testimony of Dr. Taylor relied upon State v. Cole. In support of its decision to grant Dr. Taylor's testimony as a rebuttal witness, the trial court stated:

When the court orders a psychiatric evaluation of the defendant, the physician/patient does not arise. (emphasis added)¹

Different from the present case, however, the court in State v. Cole, ordered sua sponte, the defendant to be examined by the psychiatrist and reports of the examination to be given to the court. The examination was not "defense-invited". In the present case, McDaniel approached the court as an indigent and requested a psychiatrist. Under these circumstances, although public funds were used in the appointment of the doctor, the clear intent was to benefit McDaniel.

There have been three elements uniformly required in our case law to establish a doctor-patient relationship: (1) the relationship of doctor-patient; (2) acquisition of information or knowledge during the relationship and (3) the necessity of the information to enable the doctor to treat the patient skillfully. State v. Cole, 295 N.W.2d 29, 32 (Iowa 1980). The trial court noted:

In court-ordered evaluations, the third requirement of the privilege is lacking; the communication is not for the purpose of treatment but to determine the existence of a fact or condition for the benefit of the court. Id. at 33. (Emphasis added).

We find, where an indigent has requested the court to appoint a psychiatrist for purpose of examining and

1. The dissent asserts that the defendant did not raise the issue of physician-patient privilege. We interpret the issues raised by the defendant in his appeal to claim the trial court erred in its ruling on this issue.

assessing his mental condition, the findings and conclusions resulting from such examination are "treatment" within the definition of a doctor-patient relationship. Certainly the first step involved in treatment of a patient is an evaluation of his or her condition by the professional. Dr. Taylor, at McDaniel's request performed this service for McDonald. Dr. Taylor's conclusions are irrelevant to the purpose for which he was initially engaged. In light of the fact that Dr. Taylor's services were intended to benefit McDaniel rather than the court, and that his evaluation was an initial stage of treatment, we find the state was required to rely upon Iowa R.Crim. P.

3(3)(b) for discovery of Dr. Taylor's conclusions. McDaniel did not intend to introduce in evidence at the trial any of Dr. Taylor's conclusions. Dr. Taylor's conclusions arising from his examination of McDaniel were therefore not discoverable. We find the trial court erred in allowing the discovery and testimony.

PREJUDICE: We further conclude the testimony of this doctor was critical for the State in rebutting other expert testimony regarding McDaniel's mental state. The defense was insanity. Dr. Taylor's testimony therefore went to the very heart of McDaniel's defense. We reverse the trial court and remand for a new trial.

Based upon our conclusion, we do not address the constitutional issues raised by McDaniel.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Schlegel, J., concurs; Habhab, J., dissents.

HABHAB, J. (dissenting)

I respectfully dissent.

This case is controlled by the Iowa Supreme Court's opinion in State v. Craney, 347 N.W.2d 668 (Iowa 1984). In that case the supreme court made several holdings which are pertinent here.

First, it held the attorney-client privilege does not extend to cover a court-appointed psychiatrist testifying on defendant's sanity. Id. at 671, 676-78. Next, it stated the physician-patient privilege did not apply, "because the purpose of the consultation was not diagnosis and treatment of the defendant." Id. at 671. Finally, the supreme court ruled the defendant waives the physician-patient privilege by alleging the insanity defense. Id. at 672.

Dr. Taylor was appointed to reach conclusions on McDaniel's sanity or diminished capacity at the time of the offense. This he did. If Dr. Taylor was to render conclusions different from his own professional judgment and expert opinion, he would neither be acting as a physician nor as an appointee of the court.

I would further point out the defendant did not raise the issue of physician-patient privilege. Therefore, the majority is addressing a question which is not properly before us.

The majority cites State v. Collins, 236 N.W.2d 376 (Iowa 1975), Justice Rawlings concurring, in support of its

position. I would distinguish the case. Collins deals with the content of the defendant's statements to the court-appointed psychiatrist and its incriminating effect, in light of Miranda and the right against self-incrimination. See id. at 378-383.

This consideration does not apply in the present case. The State did not offer the doctor's testimony in its case-in-chief. Nor does the defendant argue the doctor related incriminating statements by the defendant. Such testimony is generally impermissible. See id.; Craney, 347 N.W.2d at 673-74. Rather, the State offered the testimony in rebuttal, after McDaniel had opened the door by raising the insanity/diminished responsibility question. Here we are only dealing with the psychiatrist's expert opinion or conclusions as to McDaniel's sanity at the time of the offense. The doctor's testimony was clearly admissible for that purpose.

Finally, the defendant's discovery arguments are without merit. The medical records and reports here are not "within the possession or control of the defendant." Iowa R. Crim. 13(3)(b). The doctor's name was in the public records as a court appointee. Thus, the county attorney could conduct his/her investigation merely by contacting the doctor, especially as the defendant has waived any privilege by asserting the insanity defense. See Craney, 347 N.W.2d at 672.

The trial court was correct in allowing the discovery and testimony. Craney is clearly controlling and we are bound by its rationale. I would affirm.