IN THE COURT OF APPEALS OF IOWA

No. 8-605 / 07-1813
Filed December 17, 2008

STATE OF IOWA,
Plaintiff-Appellant,

vs.

CHAD ALBERT GODFREY,
Defendant-Appellee.

Appeal from the Iowa District Court for Story County, Michael J. Moon, Judge.

The State of Iowa has been granted discretionary review of the district court's ruling ordering the State to provide the home addresses of all witnesses listed in the minutes of testimony. **AFFIRMED.**

Thomas J. Miller, Attorney General, Darrel Mullins and Mary Tabor, Assistant Attorneys General, Stephen Holmes, County Attorney, and Keisha Cretsinger, Assistant County Attorney, for appellant.

Mark C. Smith, State Appellate Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellee.

Heard by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.

I. Background Facts and Proceedings

On August 14, 2007, Chad Godfrey was charged by trial information with sexual abuse in the second degree in violation of Iowa Code section 709.1(3) and 709.3(2) (2007); domestic abuse assault in violation of Iowa Code section 708.2A(4); and false imprisonment in violation of Iowa Code section 710.7. The same day, the State filed the minutes of testimony of twelve witnesses, listing a home address for only one witness, the alleged victim. On August 30, 2007, the State filed additional minutes of testimony of three witnesses listing no home addresses.

On August 31, 2007, Godfrey filed a motion to compel compliance with Iowa Rule of Criminal Procedure 2.5(3), requesting that the State provide the home addresses of all witnesses in the minutes of testimony. On September 17, 2007, the State filed a resistance to Godfrey's motion to compel, stating that service could be achieved through the witnesses' places of employment, which were provided in the minutes of testimony. On September 17 and 18, 2007, the State filed two more notices of additional minutes of testimony for three witnesses listing no home addresses.

On October 1, 2007, Godfrey filed another motion to compel compliance with rule 2.5(3), requesting home addresses of State witnesses as well as a full and fair statement of witness testimony. The district court issued an order on October 2, 2007, sustaining Godfrey's motions and requiring the State to amend the minutes of testimony within ten days. The district court stated that minutes of testimony were lacking in every respect set forth in Godfrey's motions and that

the Iowa Rules of Criminal Procedure "clearly state that the residence address of each witness will be set forth."

On October 10, 2007, the State filed a motion to reconsider the district court's October 2 ruling, stating that the rules only require a "place of residence" and not a physical address. The State asserted that "place of residence" could be interpreted to mean city, county, or state of residence. The district court conducted a hearing on October 16, 2007, after which the court denied the State's request to reconsider its prior ruling. The district court determined that the phrase "place of residence" as used in rule 2.5(3) was ambiguous and used former versions of the rule and related cases to aid in interpretation. The district court found that the intent of the drafters in writing the rule was that home addresses be provided. Thus, the district court ordered the State to provide the home addresses of all of its witnesses.

On October 26, 2007, the State submitted amended minutes of testimony that listed the home addresses of all witnesses with the exception of three: (1) one witness refused to provide his home address; (2) one witness provided his work address; and (3) the personal address of one witness was unknown. The State also obtained a temporary protective order that prohibited Godfrey's attorney from distributing or disseminating certain personal addresses. In addition, on October 30, 2007, the State sought discretionary review of the district court's ruling and a stay. The State's application was granted on November 20, 2007. Godfrey asks us to affirm the district court and also asserts an argument of ineffective assistance of counsel.

II. Standard of Review

We review the district court's interpretation of Iowa Rule of Criminal Procedure 2.5(3) for correction of errors at law. *State v. Sanders*, 623 N.W.2d 858, 859 (Iowa 2001).

III. Iowa Rule of Criminal Procedure 2.5(3)[1]

The rule at issue states:

> The prosecuting attorney shall, at the time of filing such information, also file the minutes of evidence of the witnesses which shall consist of a notice in writing stating the name, *place of residence* and occupation of each witness upon whose expected testimony the information is based, and a full and fair statement of the witness' expected testimony.

Iowa R. Crim. P. 2.5(3) (2007) (emphasis added).

We interpret rules in the same manner we interpret statutes. *City of Sioux City v. Freese*, 611 N.W.2d 777, 779 (Iowa 2000). When a rule's language is clear, we should not look beyond its express meaning. *State v. Finders*, 743 N.W.2d 546, 548 (Iowa 2008). A rule is ambiguous if "reasonable persons could disagree as to its meaning." *Wright v. Iowa Dep't of Corrs.*, 747 N.W.2d 213, 215 (Iowa 2008). If a rule is ambiguous, the court may interpret the rule to determine the legislative purpose and avoid absurd results. *Finders*, 743 N.W.2d at 548. The court may consider among other matters: (1) the object sought to be attained; (2) the common law or former statutory provisions; and (3) the consequences of a particular construction. Iowa Code § 4.6.

[1] Proposed amendments to Iowa Rules of Criminal Procedure 2.4(6) and 2.5(3) are currently pending action by the supreme court.

A. Former Statutory Provisions

We agree with the district court that the definition of "place of residence" is ambiguous. The phrase "place of residence" has been used in both the Iowa Code and Iowa case law to describe: (1) a person's home address;[2] (2) a person's home city;[3] (3) a person's home county;[4] and (4) a person's home state.[5] Thus, the phrase could reasonably be understood to have the meaning asserted by Godfrey, home address, or the meaning asserted by the State, one's home city, county, or state. We seek to interpret the rule in a way that fulfills the purpose of the rule as it was intended by the drafters.

Effective January 1, 1978, Iowa Rule of Criminal Procedure 4(6)(*a*), relating to indictments returned by a grand jury, stated:

> A minute of evidence shall consist of a notice in writing stating the name, place of residence, and occupation of the witness upon whose testimony the indictment is found, and a full and fair statement of the witness' testimony before the grand jury.

Iowa. R. Crim. P. 4(6)(*a*) (Supp. 1977).

At that time, Iowa Rule of Criminal Procedure 5(3)–now Iowa Rule of Criminal Procedure 2.5(3)–provided:

> The prosecuting attorney shall, at the time of filing such information, endorse or cause to be endorsed thereon the names*, occupations, and last known addresses* of the witnesses whose evidence the prosecuting attorney expects to introduce and use on the trial of the same, and shall also file with such information, *of each witness whose name is endorsed upon the information, a statement sufficient to enable the defendant to prepare his defense.*

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[2] *See* Iowa Code § 43.24(2).
[3] *See Chamberlain v. Anderson*, 195 Iowa 855, 857, 190 N.W. 501, 502 (1922).
[4] Iowa Code § 229.6 (2007). *See State v. Story County*, 207 Iowa 1117, 1118, 224 N.W. 232, 233 (1929).
[5] Iowa Code § 321.53 (2007).

Iowa R. Crim. P. 5(3) (Supp. 1977) (emphasis added).

Effective July 1, 1979, changes were made to Rule 5(3). The portions of the rule that are italicized above were stricken and a new ending was added requiring the prosecuting attorney to file with the trial information, "the minutes of evidence of such witness as defined in the rule 4(6)(*a*)." Iowa R. Crim. P. 5(3) (1979). Thus, as of July 1, 1979, the phrase "last known addresses" was removed from our Rules of Criminal Procedure and replaced with the phrase "place of residence" as found in Rule 4(6)(*a*), which has remained in effect ever since. *Id.*

We also agree with the district court that the supreme court's explanation of the change in rule 5(3) is helpful in examining the history of this rule. *See State v. Walker*, 281 N.W.2d 612, 613 (Iowa 1979). The supreme court stated that the purpose of the change in rule 5(3) "was merely to conform the two rules so that all prosecutions, whether by indictment (rule 4(6)(*a*)) or by trial information (rule 5(3)), should adhere to the same standards." *Id*. The supreme court explained that it considered "the July 1, 1979, modification to rule 5(3) to be one of clarification only. It was not intended to effect a change in the rule but only to explain the meaning of the rule as it was originally drafted." *Id.* The changes in language would necessarily effect a change in rule 5.3 unless the language in both rules was synonymous. Thus, the supreme court considered the phrases "place of residence" and "last known address" to have equivalent meaning.

Further, the supreme court stated, "[W]e reach this conclusion without difficulty because we are interpreting rules which we ourselves drafted and

adopted and which were then accepted by the legislature." *Id.* at 614. The supreme court was in the best position to determine the purpose of the rule and the effect of the change in wording. We find that the phrase "place of residence" was intended to have the same meaning as "last known address." Therefore, the phrase "place of residence," as used in current Rule 2.5(3), was intended to mean address, not something broader.[6]

B. Purpose of Rule 2.5(3)

The purpose of the rule is best fulfilled when "place of residence" is interpreted to require an address and not merely a city, county, or state. The purpose of rule 2.5(3) is to "provide meaningful minutes from which a defense could be prepared." *Walker*, 281 N.W.2d at 613. "Minutes need not detail each circumstance of the testimony, but they must be sufficient fully and fairly to alert defendant generally to the source and nature of the evidence against him." *Id*. at 614. At a minimum, the minutes must contain the information required by Rules of Criminal Procedure. The minutes of testimony should give defendants the opportunity to prepare to contradict or explain the evidence that will be introduced against them. It is undeniable that a "witness' name and address open countless avenues of in-court examination and out-of-court investigation." *Smith v. Illinois*, 390 U.S. 129, 131, 88 S. Ct. 748, 750, 19 L. Ed. 2d 956, 959 (1968). Thus, we find that assigning the meaning of "personal address" to the

[6] This analysis disposes of the State's argument that if the drafters meant "address," they would have used the word address as they did in other rules. *See e.g.*, Iowa R. Crim. P. 2.11(11). The drafters initially chose the word address and eliminated it only when replacing it with a phrase that they deemed to have identical meaning.

phrase "place of residence" best fulfills the purpose of allowing the defendant to prepare a thorough defense.

We are not persuaded by the State's argument that the purpose of the rule was satisfied in this case because Godfrey was familiar with the witnesses. The witnesses at issue were a county attorney, a clerk of court, and a physician. These witnesses are not individuals with whom Godfrey associated.[7] The rule specifically requires that the prosecuting attorney should provide a place of residence for all witnesses, without exception for those known to the defendant. Rule 2.5(3) exists to allow defendants access to necessary information about the State's witnesses without having to go through the prosecutor to investigate and prepare a defense.

IV. Conclusion

We find that the history of Iowa Rule of Criminal Procedure 2.5 indicates that the drafters of the rule intended for the prosecuting attorney to provide the home addresses of witnesses in the minutes of testimony. We further find that such information is necessary to allow a defendant to properly prepare a defense. Because we find in Godfrey's favor, we decline to address his ineffective-assistance-of-counsel claim.

AFFIRMED.

[7] In *State v. Friedley*, No. 01-1580 (Iowa Ct. App. Mar. 26, 2003), this court ruled that failure to comply with the requirement that addresses and occupations be provided in the minutes of testimony did not require dismissal of the trial information where defendant was familiar with the witnesses and their testimony by virtue of a previous trial.