IN THE COURT OF APPEALS OF IOWA

No. 21-1101
Filed December 7, 2022

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FONTAE COLE BUELOW,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica Ackley, Judge.

Fontae Buelow appeals his conviction for second-degree murder. **AFFIRMED.**

Martha J. Lucey, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Genevieve Reinkoester and Douglas D. Hammerand, Assistant Attorneys General, for appellee.

Heard by Vaitheswaran, P.J., and Greer and Badding, JJ.

VAITHESWARAN, Presiding Judge.

Fontae Buelow appeals his judgment and sentence for second-degree murder. He challenges (I) the sufficiency of the evidence supporting the jury's finding of guilt; (II) the district court's denial of his motion for new trial; and (III) the district court's denial of his motion to suppress a statement he made to police.[1]

I. Sufficiency of the Evidence

The jury was instructed that the State would have to prove the following elements of second-degree murder:

> 1. On or about 31st day of March, 2017, [Buelow] stabbed [a woman].
> 2. [The woman] died as a result of being stabbed.
> 3. [Buelow] acted with malice aforethought.

In evaluating whether there was sufficient evidence to support the jury's finding of guilt, we consider "whether, taken in the light most favorable to the State, the finding of guilt is supported by substantial evidence in the record." *State v. Crawford*, 974 N.W.2d 510, 516 (Iowa 2022) (citation omitted).

Buelow's sole argument is that he could not have been guilty of second-degree murder because "this case involved a suicide and not a murder." The jury heard from various experts on this point.

The State Medical Examiner opined that the cause of death was "[s]tab wounds of chest," the manner of death was "[h]omicide," and the evidence was "inconsistent with suicide." He found an absence of "hesitation marks," indicative of someone who is "testing themselves" in contemplation of suicide "and then

[1] This was Buelow's second trial. The supreme court reversed and remanded the first district court judgment based on the district court's exclusion of suicide-related evidence. *See State v. Buelow*, 951 N.W.2d 879, 890 (Iowa 2020).

building up the courage to actually insert the knife to the point that it actually penetrates vital organs." The medical examiner discussed the details of the woman's stab wounds, explaining that she had "three sharp force injuries on the left chest area."

One wound "perforated [the] ribs and the heart," penetrating to a depth of "5-and-a-half inches." The medical examiner said the knife "went into the heart and actually opened up . . . the whole front muscle portion of the heart." It also "perforated cartilage and even went through part of the bone." He opined that the trajectory "was consistent with an inflicted wound" and it was considered fatal. He testified the slicing of bone together with the depth of the wound was "more suggestive of a homicide."

Another wound with a depth of "4-and-a-quarter" inches went from "front to back" and "perforated the part of the lung that just overlaps the front portion of the chest." The medical examiner testified it too was "consistent with an inflicted wound" and was considered fatal.

The third wound "did not go through the chest wall and did not include any internal chest organs." This wound was not the cause of death.

The medical examiner also pointed to "two cut wounds" to the woman's right-hand fingers. He characterized them as "defensive wounds," caused by a person's use of "their hands to protect their core or their face from an attacker." While he acknowledged the wounds could have been self-inflicted, he noted that the cuts were not underneath the woman's index finger, as they would be with offensive wounds.

The next set of injuries to the woman showed "a number of different . . . blunt force type of injuries" to her head, marked by bruises and abrasions. The medical examiner identified them on her forehead, the bridge of her nose, between her nose and right eye, inside her mouth, and on the left side of her lower jaw. He found a contusion near the woman's armpit that could have been caused by being "pushed up against something." And he found scrapes on "the left side of [the woman's] abdomen and . . . belly" that could have been caused by a corner of a table, the "tip of the knife," or "a fingernail."

The medical examiner was asked to opine on the location of the knife that caused the injuries. He said "it was at least 10 to 11 feet" away from the body, a fact that he found also "favor[ed] homicide."

Buelow called his own experts. A forensic psychiatrist diagnosed the woman with "borderline personality disorder," "multiple substance abuse disorders," "uncomplicated bereavement," a "history of self-harm," and a history of trauma. She also cited a family history of suicide. Based on this information, she opined the woman was "at high risk for chronic suicide." The catalyst, in her view, was Buelow's desire "to end things" and the woman's desire to "avoid abandonment." On cross-examination, she conceded the woman did not exhibit suicidal thoughts, a suicide plan, or suicide attempts in the days leading up to her death.

Buelow's next expert, a forensic pathology consultant, opined "the decedent inflicted these wounds on herself." He cited "the pattern of the injuries to the chest." While he agreed with the medical examiner that the death was caused by "two" stab wounds "to the chest," he stated the "the manner of death" was "suicide." At

the same time, he acknowledged it was "not very common" to see people stab themselves multiple times. And, while he stated "people with mental illnesses sometimes can be completely insensitive to pain," he conceded he formed his opinion before examining the woman's mental health records. Finally, he conceded that certain articles cited by him correlated vertical wounds such as the ones that were fatal in this case with homicide.

A forensic consultant and analyst testified to blood splatter and what it might mean for Buelow's physical location relative to the woman when she was stabbed. In his view, the hypothesis that Buelow "was standing at least . . . 10 feet away at the time that this occurred [was] supported by the . . . evidentiary findings, the scene examination, and the examination of the blood stain patterns." That said, a reasonable juror could have found that the splatter evidence shed little light on Buelow's movements in the minutes immediately before and after the stabbing. For example, the defense expert essentially agreed with a State expert on the distance blood could travel, and he admitted Buelow was "in the very outer limits of how far that blood is going to travel." He also had no opinion on how the knife used in the stabbing ended up on the living room carpet when the stabbing occurred in the kitchen. In his words, "At some point, and I don't know how, [the knife] ends up on the carpet" and "for whatever reason, and I don't know the mechanism of that, it ends up 10 or 11 feet away on that carpet." He agreed "one of the least likely scenarios" would be that the woman threw the knife to the living room carpet.

At oral argument, counsel for Buelow conceded Buelow was likely the person who moved the knife. The jury reasonably could have inferred the same

thing. *See State v. Ernst*, 954 N.W.2d 50, 59 (Iowa 2021) ("Juries must necessarily make inferences when finding facts based on circumstantial evidence."). That inference could have led the jury to implicate Buelow in the stabbing. *See State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014) ("Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury [is] free to reject certain evidence, and credit other evidence." (alteration in original) (citation omitted)); *State v. Walton*, 424 N.W.2d 444, 448 (Iowa 1988) ("Questions of the reliability and credibility of witnesses . . . are committed by our system to the jury."). We affirm the jury's finding of guilt.

II. New Trial Ruling

Buelow filed a motion for new trial, arguing the weight of the evidence did not support the jury's finding of guilt. The district court denied the motion.

On appeal, Buelow concedes the district court "facially used the correct legal standard" in ruling on the new trial motion. *See State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998) (holding "contrary to . . . the evidence" in [Iowa Rule of Criminal Procedure 2.24(2)(b)(6)] means 'contrary to the weight of the evidence'"). He focuses on the court's application of the standard, arguing the court "mischaracterized" or "did not properly weigh the evidence." He specifically suggests there was no evidence to support the following statements in the district court's ruling:

- "The placement of the blood spatter and where the Defendant places his feet and his body and right arm is not consistent with the experts' theory."

- "The jurors could come to the reasonable conclusion that the Defendant wiped the knife handle before placing it on the floor in the other room from where [the woman's] body lay lifeless."
- "The assertions of the Defendant's arguments are purely speculation."
- The defense's forensic pathology consultant "would not consider any . . . alternatives" other than suicide.

The court was authorized to "weigh the evidence and consider the credibility of witnesses." *Id.* at 658. The court did just that, making inferences from the trial evidence, weighing the defense evidence, and discrediting the suicide theory. *See Ernst*, 954 N.W.2d at 60 (noting "the weight-of-the-evidence standard allows the district court to make its own credibility determinations"). We discern no abuse of discretion in the court's denial of the new trial motion. *Id.* (setting forth standard of review).

III. Suppression Ruling

Buelow called 911 after the stabbing. Dubuque police officers responded. Buelow interacted with them outside the home.

Buelow moved to suppress one of the statements he made during the interaction. He alleged the officers engaged in a "functional interrogation" that entitled him to "*Miranda* warnings regarding his rights under the Fifth Amendment."[2]

[2] *Miranda v. Arizona*, 384 U.S. 436, 478–79 (1966) (holding an individual taken into custody or otherwise deprived of freedom in any significant way and subjected to questioning must "be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires").

At a hearing on the motion, one of the officers testified he arrived at the home to find Buelow on the "front stoop," with other officers attempting to handcuff him. Buelow was "sweating profusely" and was "very upset." The officer went up to Buelow and twice told him to relax. The second time, Buelow responded with, "Go stab your fucking spouse in the face, then you relax."

The State conceded Buelow was in custody at the time of the statement but asserted the comment "was not made . . . pursuant to an interrogation." The district court agreed. The court concluded the officers' conduct did "not amount to an interrogation or its functional equivalent." The court also found "no compulsion," stating "nothing about the attending circumstances at the moment in question . . . amount[ed] to coercive police conduct."

On appeal, Buelow argues the officer's second command to "relax" was "likely to elicit an incriminating response" and the officer's failure to afford him *Miranda* warnings required suppression of the response.[3] He also argues his statement was involuntary. The State responds that the officer's comment did not render the interaction an interrogation and Buelow failed to preserve error on his voluntariness challenge.

"[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). The officer's statement to "relax" was

[3] Buelow does not argue his response to the first command to relax required suppression.

nothing more than a command associated with arrest and custody. *See id.* On our de novo review, we are persuaded it was not the type of term designed to elicit an incriminating response. Because the exchange did not qualify as an "interrogation," we agree with the district court that the requirement to provide *Miranda* warnings was not triggered.

We turn to Buelow's assertion that the statement was involuntary, beginning with the State's error-preservation concern. Although the voluntariness issue was not raised in Buelow's suppression motion, Buelow discussed it at the suppression hearing, and the district court essentially ruled on it. Error was preserved and we proceed to the merits, reviewing the record de novo. *State v. Hauge*, 973 N.W.2d 453, 458 (Iowa 2022).

"'[V]oluntariness' for . . . due process purposes and *Miranda* purposes are identical." *See State v. Tyler*, 867 N.W.2d 136, 174 (Iowa 2015) (alterations in original) (quoting *State v. Countryman*, 572 N.W.2d 553, 559 (Iowa 1997)). Although a number of factors bear on the analysis, the totality of the circumstances must at least indicate the statement was "the product of police misconduct or overreaching." *Countryman*, 572 N.W.2d at 559. At the point when the officer told Buelow to relax, the record does not reveal police coercion. Accordingly, Buelow's involuntariness claim fails.

We affirm the district court's denial of Buelow's suppression motion and his judgment and sentence for second-degree murder.

AFFIRMED.