

IN THE COURT OF APPEALS OF IOWA

No. 1-798 / 10-0478
Filed December 7, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LOUIS EUGENE WOOLHEATER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

A defendant challenges his judgment and conviction for the offense of first-degree murder, contending (1) the evidence was insufficient to support the jury's finding of guilt, (2) the verdict was contrary to the weight of the evidence, (3) the district court improperly admitted certain evidence, and (4) the district court abused its discretion in overruling his mistrial motion based on claimed prosecutorial misconduct. **AFFIRMED.**

Susan R. Stockdale, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano and Mike Salvner, Assistant County Attorneys, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

Lance Morningstar's bullet-riddled body was found behind the Altoona home of Louis Woolheater. The State charged Woolheater with first-degree murder and a jury found him guilty as charged.

On appeal, Woolheater contends: (1) the evidence was insufficient to support the jury's finding of guilt, (2) the verdict was contrary to the weight of the evidence, (3) the district court improperly admitted certain evidence, and (4) the district court abused its discretion in overruling his mistrial motion based on claimed prosecutorial misconduct.

I. Sufficiency of the Evidence

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

1. On or about September 30, 2004, the defendant or someone he aided and abetted shot Lance Morningstar.
2. Lance Morningstar died as a result of being shot.
3. The defendant or someone he aided and abetted acted with malice aforethought.
4. The defendant or someone he aided and abetted acted willfully, deliberately, premeditatedly and with a specific intent to kill Lance Morningstar.

See Iowa Code §§ 707.1, .2(1) (2003). Woolheater asserts there was "no forensic or physical evidence to link [him] to Morningstar's death and no evidence of premeditation or malice aforethought." A reasonable juror could have found otherwise.

The State theorized that Woolheater killed Morningstar at the request of a friend named Vern Huser, who had discovered that his wife was having an affair

with Morningstar.¹ In support of that theory, the State called Huser's wife, who admitted to an intimate relationship with Morningstar. She also testified that, when Huser found out about the affair, he was "angry and [h]urt" and "wanted revenge." He told her that, some day, Morningstar "would turn up missing and that no one would find his body."² While Huser's wife acknowledged that she never heard her husband mention Woolheater by name, other witnesses tied Woolheater to the crime.

According to one of Woolheater's many girlfriends, Woolheater told her Huser wanted Morningstar "roughed up" because he had an affair with his wife or ex-wife. Another girlfriend testified that Woolheater carried around a blue bag with a gun in it. Yet another girlfriend testified that Woolheater told her "one of his friend's [wives] was cheating and that he wanted to get the guy." When this girlfriend asked Woolheater why he cared about his friend's marital problems, he said the two of them "stick together." Woolheater also told her "he was going to kill [Morningstar]." After the shooting, he called her again and said "he was in big trouble."

A fourth girlfriend, Michelle Zwank, directly tied Woolheater to the shooting. According to her, Woolheater said his brother and his nephew "Ricky" would be coming into town to "deal with [Morningstar]" and he wanted to "check it out or whatever." Woolheater had Zwank drop him off near Morningstar's house.

¹ Huser was separately charged, tried, and found guilty of first-degree murder and his appeal is the subject of a separate opinion.

² As will be discussed below, we consider these statements to be hearsay, but in analyzing the sufficiency of the evidence, "all the evidence admitted during the trial, including erroneously admitted evidence, must be considered." *State v. Dullard*, 668 N.W.2d 585, 597 (Iowa 2003).

He told Zwank he would call her and left carrying a satchel that looked “like something that you would have pool cues in.” Zwank drove around for awhile and, in time, received a call from Woolheater in which he said, “Ricky made a hell of a shot.”

Zwank picked up Woolheater, but later took him back to Morningstar’s house “to clean up the scene.” She backed up to the house and opened the trunk of her car, as instructed. Woolheater brought out “a big form” wrapped in tarp. Zwank assumed the form was a body, an assumption that was confirmed when Woolheater told her to “[g]rab the feet.” Woolheater deposited the body into the trunk and Zwank drove her car back to Woolheater’s house, where she left it for the night. At the end of the day, Woolheater instructed Zwank to purchase a chemical that “would dissolve anything.” The following day, Woolheater returned Zwank’s car to her without the body. Zwank never saw “Ricky” or Woolheater’s brother.

In addition to these girlfriends’ testimonies, a friend of both Huser and Woolheater connected Woolheater to the crime. Lawrence Webb testified that he saw Huser and Woolheater together. At one point, Huser told him Morningstar ended up with money that went to Huser’s ex-wife. Woolheater separately told him Huser wanted “something done about it.” A day after Morningstar’s body was found, Webb went to Woolheater’s house. Woolheater told him “the body wasn’t even supposed to be there. It was supposed to be in Oklahoma in a pit.” Woolheater also said .22 caliber ammunition was used in the shooting.

A reasonable juror could have found this evidence sufficient to support the elements of first-degree murder, whether Woolheater was acting as a principal or as an aider or abettor. See *State v. Lewis*, 514 N.W.2d 63, 66 (Iowa 1994) (stating aiding and abetting requires proof that the defendant “assented to or lent countenance and approval to the criminal act either by active participation in it or by some manner encouraging it prior to or at the time of its commission” (quoting *State v. Lott*, 255 N.W.2d 105, 107 (Iowa 1977))).

II. Whether the Verdict was Contrary to the Weight of the Evidence

Woolheater moved for a new trial on the ground that the verdict was contrary to the evidence. He cited conflicting DNA evidence identifying Morningstar as the person in the trunk of Zwank’s car, the claimed absence of forensic or ballistic evidence tying him to the crime, and the absence of “money exchanged or an agreement” with Huser. The district court denied the motion, stating “I considered and heard all of the witnesses in this case testifying against Mr. Woolheater. And I find that those witnesses were credible and no miscarriage of justice is taken based on the weight of the evidence test.” See *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998) (stating the “weight of the evidence” refers to “a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other” (quoting *Tibbs v. Florida*, 457 U.S. 31, 37–38, 102 S. Ct. 2211, 2216, 72 L. Ed. 2d 652, 658 (1982))). Our review of this ruling is for an abuse of discretion. See *id.* at 659.

We begin with the conflicting DNA evidence cited by Woolheater. Law enforcement officers extracted a “weak” DNA sample from the trunk of Zwank’s

car, which a State expert attempted to link to Morningstar. The State's efforts were challenged by a defense expert, who questioned the State's interpretation of the sample. While this evidence was controverted, the district court found all the State's witnesses more credible. As the court exercised its unique authority "to weigh the evidence and determine credibility," we will not second guess this finding. See *State v. Reeves*, 670 N.W.2d 199, 208 (Iowa 2003).

That said, even without this disputed evidence and even without forensic or ballistic evidence tying Woolheater to the crime, the State presented several witnesses who connected Woolheater to Huser and to the shooting of Morningstar. The district court acted well within its authority in finding these witnesses credible. Accordingly, we conclude the district court did not abuse its discretion in denying Woolheater's motion for new trial on this ground.

III. Evidentiary Issues

A. Ownership of Firearms

At trial, an agent with the Department of Criminal Investigation testified that Woolheater told him that, at one time, he had over 200 firearms. Woolheater said he no longer had any, as he either gave them to his brother or sold them. He also said law enforcement authorities probably would not come across any of the guns. Woolheater did not disclose that he gave some of the guns to one of his girlfriends.

Based on these statements, the State sought to admit evidence of a cache of guns Woolheater gave to that girlfriend. The prosecutor argued that

[t]he fact that [Woolheater] knew that [his girlfriend] was holding weapons for him, including what we believe to be the murder weapon, shows a consciousness of guilt in that he knew that these

weapons would land him in trouble and would then connect him with that murder. Otherwise, he would have not answered the way he did.

The district court admitted evidence of Woolheater's ownership of these and other guns, ammunition, and silencers. On appeal, Woolheater contends the evidence was irrelevant and prejudicial. Our review is for an abuse of discretion. *See State v. Paredes*, 775 N.W.2d 554, 560 (Iowa 2009) (articulating an abuse of discretion standard of review on evidentiary rulings).

"Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. The State asserts the gun evidence was relevant for the following reasons:

(1) That evidence of Woolheater's ownership of firearms was admissible to show the falsity of his claim that he owned no firearms, and thus to support an inference concerning his consciousness of guilt; and (2) that evidence of Woolheater's ownership of firearms found with the rifle that was believed to be the murder weapon corroborated [a girlfriend's] testimony that Woolheater owned that weapon as well, and thus supported an inference concerning the identity of the perpetrator.

Neither theory holds water.

Beginning with the first theory, the State correctly points out that "[a] false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt and the false story is relevant to show that the defendant fabricated evidence to aid his defense." *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993). The State also correctly notes that Woolheater's testimony about his ownership of guns was, at a minimum, incomplete. But the State's first theory

flounders with its final assertion that the gun evidence was necessary to show the falsity of Woolheater's statements about his gun ownership and to show his consciousness of guilt. The problem with this assertion is that the "false story"—Woolheater's failure to disclose that he gave several guns to one of his girlfriends—is a non-story because the State did not tie the weapons found at the girlfriend's house to the shooting. All but one of the weapons found at the girlfriend's house fired different bullets than the bullets that killed Morningstar. And even the single gun that used the same type of bullet could not be positively identified as the gun that was used in the shooting.

Despite this fact, the State was allowed to elicit detailed descriptions of several of these weapons and was allowed to "publish" the weapons to the jury. The State was also allowed to show the jury the ammunition used in the guns, without making any effort to link the ammunition to the charged crime. To make matters worse, the guns were again shown to the jury during the testimony of a ballistics expert, with little more than passing reference to their bearing on the charged crime. Absent that connection, we conclude the evidence relating to guns and ammunition that came from Woolheater's girlfriend's house was irrelevant. *See id.* at 25–26 (noting that defendant's statements did not indicate a consciousness of guilt, as the statements did not go to an element *of the charged crime*); *see also State v. Crawley*, 633 N.W.2d 802, 805 (Iowa 2001) (finding evidence of refusal to submit handwriting exemplar probative of consciousness of guilt *on the crime of forgery*).³

³ The prosecution also introduced evidence of a silencer that came from this girlfriend's house. The State concedes this evidence has no probative value. And, the prosecution

The State's second theory, that the evidence was relevant to establish the identity of the perpetrator, fares no better than the first theory, as it presumes that one or more of the guns could be linked to the murder. As they could not, we conclude the gun evidence was not relevant to establish identity.

We must next determine whether the erroneously admitted evidence amounted to harmless error. Prejudice is presumed unless the contrary is affirmatively established. *State v. Sullivan*, 679 N.W.2d 19, 30 (Iowa 2004). Where a nonconstitutional error is claimed, as in this case, the test for determining prejudice is whether the rights of the complaining party have been "injuriously affected by the error" or whether the party has "suffered a miscarriage of justice." *Id.* at 29. Reversal may not be warranted where the properly admitted evidence is overwhelming. *See id.* at 30–31.

The evidence presented by Michelle Zwank leaves little to the imagination about where, when, how, and by whom the murder was committed. When combined with the fact that the body was essentially found in Woolheater's backyard, we conclude the properly-admitted evidence of Woolheater's guilt was overwhelming. For that reason, we decline to find the admission of the gun evidence reversible error.

B. Hearsay Statements of Huser

Woolheater next contends the district court erred in admitting the testimony of several witnesses who recounted statements made by Vern Huser. He contends these statements were hearsay.

introduced evidence of another gun at someone else's house but there is no evidence that Woolheater possessed this gun after 2002, and the shooting took place in 2004. For this reason, evidence of this gun is irrelevant.

Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Iowa R. Evid. 5.801(c). Hearsay rulings are reviewed for correction of errors at law. *State v. Paredes*, 775 N.W.2d 554, 560 (Iowa 2009).

The out-of-court statements made by Huser to others include statements made to his wife and to Lawrence Webb. Citing *State v. Weaver*, 608 N.W.2d 797, 805 (Iowa 2000), the State contends these statements were not hearsay because they were merely expressions of aggrieved feelings rather than assertions of fact. We disagree.

Weaver does not exempt statements of “aggrieved feelings” from the hearsay definition. That opinion simply stands for the proposition that certain statements may be admissible under the “excited utterance” exception to the hearsay rule. *Weaver*, 608 N.W.2d at 805; see Iowa R. Evid. 5.803(2). None of the challenged statements could be viewed as excited utterances. For example, the statements Deb Huser recounted were made to her repeatedly and over a period of time. And, there was no indication in Lawrence Webb’s testimony that Huser’s statements about Morningstar were made in the heat of the moment. Because this exception did not apply and the State cites no other valid exception to the hearsay rule, we conclude the challenged statements attributed to Vern Huser were hearsay.

The question remains whether the admission of these statements amounted to reversible error. As discussed, several witnesses testified that Woolheater mentioned Huser’s motives in wanting Morningstar killed. Woolheater’s statements to these witnesses were admissible as admissions of a

party opponent. See Iowa R. Evid. 5.801(d)(2). Because the challenged statements attributed to Huser were essentially cumulative of Woolheater's statements, we conclude reversal is not required. See *State v. Schaer*, 757 N.W.2d 630, 633 (Iowa 2008).

IV. Mistrial Motion—Prosecutorial Misconduct

During his closing argument, the prosecutor misstated the testimony of Lawrence Webb. According to the prosecutor, Woolheater “told Larry Webb that he was watching Lance Morningstar for Vern Huser.” In fact, while Webb said Woolheater was watching Morningstar, he did not state Woolheater was watching Morningstar *at Huser's request*.

After the prosecutor made this statement, Woolheater's attorney immediately moved for a mistrial based on prosecutorial misconduct. The court overruled the motion, finding that the prosecutor did not make the statement intentionally. Nonetheless, the prosecutor agreed to correct his statement. He advised the jury,

I misspoke when we were talking about Larry Webb. His testimony was that the defendant, Mr. Woolheater, told him that he was watching Lance Morningstar. Mr. Webb did not say he was doing it for Vern Huser. So we can be clear on that.

On appeal, Woolheater reiterates that the court should have granted his mistrial motion. He notes that the prosecutor's original statement made the crucial link between Woolheater and Huser.

We conclude the prosecutor's admitted misstatement did not deprive Woolheater of a fair trial. See *State v. Anderson*, 448 N.W.2d 32, 33 (Iowa 1989) (stating that a prosecutor's misconduct does not warrant a new trial unless it

deprived the defendant of a fair trial). Although the statement was relevant to the State's theory of motive, it was not essential to the State's proof of the elements of first-degree murder. Additionally, the statement came at the end of a lengthy trial after many witnesses had already testified to the connection between Huser and Woolheater. While no witness explicitly referred to an agreement between the two, a reasonable juror could have inferred that Woolheater acted at Huser's behest. Finally, the prosecutor's reference was isolated and was immediately corrected. For these reasons, we conclude the district court did not abuse its discretion in denying Woolheater's mistrial motion on this ground. See *State v. Thornton*, 498 N.W.2d 670, 676 (Iowa 1993) (setting forth standard of review).

We affirm Woolheater's judgment and sentence for first-degree murder.

AFFIRMED.