

IN THE COURT OF APPEALS OF IOWA

No. 0-901 / 10-0116
Filed February 9, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANGEL DEJESUS VEGA-SANCHEZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke,
Judge.

Angel DeJesus Vega-Sanchez appeals from his conviction of murder in
the first degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney
General, Ricki Osborn, County Attorney, and Laura Roan, Assistant County
Attorney, for appellee.

Heard by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J.,
takes no part.

EISENHAUER, J.

Angel Vega-Sanchez appeals from his conviction and sentence for murder in the first degree. He contends the district court erred in overruling his motion to suppress evidence of his statements to law enforcement. Because we find any error in the admission of the statements was harmless beyond a reasonable doubt, we affirm.

I. Background Facts and Proceedings. The undisputed facts are as follows: Vega-Sanchez and Rachelle Vega had been married approximately eight years as of May 2009. For several months, with Vega-Sanchez's knowledge, Vega had been having an affair with another man.

On the night of May 16, 2009, Vega-Sanchez was at a bar drinking with a friend, Mario Isai Ramos, when Vega entered the bar. The two spoke and Vega-Sanchez appeared upset. At closing, Vega-Sanchez and Vega spoke again at Vega's car before she left.

Vega-Sanchez drove Ramos around in search of Vega's vehicle in an attempt to locate her. After spotting the car outside of a residence, they stopped at Vega-Sanchez's home where Vega-Sanchez retrieved a shotgun. They then went back to the residence where Vega's car was parked and entered the home.

When the men entered, Vega was seated on a couch in a room with two other men, Juan Perez Rubio and Everado Cruz-Sanchez. She hugged Ramos, but not Vega-Sanchez. When Vega-Sanchez began yelling at her, Vega told him she was going to divorce him. Vega-Sanchez then went to the kitchen where he

showed Rubio he had a handgun in his pants and told him not to say anything. The record does not reveal when or where Vega-Sanchez obtained the handgun.

Vega-Sanchez returned to continue his conversation with Vega. At some point, he took out his gun and shot Vega four or five times. He then threatened the three other men present, telling them not to follow him, and left the house. Vega died at the scene.

After the shooting, Agent Larry Hedlund of the Iowa Division of Criminal Investigation called Vega-Sanchez on the telephone. Their conversation was tape-recorded and Vega-Sanchez stated Vega had cheated on him “over and over again.” He asked Agent Hedlund to pick him up so he could turn himself in to custody. Vega-Sanchez stated, “I need a lawyer, I need, I need, I need, I need help.” Agent Hedlund responded, “We can do whatever you want to do, Angel. First thing I want to do is get you to some safe place and take care of that issue, okay?”

Agent Hedlund picked up Vega-Sanchez and transported him to the hospital to have his ankle treated. After being informed of his *Miranda* rights, Vega-Sanchez was asked if he understood those rights and he responded affirmatively. Vega-Sanchez reviewed and signed the form waiving his *Miranda* rights.

On May 27, 2009, the State charged Vega-Sanchez with first-degree murder in violation of Iowa Code sections 707.1 and 707.2(1) (2009). On November 9, 2009, he filed a motion to suppress all statements made and evidence discovered following his request for an attorney during his phone call

with Agent Hedlund, alleging he invoked his right to counsel. Specifically he sought to suppress the handgun and evidence of Vega-Sanchez's assistance in finding the gun. He also alleged his waiver of his *Miranda* rights was not voluntarily made because the interviews with law enforcement were lengthy, he was under extreme stress, he believed he would help himself by making statements, he was extremely tired, and he was injured. A hearing was held on the motion on November 10, 2009.

On November 13, 2009, the district court entered its order denying the motion to suppress. In its review of the transcripts of the recordings, the court found the statements made to Agent Hedlund were unsolicited, other than the responses to inquiries regarding the location of the gun. The court concluded Vega-Sanchez had no sixth amendment right to counsel during his initial telephone conversation with Agent Hedlund. The court also found Vega-Sanchez failed to prove he was subjected to coercive questioning following his *Miranda* warnings rendering his statements involuntary.

Trial was held November 17 through November 20, 2009. On November 20, 2009, the jury returned a verdict finding Vega-Sanchez guilty of first-degree murder. On January 8, 2010, judgment was entered against Vega-Sanchez and he was sentenced to life imprisonment. He filed an appeal the same day.

II. Scope and Standard of Review. Because the State's appeal of the district court's ruling on the motion to suppress implicates constitutional issues, our review is de novo. *State v. Morgan*, 559 N.W.2d 603, 606 (Iowa 1997).

III. Analysis. In *Miranda v. Arizona*, 384 U.S. 436, 473, 86 S. Ct. 1602, 1627, 16 L. Ed. 2d 694, 723 (1966), the United States Supreme Court determined the Fifth and Fourteenth Amendments require the police to inform a suspect he has a right to remain silent and a right to counsel during a custodial interrogation. Absent *Miranda* warnings and a valid waiver of those rights, statements made during an interrogation are inadmissible. *Miranda*, 384 U.S. at 479, 86 S. Ct. at 1630, 16 L. Ed. 2d at 726. When a suspect makes an unambiguous and unequivocal request for counsel during a custodial interrogation, the police must stop questioning him immediately until an attorney is present. *State v. Effler*, 769 N.W.2d 880, 886 (Iowa 2009). The question presented here, which is a question of first impression in this state, is whether the right to counsel extends to pre-custodial interrogations. Vega-Sanchez argues it does, and therefore any statements made after his request for an attorney should be suppressed a fruits of the poisonous tree.

In the alternative, Vega-Sanchez argues his waiver of *Miranda* rights was not voluntarily entered into. For his statements to be admissible, the State must first prove Vega-Sanchez was adequately informed of his *Miranda* rights, understood them, and knowingly and intelligently waived them. *Moran v. Burbine*, 475 U.S. 412, 421, 106 S. Ct. 1135, 1141, 89 L. Ed. 2d 410, 421 (1986) (“[T]he waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.”); *Morgan*, 559 N.W.2d at 606. Second, the State must prove Vega-Sanchez gave his statement voluntarily. *Morgan*, 559 N.W.2d at 606. The State must prove by

a preponderance of the evidence that a suspect knowingly, intelligently, and voluntarily waived his or her Miranda rights. *Id.*

We find we do not need to address these claims because even if we assume without deciding these statements were inadmissible, we find their admission was harmless beyond a reasonable doubt. See *State v. Simmons*, 714 N.W.2d 264, 275 (Iowa 2006) (“In order for a constitutional error to be harmless, the court must be able to declare it harmless beyond a reasonable doubt.”). In assessing whether a constitutional error was harmless, we have stated:

There are two steps in the harmless error analysis. We first consider all of the evidence the jury actually considered, and then we weigh the probative force of that evidence against the erroneously admitted evidence. The inquiry is not whether in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict *actually* rendered in this *trial* was surely unattributable to the error.

Id.

Vega-Sanchez argues that if the statements he made to Agent Hedlund following his statement, “I need a lawyer” were not admitted, the jury may have found him guilty of the lesser-included offense of voluntary manslaughter rather than first-degree murder. Voluntary manslaughter occurs where one

causes the death of another person, under circumstances which would otherwise be murder, if the person causing the death acts solely as the result of sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a person and there is not an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain control and suppress the impulse to kill.

Iowa Code § 707.4. In contrast, first-degree murder occurs where one “willfully, deliberately, and with premeditation kills another person” and requires malice aforethought. Iowa Code §§ 707.1, 707.2(1). Malice aforethought exists where the actor has “a fixed purpose or design to do physical harm to another that exists before the act is committed.” *State v. Myers*, 653 N.W.2d 574, 579 (Iowa 2002).

Weighing the probative force of the evidence admitted against the testimony of Agent Hedlund, we cannot find the jury’s verdict attributable to the allegedly inadmissible evidence. Agent Hedlund testified Vega-Sanchez gave many reasons for being upset with his wife—she “pushed him into it,” she was having an affair, she was not a good wife or mother, she was not coming home at night, she called him a “motherfucker,” he had caught her in bed with another man two or three months before the shooting, and he had found photos of Jorge on Vega’s phone. Vega-Sanchez stated he had seen Vega being affectionate with another man on the night in question, that Vega “flipped him off” and told him to “fuck off” when he asked her to leave with him, and that he took the gun out because Vega didn’t care about “us.” Vega-Sanchez told Agent Hedlund more than once that Vega has pushed him into it.

Vega’s mother testified Vega-Sanchez called her after the shooting to tell her he and Vega had engaged in an argument on the night in question. Vega-Sanchez stated he had pulled on Vega’s arm and tried to get her to come home, but she had laughed at him. Ramos testified Vega had been having an affair and Vega-Sanchez was aware of it and would discuss it with him. On the night of

May 16, 2009, he and Vega-Sanchez had been at a bar and Vega had arrived. He witnessed the two argue and then he and Vega-Sanchez drove around looking for Vega. After locating her vehicle, Vega-Sanchez went to his home to retrieve a shotgun. He brought a concealed and loaded handgun into the residence. Vega-Sanchez also told hospital employees he had caught his wife cheating on him and she had “pushed [him] every day.”

Even without the Agent Hedlund’s testimony, the evidence shows Vega-Sanchez acted with premeditation.

Deliberation and premeditation may be shown by circumstantial evidence in one of three ways: (1) evidence of planning activity of the defendant which was directed toward the killing; (2) evidence of motive which might be inferred from prior relationships between defendant and the victim; and (3) evidence regarding the nature of the killing.

Vega-Sanchez brought a loaded gun into the residence where Vega was. He showed the weapon to Rubio some time before the shooting and told him not to tell. This is sufficient to show premeditation. *See State v. Fryer*, 226 N.W.2d 36, 41 (Iowa 1975) (holding premeditation and deliberation need not exist for any particular length of time; rather, “[i]n finding premeditation and deliberation the trier of facts may consider the fact a defendant has selected a deadly weapon, such as the gun involved here, with an opportunity to deliberate where he thereafter uses it in a deadly manner”). The testimony of other witnesses revealed the same facts as the testimony of Agent Hedlund and established a motive for the shooting—namely the marital problems between Vega and Vega-Sanchez.

Because any error in admitting the complained-of evidence was harmless beyond a reasonable doubt, we affirm the conviction and sentence for first-degree murder.

AFFIRMED.