IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 6-512 / 95-1206

STATE OF IOWA,
Appellee,

vs.

DAVID YWAIN FIELDS,
Appellant.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge.

Defendant appeals judgment and sentence, following jury trial, entered upon his conviction of second-degree murder in violation of Iowa Code section 707.2(1) (1993). **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Denver D. Dillard, County Attorney, and Jerry Vander Sanden, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Habhab and Vogel, JJ.

VOGEL, J.

David Fields was charged with first-degree murder for the killing of Elonda Lacey. Lacey was killed on December 30, 1994, in her apartment. Fields lived in a first-floor apartment in the same building. Lacey lived on the second floor. When police officers arrived on the scene, they found Fields in Lacey's apartment holding Lacey's head in his lap. Both Fields and Lacey were covered in blood. Fields later voluntarily accompanied officers to the police station for several hours of questioning. Fields fled the state not long after the murder.

The same day as the murder, police officers obtained a search warrant for Fields' apartment. Lacey's son, Aaron, led officers to a garbage can in an alley near the apartment building. There, officers found two plastic sacks containing bloody clothing and a knife. Both the clothing and the knife had Lacey's blood on them. The knife had Fields' fingerprints and Fields' palm print.

Upon Fields' return from Arkansas, Detective Stan McClurg read Fields his Miranda rights and asked if Fields would talk with him. McClurg asked Fields if anybody else was involved in Lacey's death. Fields' response was yes. Fields said he would like to tell his side of the story, but that he wanted a promise from McClurg that he would not have to serve time or go to an Iowa prison. McClurg stated he could not make that deal. McClurg then terminated the interview.

The district court denied Fields' motion to suppress the items seized during the search of his apartment. Fields' motion in limine to disallow McClurg's testimony about Fields' comments to him was also denied.

Robert Jones testified that he got to Fields' apartment at about 2:30 p.m. on December 30, 1994. Jones asked Fields for $25 Fields owed him. Fields went upstairs and then returned stating he needed to get change. Jones, Fields, and Lacey's son, Aaron, walked to a nearby service station. After arriving at the service station, Fields left Aaron with Jones, telling Jones he would be right back. Fields had not returned after about fifteen minutes, so Jones and Aaron walked back to Fields' apartment.

Upon returning to the apartment, Lacey's daughter, Kierra, was standing at the front door crying. Jones picked her up and noted she had blood on her forehead. He called up to Lacey's apartment that it looked like the girl had fallen. Fields responded he would be right down. Jones testified Fields took Kierra upstairs and then Fields returned. When Fields came down the steps, Jones noted a red color on both of Fields' arms from the elbow down to the hand. Jones testified Fields was breathing heavy and was shaking. Jones asked what happened and Fields stated he killed Lacey because she owed him $150. Jones watched Fields change his clothes and put them into plastic grocery sacks. Then Jones, Fields, and Aaron left the residence. When Jones parted company with Fields and Aaron, Fields told him, "You weren't here."

Law enforcement personnel and others testified. The prosecutor's relevancy objections to Fields' attempts to ask one detective about whether persons in Lacey's family had been convicted of drug offenses or were connected to a street gang were sustained.

Fields was convicted of second-degree murder.

Fields appeals.

I. ***Search Warrant.*** Fields contends the district court erred in overruling his motion to suppress the fruits of a search of his apartment. Fields argues the search warrant was improperly issued because the affiant failed to include information in the warrant affidavit which impeached the sole basis for a finding of probable cause. As fourth amendment rights are at issue, our review is de novo. *See State v. Lamp*, 322 N.W.2d 48, 50 (Iowa 1982).

In reaching our decision on this issue, we will not examine the validity of the search warrant itself. For even if the search warrant had been improperly issued, the error in failing to grant the motion to suppress would have been harmless.

Our harmless error analysis is based on the overwhelming evidence in this case outside of the evidence obtained pursuant to the search of Fields' apartment. Fields confessed his guilt to Robert Jones not long after the murder. After admitting to the murder, Roberts observed Fields changing out of bloody clothing and putting the bloody clothing in a plastic bag. The murder weapon was later found, along with some bloody cloths, in some plastic bags in an alley near the apartment building

where the murder took place. Police officers were led to the plastic bags in the alley by Lacey's son, Aaron. Fields' fingerprints and palm print were found on the murder weapon. Fields also fled the State of Iowa after the murder. We conclude that any error which may have been committed by the district court was harmless beyond a reasonable doubt.

II. ***Evidence Concerning a Plea Bargain.*** Fields contends the district court erred in admitting evidence regarding his limited attempt to strike a plea bargain and the termination of his interrogation. He argues testimony given by Officer Stan McClurg constituted an improper comment on Field's invocation of the right to silence in violation of *Doyle v. Ohio*, 426 U.S. 610, 618, 96 S. Ct. 2240, ____, 49 L. Ed. 2d 91, 98 (1976). For this constitutional issue, our scope of review is de novo. *See State v. Davis*, 446 N.W.2d 785, 787 (Iowa 1989).

McClurg's testimony revealed: 1)Fields never invoked his right to silence and 2) he stated a desire to give a statement after waiving his *Miranda* rights. *See State v. Wullner*, 401 N.W.2d 214, 218 (Iowa App. 1986) (no violation of *Doyle* where defendant does not invoke the right to silence, and instead elects to respond to custodial interrogation). We conclude there was no violation of *Doyle*.

Fields also claims the testimony of McClurg was inadmissible because it was an offer of settlement and not an admission of guilt. We review for an abuse of discretion. *State v. Oliver*, 341 N.W.2d 24, 33 (Iowa 1983). Fields said he wanted a promise from McClurg that he would not have to serve time or go to an Iowa prison

before he would tell his side of the story. McClurg told Fields he could not make such a promise and terminated the interview. The questioning did not involve a prosecutor with authority to enter into plea negotiations. We find Iowa Rule of Evidence 410(4)[1] does not apply. Thus, we conclude the district court did not abuse its discretion in admitting this evidence.

III. ***Evidence Concerning Gang Members.*** Fields contends the district court erred in excluding testimony concerning the victim's alleged connection to gang members and drug dealing. Our standard of review is for abuse of discretion. *Oliver*, 341 N.W.2d at 33. We have serious doubts as to whether this issue was properly preserved; however, after consideration of Fields' arguments on appeal, we conclude the district court did not abuse its discretion in failing to admit the excluded testimony.

IV. ***Ineffective Assistance of Counsel.*** Fields contends he was denied his right to effective assistance of counsel. Specifically, Fields argues his counsel failed to object to prejudicial conduct by deputies while he was testifying.[2]

In reviewing claims of ineffective assistance of counsel, we review de novo the totality of the relevant circumstances. *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa

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[1] Iowa Rule of Evidence 410(4) states that "any statement made in the course of plea discussions with an attorney for the prosecuting authority which did not result in a plea of guilty or which resulted in a plea of guilty later withdrawn" is inadmissible.

[2] Fields alleges that while he was testifying at trial, the deputies in the courtroom pointed their guns at him.

1987). The burden is on the defendant to prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Id.* at 131-32. In making an ineffective assistance of counsel claim, this court must be provided, at a minimum, with enough information to make an initial assessment. *State v. White*, 337 N.W.2d 517, 519 (Iowa 1983). Other than his bald assertion in his appellate brief, Fields has provided this court nothing with which an assessment of the claim can be made. Since Fields has failed to meet his initial burden, his claim fails on direct appeal.

AFFIRMED.