IN THE COURT OF APPEALS OF IOWA

No. 1-271 / 00-0947
Filed May 23, 2001

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PATRICK LEE CURNES,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge.

Defendant appeals from the judgment and sentence entered upon a jury verdict finding him guilty of first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (1999). He contends his trial counsel was ineffective in failing to sufficiently present his extensive history and current state of mental illness and psychotic episodes so the jury could properly determine whether he was sane at the time of the murder. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Stephen H. Holmes, County Attorney, and Angelina Newman, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Appellant defendant Patrick Curnes appeals the judgment and sentence entered following a jury verdict against him of first-degree murder in violation of Iowa Code section 707.1 and 707.2 (1999). Defendant was charged with the August 25, 1999, murder of his friend, Sam Kingery. Defendant claims on appeal that his extensive history and current state of mental illness were not sufficiently represented at trial by his defense counsel such that the jury could properly determine whether he was sane at the time of the murder.

In July of 1999 defendant Curnes, who voluntarily sought treatment from Mary Greeley Medical Center of Ames, was diagnosed as having a bipolar affective disorder and substance abuse problem. After a brief hospitalization there, defendant was referred to a substance abuse treatment center in Burlington for long-term treatment. On August 10, 1999, he was released from the center with the recommendation that he address his bipolar disorder. Apparently the center believed it could not treat his alcohol problems until defendant had been treated for his mental illness. Upon leaving the center in Burlington, defendant bought a bike and rode it to Grinnell. He was given a ride the rest of the way back to Ames.

On August 25 defendant began drinking beer in the morning. He met his friend Sam Kingery and, with Kingery, continued drinking and smoking methamphetamines all day long. At some point during that day defendant fell asleep and later awoke to find Kingery's mouth on his penis and Kingery's finger in his anus. Kingery's molestation enraged Curnes. The two later left on their bicycles for defendant's trailer.

When they arrived they found Paul Treadwell. The three of them bought more beer and continued consuming it. Some time later Kingery began to masturbate in front of the other two. This also enraged defendant, who ordered Kingery to go inside the trailer, throwing a brick after him. Defendant then proceeded to throw a lawnmower and a weedeater, both turned on, into the trailer after him.

After turning the lawn machinery off and removing them from the trailer, defendant entered the trailer. Treadwell entered a short time later and observed defendant strangling Kingery with a cord, beating his head onto the floor, and pouring dish soap into his throat. As Treadwell was leaving to get help, defendant followed him outside, claiming he was going to kill Kingery. Defendant picked up a hammer and walked back into the trailer. Treadwell could hear thumping noises from inside the trailer as he was leaving.

Later another man, Jason Hovick, who had come to defendant's trailer to borrow a video, found defendant still at his trailer, having the appearance of having just taken a shower. Defendant and Hovick smoked a cigarette outside of defendant's trailer until the police arrived shortly thereafter.

The police found Kingery dead inside the trailer. There were bruises and lacerations about his face, neck and the base of his skull, and a ligature mark around his neck, indicating strangulation. The several crushing skull fractures he had suffered were ruled to be the cause of his death. A barbeque fork had been pounded into his chest and there were several sharp objects sticking out of his genitals.

Defendant has a long history of mental illness and substance abuse. According to the Pre-sentence Investigation Report (PSI), he was first hospitalized for psychiatric illness in 1973 for three and one half weeks. In 1978 the defendant was hospitalized and diagnosed as being ambulatory schizophrenic. In 1980, under court order, defendant went to the Iowa Security Mental Hospital where he was diagnosed as having schizoaffective disorder and antisocial personality disorder. He was again hospitalized in July of 1996 at Mary Greeley Medical Center in Ames and was diagnosed at that time as suffering from bipolar disorder and substance abuse. Since then he has been hospitalized at least twice at Mary Greeley, most recently in July of 1999. Defendant has been further hospitalized in Oakdale, Clarinda, and Broadlawns.

We review an ineffective assistance of counsel claim on direct appeal de novo. *State v. Carter,* 602 N.W.2d 818, 820 (Iowa 1999). In order to demonstrate he received ineffective assistance from trial counsel, defendant must establish 1) his attorney failed in an essential duty; and 2) prejudice resulted. *State v. Artzer,* 609 N.W.2d 526, 531 (Iowa 2000). In establishing his case defendant must overcome our strong presumption that counsel was competent. *Brewer v. State,* 444 N.W.2d 77, 83 (Iowa 1989).

Defendant first contends that trial counsel failed to provide an expert witness of sufficient caliber and with sufficient understanding of Curnes's mental health history to adequately offset testimony by the State's expert witness. However defendant has made no showing that the expert used at trial was inadequate. Besides his claim that the expert's credentials did not match up to those of the State's expert witness, defendant makes no specific showing of what

qualifications the expert should have had or how an expert with other qualifications could have better served his case.

Furthermore the expert witness called by defense counsel was qualified. Rogers is a licensed psychologist and has a Ph.D. in Clinical Psychology. At the time of trial he specialized in psychological evaluations, having done at least 900 of them in the previous four years. Of the criminal evaluations he had made for various defense counsel in the past, only about twenty-five percent helped establish that the defendant did have a mental health problem at the time of the crime. In this case Rogers found defendant was mentally incompetent, testifying that the defendant lacked the ability to distinguish between right and wrong. He based his diagnosis on a thorough evaluation of defendant's mental health history, his observation of the videotaped police interview of defendant after the murder, and his personal interview with him. Rogers completed a comprehensive analysis and found that defendant was mentally ill. We will not, as the defendant advocates we should, pick out specific details of the defendant's life, presume Rogers failed to address these details in his analysis, and presume the jury would have found defendant insane had they been included. Defendant has failed to show his trial attorney was ineffective in using Rogers as his only expert.

Defendant next contends that his trial counsel failed him by not introducing as direct evidence defendant's past medical history, complete with testimony by prior physicians and counselors who had previously diagnosed him. Evidence of his lengthy history of mental illness, complete with prior diagnoses of schizophrenia, presumably would support defendant's claim that he was insane

at the time of the murder. Yet, although not in the form of specific testimony by prior physicians, that evidence was before the jury. Rogers testified that in making his evaluation he had consulted defendant's medical history records, indicating defendant had a history of serious psychological problems, beginning with records taken when defendant was seventeen, the age at which serious psychological problems often develop. Although defendant's counsel did not call numerous doctors to testify to defendant's history of mental illness, that history was before the jury in Rogers's testimony. Defendant has failed to show he was prejudiced by his trial attorney's failure to call additional witnesses to testify to his medical history.

Defendant's third contention is that his counsel failed to bring forth general reputation evidence from lay persons associated with the defendant to corroborate his insanity defense by testifying that, according to their observations, he was mentally ill. First of all, no lay testimony regarding reputation could be more convincing with respect to the defendant's mental state than his diagnosis of schizophrenia and bipolar disorder, which defense counsel offered to the jury through Dr. Rogers's testimony. Although the jury chose to believe an alternative psychological evaluation of defendant's mental state, there is no reason to believe lay evaluations by neighbors and community members would have convinced a jury that the defendant was insane when a clinical evaluation of insanity by a licensed Ph.D. did not.

Furthermore, defendant's counsel did present additional testimony of defendant's unusual mental state through witnesses who observed the defendant the day of the murder. Those witnesses, including officers who encountered the

defendant at his trailer and who transported him to the station, as well as defendant's own acquaintances, Thomas Treadwell and Jason Hovick, testified about the defendant's strange behavior, including his references to himself in the third person and his talk of the "dark side of the moon," inexplicably, right after the murder. Friends, neighbors, or other acquaintances with a general impression of the defendant's mental state could provide no better evidence of his state of mind at the time of the murder than these witnesses could.

The issue of the mental state of the defendant is an issue of fact. Whether a long history of mental illness demonstrates defendant was mentally ill at the time of the murder is a question for the jury. The jury was presented with plenty of evidence, both in support of a finding of insanity and against it. When conflicting psychiatric testimony is presented to the fact finder, the issue of sanity is clearly for the fact finder to decide. *State v. Jacobs,* 607 N.W.2d 679, 685 (Iowa 2000). Defendant has failed to prove that his trial attorney provided ineffective representation.

AFFIRMED.