

IN THE COURT OF APPEALS OF IOWA

No. 8-1021 / 07-2152
Filed March 26, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER ROBIN SCHMIDT,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

Christopher Robin Schmidt appeals his judgment and sentence for first-degree murder. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Harold Denton, County Attorney, and Jerry Vander Sanden, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Miller and Doyle, JJ.

DOYLE, J.

Christopher Robin Schmidt appeals his judgment and sentence for first-degree murder. Schmidt contends the district court erred in failing to give his proposed jury instruction on lack of motive and in denying his motion for a mistrial. Upon our review, we affirm Schmidt's conviction and sentence.

I. Background Facts and Proceedings.

Viewed in the light most favorable to the State, the jury could have found the following facts:

On December 31, 2006, Robert Nelson was discovered lying dead on his apartment floor. The anatomical findings showed Nelson had sustained numerous lacerations to the face, had four teeth knocked out of his head, and had fractures in the skull. Three broken bar stools were found in Nelson's apartment and were established to be the murder weapons.

After learning that Schmidt was an acquaintance of Nelson's, an investigating officer interviewed Schmidt. Schmidt was not a suspect at that time. Schmidt told the officer that he and Nelson were friends, and that he had been renting a car from Nelson for \$100 a week. Schmidt told the officer that the car had broken down and was in the shop for repairs, but he wasn't concerned about it. Schmidt told the officer that the last time he had seen Nelson, he had made arrangements to meet Nelson at work and then the two went to Nelson's apartment together. Schmidt was unsure of the date, but he indicated that nothing unusual had happened; he and Nelson had watched television, ate some food, and then Schmidt left.

Thereafter, investigators found a palm print and a fingerprint on two of the bar stools. The prints were identified to be Schmidt's. Schmidt was then called back for a second police interview, and he agreed to speak with the officers.

During the second interview, Schmidt's story changed many times. Initially, Schmidt stated again that he and Nelson watched TV, and then Schmidt left. Later, Schmidt stated that another man showed up at Nelson's and punched Nelson in the face, and that Schmidt immediately left. Schmidt then stated that he saw the man punch Nelson and hit Nelson over the head with the bar stools, and then he left, fearing for his life. Finally, Schmidt confessed that he and Nelson had gotten into a fight over the broken down car. Schmidt stated he told Nelson he needed the \$400 he had given him for the car rental, but Nelson only had \$100. Schmidt stated he and Nelson argued about the remaining \$300, and then Nelson pushed him into the wall. Schmidt stated that he then punched Nelson in the face, and that Nelson pushed him into the wall again. Schmidt stated that he next hit Nelson over the head with a nearby bar stool. The bar stool broke on impact, but Nelson continued to get up. Schmidt stated that he then grabbed another bar stool and hit Nelson in the head again. Schmidt stated that he told Nelson to stay down, but Nelson continued to get up, so Schmidt hit him again. Schmidt stated that when he left, Nelson was alive.

On January 11, 2007, the State charged Schmidt with first-degree murder, alleging that Schmidt killed Nelson willfully, deliberately, and with premeditation. Schmidt denied the State's allegations, asserting among other things that he lacked any motive to kill Nelson, and therefore did not have the requisite malice.

The matter proceeded to trial. Before submitting the matter to the jury, the court instructed the jury on, among other things, the definition of malice aforethought, instructing:

“Malice” is a state of mind which leads one to intentionally do a wrongful act to the injury of another out of actual hatred, or with an evil or unlawful purpose. It may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion.

“Malice aforethought” is a fixed purpose or design to do some physical harm to another which exists before the act is committed. It does not have to exist for any particular length of time.

The court denied Schmidt’s request that the following language be added to the malice and malice aforethought definition instruction: “Although motive is not a necessary element of murder, lack of motive may be considered in determining whether the defendant acted with malice aforethought.”

After the matter was submitted to the jury, a juror took a tumble down the courthouse stairs. Schmidt apparently witnessed the juror’s fall. Subsequently, Schmidt’s counsel moved for a mistrial, asserting that because Schmidt saw the juror, there was a question of whether any of the jurors saw Schmidt being escorted by two armed guards. Schmidt’s counsel acknowledged that Schmidt told him that he was not shackled at the time. The district court overruled Schmidt’s motion, stating: “My understanding was there was a brief amount of time, and Mr. Schmidt was not in shackles, not in jail clothes. He was in street

clothes that he's been wearing—the clothing he's been wearing throughout the trial.”

The jury returned a verdict finding Schmidt guilty of first-degree murder. Schmidt appeals. Schmidt contends the district court erred in failing to give his proposed jury instruction on lack of motive and in denying his motion for a mistrial.

II. Scope and Standards of Review.

We review alleged errors in jury instructions for errors at law. Iowa R. App. P. 6.4; *Boyle v. Alum-Line, Inc.*, 710 N.W.2d 741, 748 (Iowa 2006). We review a trial court's ruling on a motion for mistrial for abuse of discretion. *State v. Newell*, 710 N.W.2d 6, 32 (Iowa 2006).

III. Discussion.

A. Jury Instruction.

Schmidt first argues that the district court erred in failing to give his proposed jury instruction on lack of motive because the court's instruction on the definitions of malice and malice aforethought failed to communicate the need for the jury to consider whether Schmidt had an unlawful and unjustified motive. We disagree.

“A person who kills another person with malice aforethought either express or implied commits murder.” Iowa Code § 707.1 (2005). A person commits murder in the first degree when the person commits murder willfully, deliberately, and premeditatedly. *Id.* § 707.2. Thus, “[m]alice aforethought is an essential element of first-degree murder.” *State v. Bentley*, 757 N.W.2d 257, 265 (Iowa 2008). However, motive is not an element of murder. See *State v. Hoffer*,

383 N.W.2d 543, 549 (Iowa 1986); *State v. Lass*, 228 N.W.2d 758, 765 (Iowa 1975). Nevertheless, “lack of motive may be considered in determining whether an assailant acted with malice aforethought.” *Id.* (citing *State v. Smith*, 242 N.W.2d 320, 326 (Iowa 1976)).

The Iowa Supreme Court has twice specifically held that it was not reversible error to refuse to give an instruction on motive. See *id.*; *State v. Shipley*, 259 Iowa 952, 959, 146 N.W.2d 266, 270 (1966) (“We find no reversible error in the trial court’s refusal to give defendant’s requested [lack of motive instruction], especially in view of her being found guilty of manslaughter.”), *overruled in part on other grounds by State v. Bester*, 167 N.W.2d 705 (Iowa 1969). Schmidt asserts that *Shipley* is not controlling in the present case, ultimately because the defendant in *Shipley* was convicted of the lesser-included offense of manslaughter. See *Shipley*, 259 Iowa at 954, 958, 146 N.W.2d at 267, 269. However, Schmidt ignores the Iowa Supreme Court’s holding in *Hoffer*, affirming its pronouncement in *Shipley*. See *Hoffer*, 383 N.W.2d at 549 (“[W]e specifically held in [*Shipley*] that it was not reversible error to refuse to give an instruction on motive. We find no reason to reverse this authority.”). Like Schmidt, the defendant in *Hoffer* was convicted of first-degree murder, and ultimately the supreme court held it was not reversible error to refuse to give an instruction on motive. *Id.* at 544. Thus, we find *Hoffer* is controlling here. As an intermediate appellate court, we are bound by the precedents of our supreme court. Accordingly, we are obliged to follow this law and decline Schmidt’s request to overrule *Shipley* and *Hoffer*.

Additionally, Schmidt argues that his due process right to present his theory of defense was violated by the court's refusal to include the lack of motive instruction. Although [t]he right to present a defense is essential to a fair trial, *State v. Simpson*, 587 N.W.2d 770, 771 (Iowa 1998), the defendant is only entitled to a theory of defense instruction if the instruction is timely requested and supported by the evidence. *State v. McFarland*, 598 N.W.2d 318, 321 (Iowa Ct. App. 1999). Moreover, "[t]he instructions should state the applicable rule of law, and are not intended to marshal the evidence or give undue prominence to certain evidence involved in the case." *State v. Johnson*, 534 N.W.2d 118, 124 (Iowa Ct. App. 1995) (citing *State v. Marsh*, 392 N.W.2d 132, 133 (Iowa 1986)).

Here, the jury instructions given stated the applicable rule of law. Additionally, there was not substantial evidence of a lack of motive. Schmidt acknowledges that he was able to argue his theory of the defense to the jury in closing argument. Consequently, we find no merit in Schmidt's argument that his due process right to present his theory of defense was violated by the court's refusal to include the lack of motive instruction. We therefore conclude the district court did not err in failing to give Schmidt's proposed jury instruction on lack of motive.

B. Mistrial.

"A criminal defendant is presumed innocent until his guilt is established beyond a reasonable doubt. Thus, a defendant is entitled to the indicia of innocence in the presence of the jury." *State v. Wilson*, 406 N.W.2d 442, 448 (Iowa 1987) (citation omitted). To that end, "[a] defendant is usually not restrained in the courtroom in front of a jury in order to prevent the creation of

prejudice in the minds of jurors.” *Id.* at 449 (citation omitted). However, the district court judge must balance a defendant’s fair trial demands with security and safety. *State v. Ellis*, 350 N.W.2d 178, 183 (Iowa 1984) (citing *State v. Kile*, 313 N.W.2d 558, 562 (Iowa 1981)). In balancing these considerations, “it is relevant to consider the length of time involved in the incident, the circumstances under which the incident occurred, whether it occurred in the courtroom, and whether the jury was otherwise aware the defendant was incarcerated.” *Id.*

In *Ellis*, several jurors observed the defendant manacled outside the courtroom being led down the courthouse stairs as they followed behind. *Id.* The defendant moved for a mistrial, and the district court denied the motion, finding “that the exposure to the jurors was for a brief period of time and there was no evidence the jury was prejudicially affected by the incident.” *Id.* The defendant appealed, and the Iowa Supreme Court affirmed. *Id.* The court noted that the incident had not occurred in the courtroom and that the jurors only briefly observed the defendant being led down the courthouse stairs as an officer was preparing to remove him from the courthouse. *Id.* The court therefore concluded that, under those circumstances, the district court did not abuse its discretion in finding the defendant was not unfairly prejudiced by the incident and in overruling the defendant’s motion. *Id.*

In the present case, Schmidt has offered no evidence that any of the jurors saw him in the hallway. Furthermore, if Schmidt was seen, he was in street clothes and was not shackled, and he would have only been briefly observed in the presence of two officers outside of the courtroom. We conclude

the district court did not abuse its discretion overruling Schmidt's motion for a mistrial.

IV. Conclusion.

Because we conclude the district court did not err in failing to give Schmidt's proposed jury instruction on lack of motive and did not abuse its discretion overruling Schmidt's motion for a mistrial, we affirm Schmidt's conviction and sentence.

AFFIRMED.