

FILED

NOV 30 1987

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

STEVEN BRUCE HEPPERLE,

)

Defendant-Appellant.

)

Filed November 30, 1987

306

7-199
86-605

Appeal from the Iowa District Court for Black Hawk County (D7X004817),
James C. Bauch, Judge.

Defendant appeals his conviction of murder in the first degree, asserting (1) that he was interrogated in custody, but not given a Miranda warning, and that evidence should have been suppressed, and (2) the trial court erred in allowing evidence concerning a prior sexual abuse conviction to be admitted for the purpose of showing identity. **AFFIRMED.**

Gary Kazragis of Rickert, Thompson & Kazragis, Reinbeck, for defendant-appellant.

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

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

The defendant was convicted, after a jury trial, of murder in the first degree. The defendant was a former neighbor of the victim, who had been beaten and tied up and had died of ligature strangulation. The defendant argues that he was interrogated in custody, but not given a Miranda warning, and that evidence should have been suppressed. Furthermore, the defendant claims that the trial court erred in allowing evidence concerning a prior sexual abuse conviction to be admitted for the purpose of showing identity. Our scope of review is on assigned error, except with regard to allegations of constitutional violations, which we review de novo, making an independent evaluation of the totality of the circumstances. State v. Lawless, 332 N.W.2d 120, 121 (Iowa App. 1983). We affirm.

The defendant, Steven Hepperle, was convicted of first-degree murder for the murder of Diane Voss. Voss was found naked with several bruises and signs of bondage. All of her undergarments had been taken. Two days after the murder, the defendant was questioned at the police station for two hours regarding the murder.

I. Admissibility of Defendant's Statement to Police. The defendant claims that the trial court incorrectly overruled his motion to suppress evidence from statements he made at the police station. He argues that when he was questioned it was a "custodial" interrogation and therefore, Miranda warnings should have been given. See Oregon v. Mathiason, 429 U.S. 492, 494, 97 S. Ct. 711, 714, 50 L. Ed. 2d 714, 719 (1977). The United States Supreme Court has defined a "custodial interrogation" as being "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way." Id. (citation omitted). Having reviewed the record in this case, we find that the defendant was not in custody when his interrogation occurred. The evidence does not support a conclusion that

the defendant was "deprived of his freedom in any significant way." The defendant voluntarily went to the police station after a police officer asked if the defendant would come to the station to discuss the incident. The defendant rode in the police car with the officer so as to facilitate transportation, not because he was being taken into police custody. The interview was conducted in a friendly, cordial manner and the defendant was not threatened or coerced. The interview occurred during normal working hours. Nothing was ever said to the defendant to indicate that he was not free to leave. The investigation was still in its early stages and had not focused on the defendant. Rather, the police had several possible suspects at the time of the defendant's interview. The United States Supreme Court has stated that Miranda warnings are not required "simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect." California v. Beheler, 463 U.S. 1121, 1125, 103 S. Ct. 3517, 3520, 77 L. Ed. 2d 1275, 1279-80 (1983) (citation omitted). Because the police did not so restrict the defendant's freedom as to render him in custody, Miranda warnings were not required.

II. "Other Crimes" Evidence. The defendant argues that the trial court erred in allowing testimony concerning a prior sexual abuse charge against him. The witness, Sherri Ferguson, testified that the defendant tied her up, tried to strangle her, threw her undergarments around the room, and then had intercourse with her. In State v. Cott, 283 N.W.2d 324 (Iowa 1979), the Iowa Supreme Court stated:

The general rule is that "one crime cannot be proved by proof of another." The purpose of the rule is to exclude from the jury's consideration evidence which has no relevancy except to show that the defendant is a bad person and thus likely committed the crime in question. Consequently, evidence which is relevant to prove some fact or element in issue other than the defendant's criminal disposition escapes the rule's prohibition. We have accordingly recognized certain categories of permissible objectives for proof of prior criminal acts:

(1) motive, (2) intent, (3) absence of mistake or accident, (4) a common scheme or system of criminal activity embracing the commission of two or more crimes so related that proof of one tends to prove the other, (5) identity of the person charged with commission of the crime.

Id. at 326. This general rule has been codified in Iowa Rule of Evidence 404(b). In this case the State presented the testimony of Sherri Ferguson to prove the "identity of the person charged with the commission of the crime," and we believe that it was properly admitted for that purpose. In deciding whether evidence of a prior crime may be admissible under one of the recognized exceptions to the general rule, it must be determined whether the circumstances of the prior crime are sufficiently similar to those in the present case. State v. Walsh, 318 N.W.2d 184, 185 (Iowa 1982). Iowa has adopted an approach to this analysis which "permits other-crime testimony if the common circumstances are 'strikingly similar,' 'peculiar and distinctive,' or of a 'like or unique nature.'" Id. at 186. After reviewing the record in the case before us and comparing the circumstances of this crime with the crime involving Sherri Ferguson, we hold that the crimes are "strikingly similar" and therefore, the testimony was properly admitted. The following similarities between the Ferguson crime and the murder of Diane Voss appear:

1. The victim of the first crime was bound by the wrists and ankles; the injuries to Diane Voss appear to indicate that she too was bound by her wrists and ankles.
2. In the prior crime, the defendant searched for the victim's underwear and threw it around the room; in the present case, Diane Voss's underwear was missing.

3. The victim of the prior crime was raped; the evidence in the instant case shows that seminal fluid stains were found on the victim's robe, indicating possible sexual abuse.

4. In the prior case, the victim was assaulted in the neck area; in the instant case, Diane Voss was killed by ligature strangulation.

5. The victim in the prior crime was told that "everything would be okay;" a window peeper in the instant case overheard a man in Diane Voss's house telling a moaning woman that everything would be all right.

Based on these striking similarities, we find Sherri Ferguson's testimony to be relevant on the issue of the identity of Diane Voss's killer. Furthermore, we believe that while the evidence of the prior crime is indeed damaging to the defendant, the probative value of such evidence outweighs its prejudicial effect. We therefore affirm the trial court's ruling.

AFFIRMED.