FILED
APR 25 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
KEENAN STEWART,)
Defendant-Appellant.)

509

8-610
87-1770

Appeal from the Iowa District Court for Polk County (CR 35001), Theodore H. Miller, Judge.

Defendant appeals following his conviction by a jury of first-degree murder. **AFFIRMED.**

William L. Wegman, State Public Defender, and Linda Del Gallo, Assistant Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Considered by Schlegel, P.J., and Sackett and Habhab, JJ.

SCHLEGEL, P.J 510

Defendant Keenan Stewart appeals his conviction, by a jury, of first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (1987). He contends the trial court abused its discretion in denying his motions for a mistrial due to: (1) prosecutorial misconduct and (2) prejudicial comments improperly made by the trial judge in the presence of a juror. We affirm the conviction.

On May 7, 1987, the Polk County Attorney's Office filed a trial information charging Stewart with the first-degree murder of Kristi Skidmore, who bled to death in her apartment after receiving seventeen major stab wounds to her chest and abdomen on March 25, 1987. On October 5, 1987, a jury returned a verdict finding Stewart guilty as charged. Stewart was sentenced to life imprisonment on November 18, 1987.

I. Stewart claims that the trial court abused its discretion in denying his motions for mistrial based upon prosecutorial misconduct. He urges that he was prejudiced when the prosecutor (1) displayed a rack of kitchen knives to the jury in deliberate disregard of a prior ruling by the court; (2) asked a witness whether the victim had a lot of friends and supporters in the courtroom; and (3) evoked the response from another witness that Stewart had been interrogated in a "normal" room when in fact the room had contained polygraph equipment to which Stewart was hooked up.

Trial courts have considerable discretion in passing on mistrial motions, State v. Ware, 205 N.W.2d 700, 702 (Iowa 1973), and we reverse only upon a showing that that discretion was abused. The rule is that prosecutorial misconduct is ground for reversal only if it deprives the accused of a fair trial. State v. Wright, 309 N.W.2d 891, 893 (Iowa 1981). A defendant is entitled to a new trial where it is shown that the prejudicial effect of a prosecutor's actions remained with the jury. State v. Peterson, 189 N.W.2d 891, 906 (Iowa 1971).

During the testimony of Robert Baker, an identification technician with the Des Moines Police Department, the prosecution sought to admit into evidence a knifeholder containing seven knives that had been on the wall in the victim's kitchen. Defense counsel objected to the admission of these knives. The State claimed that the knife rack was relevant to show that the murderer came to the apartment armed and did not kill the victim with one of her own knives. Defendant claimed that the knife rack was irrelevant since none of the knives were alleged to have been the murder weapon. The trial court sustained Stewart's objection, holding that the jury did not need to see the knives.

Dr. Thomas Bennett, the State Medical Examiner, later testified. He opined that the murder weapon was a single-edged, straight-bladed knife at least seven inches

long and one and three-eighths inches thick. The prosecutor then produced the knife rack containing the knives. Defense counsel objected and moved for a mistrial. The trial court overruled the motion on the ground that the knives had not been exposed to the jury. The court further stated that he did not want these items displayed to the jury:

> THE COURT: Well, they haven't been exposed. Just cover them up, doctor. We are not putting them on display here. If you want him to go look at them in the hall or something like that, you may do that, but they will not be shown to the jury.

The prosecutor continued to question Dr. Bennett, and asked him whether he had seen the knives before and whether any of them could have been used to inflict the victim's injuries. Dr. Bennett replied that two of the knives were "consistent with the weapon." Stewart subsequently renewed his motion for mistrial claiming that the prosecutor had deliberately disregarded the court's prior ruling. The trial court denied the motion, finding that the defendant had not sustained any prejudice since the knives "weren't out of the package and [weren't] displayed."

Defendant claims that the prosecutor's actions in displaying the knife rack before the jury prejudiced the defendant in that it served only to inflame the passions of the jury and emphasize the severity and brutality of the victim's death. We disagree. A review of the record indicates the knives themselves were never displayed to the

jury, and the court repeatedly admonished the jury that "if there has been any inferences here to be drawn from the package of the box, disregard it." Furthermore, the record indicates that an actual size silhouette of the knife was received into evidence, and testimony and photographs concerning the wounds inflicted on the victim were also presented to the jury. In light of the foregoing, we fail to find any abuse of discretion by the trial court's refusal to grant a mistrial.

Stewart also claims that he was prejudiced when the prosecutor elicited testimony from the victim's sister that the victim had a lot of friends and supporters in the courtroom. Defense counsel objected to this questioning and the trial court sustained the objection. Defendant claims that this question was irrelevant and served only to prejudice the jury against the defendant and jeopardized his right to a fair trial.

We fail to see how this testimony was in any way prejudicial to defendant's case, particularly in view of the fact that similar testimony, to the effect that the victim had a lot of friends and was "just friends with everyone," was elicited from a previous witness. We see no merit to this claim.

Defendant further claims that he was prejudiced when Officer James O'Donnell of the Des Moines Police Department was allowed to testify that Stewart was interrogated in a

"normal" room. Defendant claims that such testimony left the jury with the impression that defendant's subsequent "devastating and incriminating statements" were made in a normal environment under normal circumstances, and that defendant was precluded from effectively rebutting this inference on cross-examination, because to do so, defense counsel would have had to "[bring] forth to the jury the fact that polygraph equipment had been in the room and that defendant had taken a polygraph examination."

We see no merit to defendant's vague and generalized claim of prejudice. We further fail to find any indication from the record that Stewart's confession was the result of police coercion, or that it was given against his will.

II. Stewart last alleges judicial misconduct occurred in an exchange involving a juror's possession of a newspaper at trial. Stewart alleges that the judge's remark "shall we call over to the Register and tell them to go out and pick up all their newspapers in town too while we're at it?" revealed the judge's irritation with defense counsel and hostility toward him and thus "permeated the trial."

"Trial courts should of course act impartially and avoid conduct from which the jury would infer bias against or in favor of a party." State v. O'Kelley, 211 N.W.2d 589, 596 (Iowa 1973). Here, the court's comment to defense counsel fails to rise to the level of prejudice necessary

for reversible error. See State v. Larmond, 244 N.W.2d 233, 235 (Iowa 1976); State v. Kimball, 176 N.W.2d 864, 867 (Iowa 1970). In the absence of any other evidence indicating partiality by this judge, we find no merit to this claim.

Defendant's conviction of murder in the first-degree is affirmed.

AFFIRMED.