FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-005 / 91-1738

000865

STATE OF IOWA,

Appellee,

vs.

ANTHONY KING SMITH,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Alan L. Pearson, Judge.

The defendant appeals the district court's judgment, following a jury trial, finding him guilty of first-degree murder. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Richard J. Bennett, Assistant Attorney General, and Thomas J. Ferguson, County Attorney, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

The defendant, Anthony King Smith, appeals the district court's judgment, following a jury trial, finding him guilty of first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (1991). Smith contends the trial court abused its discretion by: (1) failing to sustain Smith's challenge for cause to juror Yordanoff and failing to sustain Smith's motion to strike juror Davis; and (2) permitting the State to introduce evidence regarding an Illinois arrest warrant charging Smith with first-degree murder.

On the evening of September 26, 1990, Smith, Trina Cooper, and several other people went to Goodies Lounge in Waterloo, Iowa. They had consumed alcohol prior to arriving at Goodies, and they had left several times while at Goodies to purchase more alcohol. According to Cooper, her sister, Caprice, asked Cooper for some money to purchase orange juice. Cooper testified at trial that she dropped money on the floor as she was giving Caprice the requested money. Danitra Matlock testified she observed Smith and Cooper enter the bar and stated a friend of Matlock's saw Cooper drop the money on the floor; the friend picked up the money. Cooper then told Smith that Matlock's friend had picked up her money. Smith approached Matlock and asked her for the money. Matlock gave Smith one dollar. When Smith returned to Cooper, Cooper informed Smith she believed she had dropped more money than one dollar.

Smith returned to the woman who had picked up the money and began arguing about the amount taken. A man, later identified as the victim, Frank Davis, began arguing with Smith. Davis pushed Smith, and others joined Davis in beating Smith. The police arrived after the fight had ended and talked to Smith, who was bleeding and suffering pain. Smith stated he wanted to go home.

Smith returned to Goodies to get Cooper's sister and a friend. Smith was allegedly heard telling someone that "they" had jumped him and that they would soon be "dead son of a bitches." Smith and Cooper returned to their home; Cooper's mother attempted to talk to Smith, but Smith was enraged and ran out the door. Caprice Cooper, Trina's sister, testified that she (Caprice) saw Smith put a gun in his pants and pull his shirt over the gun.

Smith returned to Goodies thirty minutes later. Sandra Lyons, a bartender at Goodies, testified that Smith approached the bar to order a beer. When told that beer night was over, Lyons observed Smith move toward the back of the bar and later observed Smith move behind Davis. She testified she saw Smith lift his right arm to the back of Davis's head and then heard two shots. Lyons testified she heard two more shots after Davis slumped over. Lyons then observed Smith run out the door. Davis received three close-range gunshot wounds to the back of his head and two gunshot wounds to his back.

Smith was arrested the following day. Smith admitted he had shot Davis. Dr. Michael Taylor performed a psychiatric evaluation of Smith and concluded that Smith was borderline mentally retarded and had a long history of drug and alcohol abuse, antisocial personality disorder, and head trauma. Dr. Taylor further testified Smith was capable of premeditation and of forming an intent to kill. Dr. Frank Gersh, an examining psychologist, also concluded that Smith was capable of premeditating and of forming an intent to kill, but testified that Smith's capacity to deliberate was severely impaired.

During the jury selection process, Smith's trial counsel sought to challenge juror Yordanoff, claiming Yordanoff had expressed an extreme distrust of psychiatrists and their studies. The trial court held that Yordanoff's opinions regarding psychiatrists did not reflect his ability to determine whether Smith had formed specific intent to commit the crime. Later, prior to the jury's swearing in, juror Davis then informed the court attendant that she had doubts as to whether anyone could successfully rely on the diminished capacity defense. Smith's trial counsel filed a motion to strike juror Davis, which was denied. Following trial, the jury found Smith guilty as charged, and Smith was sentenced to life imprisonment. Smith now appeals.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable. State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 326 A.2d 138, 140 (Vt. 1974)).

Smith first contends the trial court erred in failing to sustain his challenge for cause to juror Yordanoff. Smith maintains Yordanoff's lack of faith in psychiatrists' opinions as a result of his personal experiences adversely interferred with Yordanoff's ability to reach a fair verdict. Smith argues this is particularly true in light of the fact that Smith's sole defense was diminished responsibility and the fighting issue at trial was not whether Smith shot Davis, but rather whether Smith possessed the requisite specific intent for a first-degree murder conviction. More specifically, Smith contends that Yordanoff's inability to have any faith in psychiatrists caused Yordanoff to disbelieve the expert testimony concerning Smith's ability to form specific intent.

Having thoroughly reviewed and carefully considered the entire record in this case, we conclude the district court did not abuse its discretion in denying Smith's challenge for cause to juror Yordanoff. Iowa Rule of Criminal Procedure 17(5)(k) (1993) provides that a challenge for cause may be made when a juror has formed an opinion as to the guilt or innocence of the accused which would prevent

the juror from rendering a true verdict based on the evidence presented at trial. See also State v. Simmons, 454 N.W.2d 866, 868 (Iowa 1990). A finding that the district court abused its discretion when ruling on such a challenge is not proper unless, "the juror . . . [had] such a fixed and unqualified opinion [of the guilt of the defendant] as to disqualify him". (Emphasis added.) State v. Rhodes, 227 Iowa 332, 342, 288 N.W. 98, 103 (1939). We do not believe Yordanoff formed such an opinion.

The jury selection proceedings were not reported in the present case. However, prior to the selection of alternate jurors, a record was made by the court and by the parties regarding the events that had occurred during the course of jury selection. Several jurors had been excused for cause by consent with the exception of Yordanoff and Davis. The following record was made regarding Yordanoff's previous responses during jury selection:

> **THE COURT:** And he stated, pretty forthrightly I think, that he had no faith in psychiatrists. He didn't use the word bunk, but I think we could probably fairly describe that attitude to him. And he also had little use for intelligence tests. The Court's perception was he wasn't quite as negative about intelligence tests as he was about psychiatrists but nevertheless he made it clear that his personal experience with them was such that he really didn't believe much in their validity.
>
> At that point the defendant asked to strike the juror for cause and the Court declined to do so[,] stating that the juror was free to hold whatever opinions he chooses to hold or chose to hold about psychiatrists and about intelligence tests, that they did not go to any elemental issue in the case. And so the juror remained and eventually the panels were passed for cause and the jury of

12 was -- was selected. Nevertheless the Court did leave the juror on the panel. And to the extent the defendant wished to have the juror eliminated was forced to use one of the ten strikes available in the normal process.

Miss Knock [counsel for defense], from your point of view does that adequately recite for the record the events that occurred?

MS. KNOCK: Yes, Your Honor.

THE COURT: Mr. Ferguson?

MR. FERGUSON: Yes, Your Honor.

THE COURT: Okay. We've got about ten minutes before we start.

MS. KNOCK: Your Honor, regarding Mr. Yordanoff, I'd just like to say for the record I tend to disagree with the Court in that there was an elemental issue involved here that was affected by this potential juror's attitudes on psychiatry. I think he said he'd been evaluated by three different psychologists and psychiatrists and was given three different opinions as to his mental problems.

Also for the record this individual was on a medical disability and that is the reason he was evaluated by these three different professionals. I felt that he should be stricken for cause because regarding whether or not in fact Mr. Smith shot and killed Mr. Davis is not in issue but the element of Mr. Smith's ability to deliberate, premeditate and perform or have the specific intent to kill is the key elemental issue in this case. And I felt that this Juror's inability to have any faith in psychiatrists, I feel that the evidence in this case is going to be -- that's going to be the key evidence in this case to be presented to the jurors. I felt that he would not be able to reach a fair verdict.

THE COURT: I understand. I understood that yesterday. It's just from the Court's point of view he expressed no opinion about specific intent or what he believed about specific intent or what might be proved about specific intent. He just talked about psychiatrists and intelligence tests.

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We cannot say that the foregoing discussion of Yordanoff's responses affords a premise upon which to hold Yordanoff entertained a disqualifying prejudice or preconceived opinion regarding the defendant's guilt or innocence. See State v. Houston, 206 N.W.2d 687, 689 (Iowa 1973).

Next, Smith contends the trial court should have granted his motion to strike juror Davis. Smith argues Davis was predisposed to disbelieving the defense of diminished responsibility. Smith claims such an opinion unfairly influenced the verdict despite Davis's statement that she was capable of applying the law fairly. We disagree. A direct record was made of juror Davis's responses following a recess in the trial, after the court attendant informed the court and counsel that Davis had expressed concerns about serving on the case as a result of her attitude toward the defense of diminished responsibility. Our review of this record reveals no abuse of discretion by the trial court in denying the motion. Davis was questioned as follows:

> **MR. FERGUSON:** Miss Davis, it's come to our attention that yesterday you expressed some concern to the baliff about diminished responsibility. And before we begin, I believe yesterday at one of the breaks you came up to me and asked to speak to --
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> **MS. DAVIS:** Yes.
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> **MR. FERGUSON:** -- either myself or the other counsel or myself?
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> **MS. DAVIS:** Uh-huh.
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> **MR. FERGUSON:** And at that time I asked -- did I ask you to talk to the baliff?

MS. DAVIS: Right.

MR. FERGUSON: Okay. What is it you're concerned about diminished responsibility? What exactly did you tell the baliff or what's your concerns as you sit here now?

MS. DAVIS: If this trial is coming to the defense of a person being not mentally competent at the time of the crime, I just have a personal problem with that.

MR. FERGUSON: Okay.

MS. DAVIS: I just don't feel that that's a good defense.

MR. FERGUSON: Okay. And Court will, you know, we don't know exactly what all will come into this case, but there's excellent chance that some testimony is going to come in concerning diminished responsibility. Court will give you some instructions on it. Could you follow the law?

MS. DAVIS: What type of instructions?

MR. FERGUSON: Well, we can't get into exactly what the instructions will say. But there's certain standards that the law provides for diminished responsibility and how that affects the case and how that affects certain elements of the case. Now if the Court instructed you to follow that, could you do so?

MS. DAVIS: I would try to, yes. But I just -- I want to be fair to the person and I just -- I have a problem with people that just say that I was out of my mind when I did that.

MR. FERGUSON: Okay. Okay. And I appreciate you coming forward and letting us know this. Do you have -- have you formed any opinion as to this man's guilt or innocence as he sits here now?

MS. DAVIS: No.

MR. FERGUSON: All right. I know you indicated that -- Could you try to follow the law?

MS. DAVIS: Yeah, I would try.

MR. FERGUSON: Okay. Are you opposed to following the law in the case?

MS. DAVIS: Well, no. No, but I just wanted you to be aware of that.

MR. FERGUSON: Okay.

MS. DAVIS: That I just -- I have a problem with that.

MR. FERGUSON: Okay. Thank you, Miss Davis. Miss Knock may have some questions for you.

THE COURT: Miss Knock.

MISS KNOCK: Thank you. Miss Davis, you had sufficient concern about the possibility of the defense that you felt it was necessary to bring that information forward; is that correct?

MS. DAVIS: Uh-huh, yes.

MISS KNOCK: And then your concern was so personal that it wasn't something that you felt comfortable in bringing out during the entire process in front of the other prospective jurors; is that correct?

MS. DAVIS: Yes.

MISS KNOCK: And because of that personal concern that you have, do you think in all honesty that concern you have would -- would -- could prevent you from bringing back a fair and impartial verdict? In all honesty can you give me a yes or a no answer?

MS. DAVIS: I think I could be fair.

Despite juror Davis's statements regarding her reservations about the diminished responsibility defense, the record reveals Davis had not formed an opinion regarding the defendant's guilt or innocence. In addition, the record illustrates Davis was not opposed to following the law as instructed, and Davis stated she believed in all honesty she could be fair. In light of this record, we conclude Davis's reservations regarding the diminished

responsibility defense did not rise to the level of a fixed opinion of guilt or innocence. We further believe Davis set aside any reservations she may have had when judging Smith's guilt or innocence. Accordingly, we hold the trial court did not abuse its discretion by leaving Davis on the jury.

Finally, Smith argues the trial court abused its discretion by permitting the State to introduce evidence of an outstanding Illinois arrest warrant against Smith for first-degree murder. Smith contends such evidence was not relevant to any issue at trial and, even if relevant, should have been excluded because its probative value was substantially outweighed by the danger of unfair prejudice to the jury. The district court ruled the State could introduce evidence that at the time the police stopped Smith, prior to the shooting, there was an outstanding warrant for his arrest for a "serious offense."

We conclude such evidence was relevant since it tended to make the existence of a fact of consequence to the determination of the action more or less probable. See Iowa R. Evid. 403 (1993). More specifically, evidence of the existence of the outstanding arrest warrant corroborated police officer testimony at trial that Smith did not want the police to investigate the events leading to the beating Smith received in Goodies Lounge prior to the shooting. The State contended the defendant did not

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want the police to investigate the matter because an investigation might lead to Smith's arrest due to the outstanding warrant.

This evidence is probative of Smith's state of mind regarding premeditation and deliberation; the evidence bore on the defendant's ability to consider and weigh the consequences of his actions. If Smith had been arrested, he would not have been able to seek revenge against Davis by shooting Davis, as the State contended.

Evidence of the arrest warrant was admitted only after defense counsel had elicited testimony suggesting the police had refused to investigate the beating incident in the bar despite Smith's request that they do so. Evidence of the outstanding arrest warrant was probative of the actual circumstances occurring when the police stopped Smith after the beating and prior to the shooting. Accordingly, we conclude the testimony concerning the outstanding arrest warrant was relevant.

In addition, we do not believe the danger of unfair prejudice resulting from evidence of the arrest warrant substantially outweighed the probative value of the evidence. The district court specifically instructed the State that it could only make reference to the outstanding warrant as being one for a "serious offense." The jury was not permitted to know that in fact the outstanding Illinois arrest warrant against Smith was for murder. In this way, the court properly balanced the probative value of the evidence against any unfair prejudicial effect.

Accordingly, we hold the district court did not abuse its discretion, and we affirm Smith's conviction for first-degree murder.

AFFIRMED.