STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1008

State of Minnesota,
Respondent,

vs.

Armstrong Weston,
Appellant.

Filed July 21, 2009
Affirmed
Stauber, Judge

Ramsey County District Court
File No. 62K206003897

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, Perssis Meshkat, Certified Student Attorney, Ramsey County Government Center West, Suite 315, 50 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal from his conviction of second-degree murder, appellant argues that (1) the district court erred in finding that statements he made to police after he asked, "Do I need a lawyer?" were admissible because the police failed to clarify the reference to counsel before questioning him and (2) the circumstantial evidence presented at trial was insufficient to support his conviction. We affirm.

FACTS

On October 6, 2006, at 2:49 p.m., a 911 dispatcher received an emergency call from A.S., who lived in an apartment on Bush Avenue in St. Paul. A.S. told the dispatcher that she had just been stabbed by a man she did not know, and the man was still in her apartment. Police arrived at the scene in less than two minutes. A.S. was found slumped over on her couch and was no longer breathing. Paramedics discovered five stab wounds on her left side. A.S. was transported to Regions Hospital, but was pronounced dead on arrival. An autopsy revealed that A.S.'s death resulted from a loss of blood caused by the stab wounds. Lab tests indicated that her blood contained cocaine and marijuana derivatives, and police found drug paraphernalia in her apartment.

Approximately 11 minutes after the 911 call was received, appellant Armstrong Weston entered the emergency room at Regions Hospital holding a bloody towel against the left side of his neck. Appellant was treated for a small puncture wound above his collarbone. His urine tested positive for cocaine and marijuana use. Officer Randy Barnett, an off-duty police officer at the hospital, interviewed appellant about the cause

of his injuries. Appellant told Officer Barnett that he had been stabbed in the neck during a robbery on Rice Street in St. Paul. Officer Barnett informed St. Paul police about the incident, and Officer Theodore Mackintosh was summoned to the hospital to take appellant's statement. Appellant told Officer Mackintosh that the robbery occurred after he went to a house with several other people to drink and use drugs. Appellant was unable to identify any of the persons who were present at the house, but he claimed that someone threw a sheet or towel over his head, stabbed him, and stole money from his pocket. Appellant claimed that he did not know who stabbed him. He told Officer Mackintosh that he "flagged down" a ride to the hospital from an unknown person.

Officer Mackintosh then spoke to appellant's girlfriend, M.R. M.R. told Officer Mackintosh that appellant had been driving her minivan, which was still parked at the hospital. With M.R.'s permission, Officer Mackintosh searched the van and found blood on the driver's side head rest and a screwdriver that appeared to have flecks of blood on the tip and shaft. Because appellant's story about receiving a ride to the hospital was inconsistent with M.R.'s statements and the evidence in the van, Officer Mackintosh decided to re-interview appellant. During the second interview, appellant changed his story about how he arrived at the hospital. Appellant claimed that after the alleged robbery, he started driving the van toward the hospital, but eventually had someone else drive him the rest of the way.

At approximately 3:00 p.m. that day, the owner of the Minnesota Music Café, a restaurant located only a short distance from A.S.'s apartment, discovered a large kitchen

knife on the sidewalk outside the main entrance. The owner noticed blood on the knife and turned it over to police.

Later that evening, St. Paul Fire Captain James Smith informed police that moments after the 911 call from A.S. was received, he was driving on East Seventh Street, approximately one mile from A.S.'s apartment. As Smith waited at a stop light, he noticed an African-American male in his thirties driving a minivan with a bloody towel on his neck. The man was alone in the vehicle.

Based on Captain Smith's observations and the inconsistencies in appellant's story, Sergeant James Gray and Sergeant Munoz met appellant at the hospital and asked him to come to the police station for an interview. They told appellant that they wanted more information about the alleged robbery, and were not interested in his drug use. No mention was made of the possible connection between appellant's injuries and A.S.'s death. Appellant agreed to accompany them to the police station.

Appellant was interviewed by Sergeant Gray. Appellant received a *Miranda* warning before the interview began. For the most part, appellant's version of events was similar to the second statement he gave Officer Mackintosh at the hospital. Appellant also claimed that the screwdriver found in the van had been in his back pocket and that any blood on the item was likely his. Appellant was arrested at the conclusion of the interview.

Police collected several pieces of physical evidence that implicated appellant in A.S.'s death. Lab tests revealed that drops of blood on the floor of A.S.'s apartment matched appellant's DNA profile, and the blood on the tip of the screwdriver found

inside the van matched A.S.'s DNA profile. The knife found outside the Minnesota Music Café was identified as belonging to A.S., and the medical examiner concluded that the knife was consistent with the weapon used to stab A.S. A fingerprint on the dull side of the knife blade matched appellant's right ring finger. Blood found on the handle of the knife contained mixtures of DNA from multiple persons, and although none of the blood samples was an exact match for appellant, he could not be ruled out as a contributor.

Appellant was charged with one count of second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2006), and one count of second-degree felony murder in violation of Minn. Stat. § 609.19, subd. 2(1) (2006). At a pretrial hearing, appellant moved to suppress the statements he made to Sergeant Gray at the police station, claiming that he was in custody at the time of the interview and made an equivocal request for counsel that required Sergeant Gray to stop questioning appellant. Appellant also claimed that he did not make a knowing, voluntary, and intelligent waiver of his *Miranda* rights. The district court denied the motion to suppress. Although the court agreed that appellant was in custody at the time of the interrogation, the court concluded that appellant did not make an equivocal request for an attorney during the interview. The court also found that Sergeant Gray obtained a knowing, voluntary, and intelligent waiver of appellant's *Miranda* rights before proceeding with questioning.

After a jury trial, appellant was convicted of second-degree felony murder and acquitted of second-degree intentional murder. This appeal followed.

D E C I S I O N

I.

Appellant argues that the district court erred in denying his motion to suppress statements he made to Sergeant Gray. Appellant claims that suppression was necessary because Sergeant Gray failed to clarify his equivocal request for an attorney.

A suspect has the right to have counsel present during all custodial interrogations in order to protect the suspect's right to remain silent. *State v. Ray*, 659 N.W.2d 736, 741 (Minn. 2003). "If an accused asserts his right to counsel, interrogation must cease unless the accused initiates further communication, exchanges, or conversations with the police and validly waives his earlier request for the assistance of counsel." *State v. Hannon*, 636 N.W.2d 796, 804 (Minn. 2001). The suspect generally must make a "clear and unequivocal" invocation of the right to counsel before police must cease their interrogation. *State v. Farrah*, 735 N.W.2d 336, 342 (Minn. 2007). However, "when a suspect indicates by an equivocal or ambiguous statement, which is subject to a construction that the accused is requesting counsel, all further questioning must stop except that narrow questions designed to 'clarify' the accused's true desires respecting counsel may continue." *State v. Robinson*, 427 N.W.2d 217, 223 (Minn. 1988). In deciding this issue, courts must bear in mind that "not every mention of the word 'lawyer' or 'counsel' or 'attorney' by a suspect 'arguably' suggests that the suspect wants a lawyer before submitting to further questioning." *State v. Hale*, 453 N.W.2d 704, 708 (Minn. 1990). "We defer to a district court's factual determination of whether a

defendant invoked the right to counsel during an interrogation unless that determination is clearly erroneous." *State v. Bradford*, 618 N.W.2d 782, 796 (Minn. 2000).

Immediately after Sergeant Gray read appellant his *Miranda* rights during the interrogation at the police station, appellant asked, "Do I need a lawyer?" Appellant contends that his question constituted an equivocal invocation of the right to counsel. We agree. Although not a clear invocation, Minnesota appellate courts have concluded that variations of the question appellant posed to Sergeant Gray constitute an equivocal assertion of the right to counsel. *See, e.g.*, *State v. Pilcher*, 472 N.W.2d 327, 331–32 (Minn. 1991) ("Do you think I should have an attorney?"); *State v. Doughty*, 472 N.W.2d 299, 303 (Minn. 1991) ("Shouldn't I have an attorney so you don't ask me any illegal questions?"). Accordingly, Sergeant Gray was required to cease all questioning and clarify appellant's desire for counsel. *See Robinson*, 427 N.W.2d at 223. Sergeant Gray did not comply with the requirement. Instead of clarifying appellant's question, Sergeant Gray continued the interrogation after explaining that it was necessary for him to read the *Miranda* warning because appellant had previously admitted to using controlled substances. Therefore, the district court erred in admitting appellant's statement from the interrogation.

A constitutional error requires reversal unless the state can demonstrate beyond a reasonable doubt that the error was harmless. *State v. Juarez*, 572 N.W.2d 286, 291 (Minn. 1997). An error is harmless "[i]f the verdict rendered is 'surely unattributable' to the error." *Id*. at 292. In determining whether a constitutional evidentiary error is harmless beyond a reasonable doubt, this court considers (1) the manner in which the

evidence was presented; (2) whether it was highly persuasive; (3) whether it was used in closing argument; (4) whether it was effectively countered by the defendant; and (5) the strength of the evidence of guilt. *State v. Al-Naseer*, 690 N.W.2d 744, 748 (Minn. 2005). Overwhelming evidence of guilt is a crucial factor in determining whether an error is harmless. *Juarez*, 572 N.W.2d at 291.

After a painstaking review of the record, we conclude that the admission of appellant's statement to Sergeant Gray was harmless beyond a reasonable doubt. Appellant's statement was used primarily to demonstrate the inconsistencies in his story and was mentioned only briefly in closing arguments. Although it held some persuasive value, the statement was similar in many respects to the admissible account that appellant gave to Officer Mackintosh at the hospital, and appellant did not make any incriminating statements regarding A.S.'s murder. Moreover, the evidence against appellant was compelling. Appellant's DNA matched physical evidence found at the scene, the screwdriver found in the van appellant drove to the hospital matched blood from A.S., and the knife found at the Minnesota Music Café contained blood from the victim and a fingerprint from appellant. Appellant arrived at the hospital shortly after A.S.'s 911 call, and testimony from Fire Captain Smith tended to place appellant within a mile of the crime scene only minutes after the murder.[1]

[1] Appellant also contends that he did not make a voluntary, knowing, and intelligent waiver of his *Miranda* rights. *See State v. Thieman*, 439 N.W.2d 1, 5 (Minn. 1989) (requiring the state to demonstrate that the accused voluntarily, knowingly, and intelligently waived his right against self incrimination before allowing admission of the statement as substantive evidence.) Because appellant made an equivocal request for counsel after Sergeant Gray read appellant his *Miranda* rights, we agree. But appellant is

II.

When assessing the sufficiency of evidence, the reviewing court is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction," was sufficient to permit the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court must assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The verdict should stand "if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

"[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). "While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must "form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than . . . guilt." *Jones*, 516 N.W.2d at 549 (quotation omitted). But a jury "is in the best position to evaluate circumstantial evidence, and [its] verdict is entitled to due deference." *Webb*, 440 N.W.2d at 430.

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not entitled to relief on this basis, as the admission of his statement was harmless beyond a reasonable doubt.

In challenging the sufficiency of the evidence, appellant notes that (1) none of A.S.'s blood was found on appellant's clothes or body; (2) no motive was established for the murder; (3) the murder could have been committed by any number of people who associated with A.S. or by a man who was seen outside the Minnesota Music Café around the time the knife was found; and (4) Captain Smith and the owner of the Minnesota Music Café changed their stories in ways that favored the state.

These arguments are unpersuasive. The lack of blood on appellant's clothing was explained by the fact that there was relatively little blood found in the apartment other than on A.S.'s back and the cushion beneath her. Appellant's emphasis on the state's failure to prove motive is unpersuasive because the state did not have to establish a motive in order to obtain a conviction. *See State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006) (stating that "[m]otive is not an element of most crimes"). The suggestion that several other suspects existed is unpersuasive because none of the evidence supports those theories. Finally, evaluating the credibility of Captain Smith and the owner of the Minnesota Music Café was for the jury. The jury was in the best position to weigh any inconsistencies in their testimony, and we decline to disturb its credibility determinations. *See State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998) ("The jury is in the best position to . . . weigh the evidence."). Because there was sufficient evidence in the record to support the jury's verdict, we affirm appellant's conviction.

Affirmed.