IN THE COURT OF APPEALS OF IOWA

No. 8-604 / 07-1659
Filed December 17, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MEGAN NICOLE PRICE,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, David H. Sivright Jr., Judge.

Megan Price appeals her conviction and sentence for voluntary manslaughter following a jury trial. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, and Michael J. Walton, County Attorney, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

Defendant Megan Price appeals her conviction and sentence for voluntary manslaughter following a jury trial. Among other things, Price contends the district court erred in excluding her expert's testimony concerning battered women's syndrome. Upon our review, we reverse the decision of the district court and remand for a new trial.

***I. Background Facts and Proceedings*.**

On January 5, 2007, Price fatally stabbed Allen Johnson after a confrontation with him at his house in Davenport, Iowa. At the time, Price and Johnson had been involved in a romantic relationship for nearly a year and lived together three to four days a week. It is uncontroverted that throughout much of their relationship Johnson was abusive toward Price.

Price was initially charged with voluntary manslaughter in violation of Iowa Code section 707.4 (2005). Price pleaded not guilty and filed a notice of self-defense and diminished responsibility. Thereafter, the State amended the trial information to amend the charge to second-degree murder in violation of sections 707.1 and 707.3.

Price applied for, and the district court approved, expert witness fees to have an expert evaluate her for and possibly testify as to battered women's syndrome. Dr. David McEchron then evaluated Price and subsequently issued a report. In the report, Dr. McEchron opined:

> The history of [Price's] relationship with [Johnson] is such that she also appears to fit the characteristics of [battered women's] syndrome. While Megan clearly has a history of antisocial behavior and has experienced serious psychological difficulties, her psychological limitations have been further impacted by . . . submitting to a seriously abusive relationship for a pattern of

> months. Her thinking clearly reflects a great deal of confusion and an inability to care for herself in an abusive relationship.

Price named Dr. McEchron as a defense witness, and the State, on the day of trial, filed a motion seeking to exclude Dr. McEchron's testimony. Price resisted and asserted that Dr. McEchron's testimony would pertain to battered women's syndrome and her claim of self-defense. The district court reserved its ruling on the issue at that time, and the trial commenced.

The evidentiary matter came before the court again after the State rested its case in the trial. The State argued at that time that the expert's testimony was irrelevant. Conversely, Price argued that the testimony was relevant, citing two out-of-state cases where expert testimony on battered women's syndrome was permitted for the issue of the state of mind of the defendant and justification. Ultimately, the district court granted the State's motion to exclude Dr. McEchron's testimony. The court concluded the testimony was irrelevant because the killing arose out of a confrontation, not a non-confrontational situation where a defendant has an alternative course of action available but instead chose to attack the victim. The court explained:

> If this was a non-confrontational killing, I would deny this motion and allow Dr. McEchron to testify so that the jury could understand the defense. I think then . . . expert testimony would be of assistance to the jury. In this case, I don't think it would be. In a non-confrontational killing, expert testimony would be helpful to let the jury understand the mental state of the particular defendant and the reasonableness of her beliefs and her use of force.
>
> Here we have a confrontational incident. The jury has heard of the prior attacks, assaults, and threats, prior incidents. They have heard her response to that. . . . All in all, based on this record, I don't find that the jury needs expert help under rule 5.702 to evaluate the behavior of [Price] and interpret that behavior to determine her mental state at the time this happened. I don't think

> Dr. McEchron will add any special understanding to the situational dynamics. I think the jury can do this on their own.[1]

After ruling on the matter, the court noted that it was "going to consider [Dr. McEchron's report] as an offer of proof by [Price] in response to this ruling."

Thereafter, Price took the stand in her defense. Price testified that just prior to the stabbing, Johnson stated he was going to kill her. Price testified that Johnson came at her to punch her in the head, and Price, fearing for her life, then picked up a knife lying on the floor and stabbed Johnson. During cross-examination, Price acknowledged that she was told by friends that if she would stab Johnson, he would quit hitting her. Price stated, "I did make that plan in the future to try to stab him if he hit me again, and I had no intention in killing him."

After the defense rested, the trial court instructed the jury on, among other matters, justification. The case was then submitted to the jury. During their deliberations, the jury sent back four notes asking questions regarding justification.[2] Ultimately, the jury was unable to reach a verdict, and the district court declared a mistrial.

Following the mistrial, Price filed a notice of expert defense witness indicating her intent to call Laurie Schipper, Executive Director of the Iowa Coalition Against Domestic Violence, to testify as to self-defense and battered women's syndrome. Price also filed a motion to allow testimony regarding the

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[1] Despite the district court's distinction, expert testimony on battered women's syndrome has been allowed in both confrontational and non-confrontational killing cases. *See Commonwealth v. Dillon*, 598 A.2d 963, 969 (Pa. 1991) (Cappy, J., concurring); *see also* Erin M. Masson, Annotation, *Admissibility of Expert or Opinion Evidence of Battered-Woman Syndrome on Issue of Self-Defense*, 58 A.L.R. 5th 749, § 2[a], at 764 (1998).

[2] One jury note specifically referenced battered women's syndrome. Although it is unclear from the record, it appears battered women's syndrome was referenced in voir dire.

victim's past abuse of Price and expert testimony regarding battered women's syndrome. The State then filed a motion to exclude the testimony of both Dr. McEchron and Laurie Schipper as irrelevant.

Immediately prior to the commencement of the second trial, the district court considered the motions. Price's counsel argued that Schipper's testimony would aid the jury in the issues surrounding women who are in domestic violence situations who have been abused, and that her testimony would go to Price's state of mind at the time of the incident that resulted in the stabbing. Price's counsel additionally asserted that all of the reasons he argued for having Dr. McEchron testify in the first trial remained the same for Schipper in the second trial, and the district court admitted the first trial's record into evidence in support of his argument. Ultimately, the district court stood by its original ruling made in the first trial, holding that expert testimony was not necessary for the jury to understand Price's state of mind, given that the facts presented a confrontational killing and Johnson's past abuse of Price would be admissible. Immediately after the district court granted the State's motion to exclude the testimony, the following exchange took place:

> [PRICE'S ATTORNEY]: Your Honor, just for the record, [Dr. McEchron's] report has been previously submitted with the State's motion in limine from the first trial, which I also offered as my offer of proof in support of expert testimony, and I'm just renewing that today also.
>
> THE COURT: Well, you have anything for Ms. Shipper? Are you just gonna use McEchron's report again as her offer of proof?
>
> [PRICE'S ATTORNEY]: Yes.
>
> THE COURT: The record will indicate the same exhibit as—received as an offer of proof to allow expert testimony on the battered woman syndrome issue.
>
> [PRICE'S ATTORNEY]: Correct.

> THE COURT: I didn't know if you had anything in writing from Ms. Shipper at all.
>
> [PRICE'S ATTORNEY]: We planned on having a deposition, and then the State cancelled the [deposition] on last Thursday, so I didn't have time to get a formal statement from her.

Price did not take the stand in the second trial; however, the State did introduce into evidence an interview of Price at the Davenport Police Department following the stabbing. In its closing argument, the State argued that Price had an alternative course of action, and that she did not believe she was in imminent danger of injury or death, and thus Price killed without justification. The jury convicted Price of the lesser offense of voluntary manslaughter, and Price was sentenced to an indeterminate term of imprisonment not to exceed ten years, along with the imposition of a fine and an order to pay fees and restitution.

Price appeals. She contends, among other things, that the district court erred in excluding her expert's testimony concerning battered women's syndrome.

II. Scope and Standards of Review.

In general, a district court's ruling on the admissibility of expert testimony at trial is discretionary. *State v. Buller*, 517 N.W.2d 711, 713 (Iowa 1994). On appeal, we will not disturb a district court's ruling on the admissibility of expert testimony at trial unless it constitutes an abuse of discretion and prejudice has resulted. *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 531 (Iowa 1999). "Abuse of discretion" means that the trial court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Axiotis*, 569 N.W.2d 813, 815 (Iowa 1997) (citation omitted). "A ground or reason is untenable when it is not supported by substantial evidence or when

it is based on erroneous application of the law." *State v. Rodriquez*, 636 N.W.2d 234, 239 (Iowa 2001) (citation omitted).

***III. Discussion*.**

***A. Error Preservation*.**

As a preliminary matter, we address the State's assertion that Price failed to preserve error by making an insufficient offer of proof at trial. An offer of proof serves both to give the trial court a more adequate basis for its evidentiary ruling and to make a record for appellate review. *Strong v. Rothamel*, 523 N.W.2d 597, 599 (Iowa Ct. App. 1994). The burden of making an offer of proof to preserve error is on the party that urges the evidence should have been admitted. *Id*.

The district court accepted Price's explanation of the proposed testimony as a formal offer of proof. It is apparent to us, after a review of the complete record, that the district court and the parties understood the basis for Schipper's testimony, the line of questioning Price wished to pursue, and what was sought to be proven. The district court had an adequate basis for its evidentiary ruling. Consequently, we find the record sufficient to have preserved error, and that it provides an adequate basis for review by this court. *See State v. Lange*, 531 N.W.2d 108, 114 (Iowa 1995).

***B. Exclusion of Evidence*.**

1. Abuse of Discretion.

"Justification is a complete defense." *State v. Wilkens*, 346 N.W.2d 16, 18 (Iowa 1984). In Iowa, self-defense is statutorily denominated as a defense of justification. *State v. Dunson*, 433 N.W.2d 676, 677 (Iowa 1988). The defense, as codified, provides: "A person is justified in the use of reasonable force when

the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force." Iowa Code § 704.3 (2005). Thus, "the test for justification is both subjective and objective." *State v. Elam*, 328 N.W.2d 314, 317 (Iowa 1982). A person claiming self-defense must actually believe he or she is in danger, and the belief must be a reasonable one. *Id*.; *State v. Washington*, 160 N.W.2d 337, 340 (Iowa 1968); *see also* Iowa Code § 704.3.

Once self-defense is raised, the burden is on the State to prove beyond a reasonable doubt that the asserted justification of self-defense did not exist. *State v. Rubino*, 602 N.W.2d 558, 565 (Iowa 1999). The State may meet its burden by proving any of the following: (1) the defendant initiated or continued the incident resulting in injury; (2) the defendant had an alternative course of action, which was not utilized; (3) the defendant did not have reasonable grounds for the belief he was in imminent danger of injury or death; (4) the defendant did not actually believe he was in imminent danger of injury or death; or (5) the force used by the defendant was unreasonable. *Id*.; *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). Consequently, the defendant's state of mind is relevant to this defense.

Iowa has a liberal tradition in the admission of expert opinion evidence under Iowa Rule of Evidence 5.702. *State v. Buller*, 517 N.W.2d 711, 713 (Iowa 1994). Rule 5.702, which governs the admission of expert opinion testimony, provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill,

> experience, training, or education may testify thereto in the form of an opinion or otherwise.

Thus, expert testimony is admissible if it is reliable and will assist the trier of fact in resolving an issue. *State v. Rodriquez*, 636 N.W.2d 234, 245 (Iowa 2001) (citations omitted). "Courts welcome the testimony of an expert who is in a better position through education and experience to have an opinion on relevant facts and circumstances than the trier of fact." *State v. McKowen*, 447 N.W.2d 546, 548 (Iowa Ct. App. 1989) (citation omitted).

Price contends the district court erred in excluding her expert's testimony concerning battered women's syndrome. A thorough review of Iowa case law regarding battered women's syndrome found there have been only a few written decisions where a court has ruled on whether expert testimony regarding battered women's syndrome is admissible. In *State v. Rodriquez*, 636 N.W.2d 234 (Iowa 2001), the defendant was charged with, among other things, third-degree kidnapping and aggravated domestic assault arising out of an incident of domestic abuse against his girlfriend. *Rodriquez*, 636 N.W.2d at 238. The defendant did not deny his assault on his girlfriend, but rather sought to prove he did not intend to seriously injure her and that he did not confine her against her will. *Id*. at 245-46. The State was allowed to introduce expert testimony on battered women's syndrome, and the defendant appealed, arguing the testimony was irrelevant. *Id*. The Iowa Supreme Court concluded that expert testimony on battered women's syndrome was relevant and thus admissible, explaining:

> We think [the expert's] testimony allowed the jury to view both the defendant's and the victim's behavior in the context of the nature of their relationship, which clearly reflected a "cycle of violence." Moreover, the testimony of the expert on battered women's syndrome gave the jury information that it needed to understand

> the significance and meaning of the defendant's conduct and to understand the victim's reaction to that conduct.

Id. at 246. Additionally, in *State v. Griffin*, 564 N.W.2d 370 (Iowa 1997), the court determined expert testimony about battered women's syndrome on the issue of a victim's credibility was admissible where, prior to trial, the victim had recanted her accusation of defendant. *Griffin*, 564 N.W.2d at 374.

Other jurisdictions have specifically found that expert testimony on battered women's syndrome is relevant to the issue of a defendant's claim of self-defense. *See*, *e.g.*, *State v. Hickson*, 630 So.2d 172 (Fla. 1993); *Pickle v. State*, 635 S.E.2d 197 (Ga. Ct. App. 2006); *People v. Evans*, 648 N.E.2d 964 (Ill. App. Ct. 1995); *State v. Hundley*, 693 P.2d 475 (Kan. 1985); *Commonwealth v. Rose*, 725 S.W.2d 588 (Ky. 1987), *overruled on other grounds by Commonwealth v. Craig*, 783 S.W.2d 387 (Ky. 1990); *State v. Anaya*, 438 A.2d 892 (Me. 1981); *People v. Wilson*, 487 N.W.2d 822 (Mich. Ct. App. 1992); *State v. Edwards*, 60 S.W.3d 602 (Mo. Ct. App. 2001); *Boykins v. State*, 995 P.2d 474 (Nev. 2000); *State v. Kelly*, 478 A.2d 364 (N.J. 1984); *People v. Seeley*, 186 Misc. 2d 715, 720 N.Y.S.2d 315 (N.Y. Sup. Ct. 2000); *State v. Koss*, 551 N.E.2d 970 (Ohio 1990); *Bechtel v. State*, 840 P.2d 1 (Okla. Crim. App. 1992); *Commonwealth. v. Miller*, 634 A.2d 614 (Pa. Super. Ct. 1993); *State v. Urena*, 899 A.2d 1281 (R.I. 2006); *Fielder v. State*, 756 S.W.2d 309 (Tex. Crim. App. 1988). We find these cases informative and their reasoning persuasive.

In the present case, we think the expert's testimony would have given the jury information that it needed to understand the significance and meaning of the victim's conduct and to understand the defendant's reaction to that conduct, as the Iowa Supreme Court similarly found in *Rodriquez*. *Rodriquez*, 636 N.W.2d at

238. Furthermore, we agree with those jurisdictions that have concluded that while evidence of battered women's syndrome is not in and of itself a defense, "its function is to aid the jury in determining whether a defendant's fear and claim of self-defense are reasonable." *Edwards*, 60 S.W.3d at 613 (and citations therein). Consequently, we conclude the district court abused its discretion in excluding the expert's testimony.

2. Prejudice.

"Even if an abuse of discretion is found, reversal is not required unless prejudice is shown." *State v. Buenaventura*, 660 N.W.2d 38, 50 (Iowa 2003). Here, the State argued in closing that Price had an alternative course of action, and that she did not believe she was in imminent danger of injury or death, and thus she killed without justification. Because we find the expert's testimony would have been relevant in aiding the jury's determination of whether Price did have a reasonable belief that she was in imminent danger of injury or death or whether Price had an alternative course of action, we conclude this record does not affirmatively establish a lack of prejudice. Consequently, we reverse and remand for a new trial.

***IV. Conclusion*.**

Because the trial court abused its discretion in prohibiting Price from presenting expert testimony concerning battered women's syndrome, and the record does not affirmatively establish a lack of prejudice, we reverse and remand for a new trial. This disposition makes it unnecessary to address the remaining issue Price raises on appeal.

REVERSED AND REMANDED.