**IN THE COURT OF APPEALS OF IOWA**

No. 9-086 / 07-2068
Filed April 22, 2009

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**KYLE ANTHONY MARIN,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, Judge.

A defendant appeals his convictions of two counts of first-degree murder. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Harold Denton, County Attorney, and Jason Burns, Assistant County Attorney, for appellee.

Heard by Eisenhauer, P.J., and Doyle and Mansfield, JJ.

**MANSFIELD, J.**

Kyle Marin appeals his first-degree murder convictions. He asserts that the district court erred in denying his motion to suppress and in refusing to give certain jury instructions. We affirm.

**I. Background Facts and Proceedings.**

On April 22, 2006, Marin spent the latter part of the evening with two of his friends, Molly Edmondson and Katrina Hill. Eventually, the three of them made their way to Edmondson's apartment. According to Marin's own statement, when Edmondson and Hill were asleep, Marin suddenly got thoughts about killing. Marin grabbed a steak knife, a hammer, a pizza cutter, and a screwdriver, woke up both Edmondson and Hill, and instructed them to go into the bathroom of the apartment.

In the bathroom, Marin ordered Edmondson and Hill to take their clothes off and told them he was going to kill them. Using the foregoing weapons, Marin stabbed both women to death. Marin inflicted over one hundred seventy wounds on the two women. Edmondson received fifty separate wounds to her face, arms, back, legs, and chest wall. Hill had over one hundred twenty separate punctures, with extensive trauma to her head, including a fractured skull. Marin later said, "I was enjoying it for some reason—I don't know why."

Having savagely killed the two women, Marin dragged Edmondson's body out to the bedroom floor, leaving Hill's body in the bathroom. Marin then changed his clothes and fell asleep in the other bedroom. That afternoon (April 23) he woke up and drove away in Hill's car.

Late that afternoon, Hill's father went to Edmondson's apartment after Hill did not show up for a family function. The apartment had been left unlocked by Marin. Hill's father entered and found Edmondson's dead body on the bedroom floor and his own daughter's dead body on the bathroom floor. He called 911.

That same evening, at approximately 7:20 p.m., Marin appeared at the Linn County Correctional Center. After walking in, he stated that he was there "to turn himself in on two murders" and he had "just killed two girls." While a civilian employee called the Cedar Rapids Police Department, Sergeant John Davidson went to the lobby area and told Marin the Cedar Rapids police were coming to talk to him. Sergeant Davidson noticed blood on Marin's hands and jeans. Minutes later, three police officers arrived at the jail. The officers, along with Sergeant Davidson, took Marin to a secure area of the jail, where they frisked him. The officers questioned Marin as to his identity, and one officer asked, "What brings you to the jail?" Then, the officers transported Marin to the Cedar Rapids Police Station.

Once Marin arrived at the police station, he was brought to an interview room. Beginning at approximately 7:30 p.m., Detective Douglas Larison conducted a three-hour interview with Marin, which was videotaped. At the outset of the interview, Detective Larison read Marin his *Miranda* rights.[1] However, after going through the text of the form, Detective Larison realized he had used a juvenile version of the *Miranda* form. He retrieved an adult *Miranda* form and again read Marin his *Miranda* rights, this time from the adult form. Detective Larison asked Marin to sign the form if he understood his rights. Marin

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

signed the form. Detective Larison began asking Marin questions, and Marin freely discussed the details of the killings. Following the interview, Marin signed a typed statement. On April 24, a search warrant on Marin's residence was executed.

On May 12, 2006, the State charged Marin with two counts of first-degree murder in violation of Iowa Code sections 707.1 and 707.2(1) (2005). On February 2, 2007, Marin filed a motion to suppress any statements he had made at the jail and in the interview with Detective Larison and any evidence obtained therefrom, alleging his Fifth and Fourteenth Amendment rights had been violated. On March 14, 2007, Marin filed an amended motion to suppress the interview, alleging his statutory right to contact a family member had been violated. On May 1, 2007, the district court partially granted and partially denied the motion. The district court found that after the police officers arrived at the jail and took Marin to a secured room, Marin was in custody and had not yet been read his *Miranda* rights. The officer's question asking Marin what brought him to the jail was "an invitation for Marin to repeat . . . that he had killed two girls." Thus, the district court suppressed any statements made by Marin while in the secured area of the jail. However, the district court found that following Marin's arrival at the police station, Detective Larison advised Marin of his *Miranda* rights prior to any questioning and Marin knowingly, intelligently, and voluntarily waived those rights. Thus, the district court denied Marin's motion to suppress the interview with Detective Larison and all evidence obtained as a result. On September 10, 2007, Marin renewed his motion to suppress. Subsequently, the district court denied Marin's renewed motion.

On October 22, 2007, a jury trial began. Marin relied in part on an insanity defense. Marin introduced evidence that three weeks prior to the killings, he had been hospitalized after attempting to commit suicide. He was discharged from the hospital on April 17, 2006, with a diagnosis of depression and substance abuse disorders. He was prescribed Zoloft, Buspar, and Doxepin. Marin admitted that on the night of the killings he took seven or eight Zoloft pills, which greatly exceeded the prescribed dosage, and consumed significant amounts of alcohol. Marin received the standard Iowa jury instruction on intoxication. Marin also requested an *involuntary* intoxication jury instruction, which the district court denied.

On November 1, 2007, the jury found Marin guilty as charged. On November 15, 2007, Marin filed a motion for a new trial challenging the malice aforethought jury instruction given by the court and claiming the jury should have been instructed as to involuntary intoxication. The district court denied Marin's motion. On November 21, 2007, the district court sentenced Marin to two consecutive life-in-prison terms. Marin appeals.

**II. Motion to Suppress.**

Marin asserts the interview with Detective Larison was conducted in violation of his Fifth and Fourteenth Amendment rights and Iowa Code section 804.20. Thus, he claims the district court should have suppressed his statements from the interview and all evidence obtained as a result thereof. We review Marin's constitutional claim de novo. *State v. Harris*, 741 N.W.2d 1, 5 (Iowa 2007). We review the alleged violation of section 804.20 for errors at law. *Id*.

**A. Fifth Amendment.**

First, we examine Marin's claim that he did not waive his constitutional right to remain silent. The Fifth Amendment of the United States provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V; *see Malloy v. Hogan*, 378 U.S. 1, 6-11, 84 S. Ct. 1489, 1492-95, 12 L. Ed. 2d 653, 658-61 (1964) (holding the Fifth Amendment is applicable to the states through the Fourteenth Amendment). Accordingly, a defendant in custody must be advised of his *Miranda* rights prior to an interrogation. *Harris*, 741 N.W.2d at 5. "Absent a recitation of the *Miranda* warnings and a valid waiver of the right to remain silent and the right to the presence of an attorney, any statement made by an individual in response to a custodial interrogation is inadmissible." *Id*. (citing *Miranda v. Arizona*, 384 U.S. 436, 476, 86 S. Ct. 1602, 1629, 16 L. Ed. 2d 694, 725 (1966)). The burden is on the State to prove the defendant "knowingly and intelligently waived" these rights. *Id*. (citing *Miranda*, 384 U.S.at 475, 86 S. Ct. at 1628, 16 L. Ed. 2d at 724).

In the present case, the parties do not dispute that Marin was in custody at the Cedar Rapids police station. Rather, the dispute lies over whether Marin waived his right to remain silent. At the outset of the interview, Detective Larison read the *Miranda* warnings twice aloud and asked Marin to sign the *Miranda* form if he "understood" those rights. Marin signed the *Miranda* form. However, Detective Larison did not explain that a signature on the form amounted to a waiver of rights or specifically ask Marin if he waived his rights. (The form did say that a signature constituted waiver.) Rather, Detective Larison began asking Marin questions, to which Marin freely responded. Marin spoke in a

conservational tone and appeared to be relaxed. At no point did Marin indicate that he wanted to stop talking.

Marin specifically contends he did not waive his right to remain silent, relying on the fact that Larison misspoke and told him his signature on the *Miranda* form was only an indication he *understood* his rights. We disagree. As the district court correctly found, although there may not have been a valid written waiver in this case due to Detective Larison's misstatement, Marin unquestionably waived his *Miranda* rights. Having been told twice of those rights, he proceeded to voluntarily answer Detective Larison's questions. Waivers of *Miranda* rights do not have to be in writing. "*Miranda* warnings may be orally transmitted to a subject in custody and the waiver of rights attendant thereto may be oral or may be inferred from the facts." *State v. Bowers*, 656 N.W.2d 349, 353 (Iowa 2002). The interview was conducted in a conversational tone, and Marin never expressed a desire to stop talking. We agree with the district court that Marin voluntarily and knowingly waived his right to remain silent.

**B. Iowa Code section 804.20.**

We next turn to Marin's assertion that Iowa Code section 804.20 was violated. Section 804.20 provides:

> Any peace officer . . . having custody of any person arrested or restrained of the person's liberty for any reason whatever, shall permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of the person's family or an attorney of the person's choice, or both.

Iowa Code § 804.20. Pursuant to this section, once a defendant invokes the right, the officer must give the defendant an opportunity to call or consult with an attorney or family member. *Harris*, 741 N.W.2d at 8.

In the present case, for approximately the first twenty minutes of the interview, Detective Larison and Marin discussed the details of the killings. Then, the following exchange took place:

> DETECTIVE LARISON: Is there anybody you want us to call?
> MARIN: Just call my mother.
> DETECTIVE LARISON: What's her name?
> MARIN: Carrie.
> DETECTIVE LARISON: What's her phone number?
> MARIN: [States the phone number.]
> DETECTIVE LARISON: What would you like me to tell her?
> MARIN: That I turned myself in. I don't know.
> DETECTIVE LARISON: Want to think about it?
> MARIN: No. Just tell her I'm here. She may worry I'm dead or something.
> DETECTIVE LARISON: So just let her know you're okay and here with us.
> MARIN: Yes.
> DETECTIVE LARISON: I'll do that. Back in a few minutes.
> [Detective Larison left the room for approximately fifteen minutes.]
> DETECTIVE LARISON: [Is your] apartment number five?
> MARIN: No, number nine.
> DETECTIVE LARISON: We're going to call your Mom right now, okay?
> MARIN: Okay.
> DETECTIVE LARISON: Is it okay for us to call her for you?
> MARIN: That's all right.

The State asserts Marin's statutory right to contact a family member was not violated. We agree. Marin never requested that he be allowed to call or consult with a family member. Rather, Detective Larison offered to phone anyone Marin requested, and Marin responded that he wanted Detective Larison

to call his mother. Because Marin never asked that he be allowed to phone his mother, he did not invoke his right under section 840.20.

**III. Jury Instructions.**

Marin next asserts the district court committed error in its jury instructions by not including his requested language in the malice aforethought instruction and by not instructing the jury on involuntary intoxication. We review Marin's challenges to the jury instructions for errors at law. Iowa R. App. P. 6.4; *State v. Newell*, 710 N.W.2d 6, 29 (Iowa 2006). "[I]n evaluating the correctness of any particular instruction, we do not consider it in isolation, but in the context of all the instructions." *Newell*, 710 N.W.2d at 29. Error in giving or refusing to give a jury instruction does not merit reversal unless it results in prejudice to the defendant. *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996).

Generally, the district court must instruct the jury on the defendant's theory of defense if the defendant makes a timely request, the requested instruction is supported by the evidence, and the requested instruction is a correct statement of the law. *State v. Ross*, 573 N.W.2d 906, 913 (Iowa 1998); *Kellogg*, 542 N.W.2d at 516. Evidence in support of the requested instruction must be substantial, which is evidence that could convince a rational fact finder that the defendant has established the affirmative defense. *Ross*, 573 N.W.2d at 913.

**A. Malice Aforethought.**

Marin asserts that the district court improperly instructed the jury as to malice aforethought. The jury was instructed:

> "Malice" is a state of mind which leads one to intentionally do a wrongful act to the injury of another or in disregard of the rights 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 required 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.

This is the approved Iowa jury instruction on malice. *See* Iowa Crim. Jury Instructions 200.19 (Malice). Marin, however, asked that the following language also be included:

> Although motive is not a necessary element of murder, lack of motive may be considered in determining whether the Defendant acted with malice aforethought.

The district court denied Marin's request. On appeal, Marin asserts that the district court should have included the foregoing language regarding motive.

We agree that Marin's requested language is an accurate statement of the law. Motive is not a necessary element of first-degree murder, but lack of motive may be considered in determining whether the defendant acted with the requisite malice aforethought. *State v. Hotter*, 383 N.W.2d 543, 549 (Iowa 1986); *State v. Smith*, 242 N.W.2d 320, 326 (Iowa 1976). Furthermore, in *State v. Newell*, 710 N.W.2d 6, 21 (Iowa 2006), the supreme court approved an instruction that included Marin's requested language. However, this does not mean that it amounts to reversible error to fail to include such language. The supreme court has specifically held it does not. "[I]t [is] not reversible error to refuse to give an instruction on motive." *Hotter*, 383 N.W.2d at 549; *State v. Shipley*, 259 Iowa 952, 959, 146 N.W.2d 266, 270 (1966), *overruled in part on other grounds by*

*State v. Bester*, 167 N.W.2d 705 (Iowa 1969). On our review of the record, we believe Marin had an adequate opportunity to argue to the jury that his lack of motive for the killings demonstrated he did not have the malice required for first-degree murder. Thus, we find no reversible error in the present case.

**B. Involuntary Intoxication.**

Marin asserts that the district court erred by not giving his proposed jury instruction on involuntary intoxication.[2] The district court found that such an instruction was not warranted in a prescription drug case unless "the person took

[2] The jury was instructed:

> The defendant claims he was under the influence of intoxicants and/or prescription drugs at the time of the alleged crime. The fact that a person is under the influence of intoxicants and/or prescription drugs does not excuse nor aggravate his guilt.
>
> Even if a person is under the influence of an intoxicant and/or prescription drug, he is responsible for his act if he had sufficient mental capacity to form the specific intent necessary to the crime charged or had the specific intent before he fell under the influence of the intoxicant and/or prescription drug and then committed the act. Intoxication is a defense only when it causes a mental disability which makes the person incapable of forming the specific intent.

*See* Iowa Crim. Jury Instruction 200.14 (Intoxication as a Defense). Marin proposed the following instruction on involuntary intoxication:

> "Involuntary intoxication" means a mental condition which does not allow the person to form a premeditated, deliberate, specific intent to kill, which are elements of the State's burden of proof on the charge of First Degree Murder. "Intoxication" is a state in which a person is affected temporarily with diminished control over the physical and/or mental powers, or is excited or stupefied by alcohol or a drug, or a combination thereof, to the point of frenzy, or to the point where physical or mental control is markedly diminished.
>
> Intoxication is involuntary when it results from:
>
> 1. Fraud, trickery, or duress of another; or
> 2. Accident or mistake on his own part; or
> 3. A pathological condition; or
> 4. Ignorance as to the effects of prescribed medication.
>
> You should determine from the evidence if the defendant was capable of premeditating, deliberating, and forming a specific intent to kill.
>
> If you have a reasonable doubt the defendant was capable of acting deliberately, with premeditation, and the specific intent to kill, then the defendant cannot be guilty of First Degree Murder. You should then consider the lesser included charges.

the medication in compliance with the directions of the physician." We note that our supreme court has not to date recognized involuntary intoxication as a separate defense. In *State v. Lucas*, 368 N.W.2d 124, 127 (Iowa 1985), the court assumed for the sake of argument that such a defense might be available, provided the defendant could "adduce substantial evidence on . . . (1) his insanity, and (2) his involuntary ingestion of an intoxicant."

At the time of the killings, Marin was prescribed Buspar (five milligrams twice a day), Doxepin (twenty-five milligrams once a day), and Zoloft (fifty milligrams three times a day). As Marin's expert testified, the week prior to the killings, Marin took "far beyond" the prescribed amount of Zoloft, which is significant because "Zoloft is a medication that lingers in the body for a long time." On the day of the killings, Marin reported that he took seven or eight fifty-milligram pills of Zoloft, as well as Buspar beyond the prescribed amount. In addition, although the Zoloft prescription medication bottle warns against combining it with alcohol, Marin voluntarily consumed "large amounts" of alcohol in addition to the prescription medication.

Marin's expert offered the opinion that early on the morning of April 23, when Marin viciously slaughtered Edmondson and Hill, he was suffering from intoxication due to Zoloft and Buspar. As the expert explained,

> Zoloft is what is called a selective serotonin reuptake inhibitor. And its job is to increase the amount of serotonin in the brain, which we think may help . . . some people with depression and anxiety. But like many things, too much is not good. And people who have too much serotonin activity in the brain from medications like Zoloft can become emotionally numb.

This effect, according to Marin's expert, is of particular concern for people, like Marin, who are under the age of twenty-five, and there have been reports of increased violence among persons taking Zoloft in that age group. As a result of this "emotional numbing," Marin's expert believed that Marin was unable to resist his impulses and control his urges on the night in question.

The evidence was not disputed that Marin voluntarily consumed prescription medication far in excess of the amount prescribed. As Marin's expert put it,

> What Mr. Marin told me is that he was taking many times the prescribed amount. He was supposed to be taking about one hundred fifty milligrams [of Zoloft] . . . . [T]here seems to be a consistency of what Mr. Marin related to different people who interviewed him that he was taking far in excess of—of what he should have been taking—because he wanted to feel better.

While a number of jurisdictions outside Iowa have recognized a separate involuntary intoxication defense based on the ingestion of prescription drugs, most of them appear to have held that the defense does not apply when the defendant knowingly exceeds the prescribed dosage. *See, e.g.*, *Goldsmith v. State*, 252 S.E.2d 657, 660 (Ga. App. 1979); *Commonwealth v. McDermott*, 864 N.E.2d 471, 493 (Mass. 2007); *Mendenhall v. State*, 15 S.W.2d 560, 565 (Tex. App. 2000); *State v. Gardner*, 601 N.W.2d 670, 675 (Wis. 1999). A few jurisdictions allow the defense to be raised even when there is an overdose, provided the defendant did not know or have reason to know of the potential intoxicating effects of the drug. *See e.g.*, *People v. Chaffey*, 30 Cal. Rptr. 3d 757, 759-60 (Cal. App. 1994), *People v. Turner*, 680 P.2d 1290, 1293 (Colo. App. 1983). Marin in effect asks Iowa to join the latter group of jurisdictions. His

proposed instruction required only "[i]gnorance of the proposed effects of prescribed medication," and he does not dispute that he voluntarily ingested far more than the prescribed amounts. Indeed, Marin's *over-consumption* of prescription medicine was central to his expert's attempted explanation for why Marin committed these savage killings.

Although judging involves much more than counting heads, we are persuaded that we should follow what appears to be the majority rule on involuntary intoxication and prescription drugs. Thus, we decline to recognize a separate involuntary intoxication defense in this case where the defendant knowingly consumed excessive quantities of a prescription drug.

In the first place, our legislature has spoken. It has addressed the subject of intoxicants or drugs in Iowa Code section 701.5. It has expressed the view that these agents are relevant to specific intent but do not generally excuse the person's acts. The standard instruction on intoxication, which was given here and to which Marin did not object, incorporates those concepts.[3] To the extent that Marin is asking for something more—i.e., asking us to recognize an additional *involuntary* intoxication defense that is not part of Iowa statutory criminal law—we believe at a minimum such a defense should be tightly circumscribed. Here Marin wanted the jury to be told, in effect, that if he was unaware of the effects of the medication, even if he intentionally exceeded the prescribed dose, and he was thereby intoxicated, then he *could not have* committed first-degree murder. This sweeps too broadly in our view and

[3] Iowa also has a statutory insanity defense, *see* Iowa Code section 701.4, and Marin received the benefit of that defense at trial, including the relevant standard jury instructions.

substantially exceeds the boundaries established for us by the legislature. *See City of Minneapolis v. Altimus*, 238 N.W.2d 851, 858 (Minn. 1976) (declining to recognize a separate involuntary intoxication defense apart from the insanity defense enacted by the legislature). Notably, Marin does not argue that his involuntary intoxication instruction was constitutionally required.

Furthermore, we believe Marin's proposed instruction really has nothing to do with "voluntariness." A person who has taken a prescription drug as directed by a physician may not be acting voluntarily in some sense; he or she is doing what someone else told him or her to do. But one who, like Marin, chooses to exceed the prescribed dose is committing a voluntary act, even if the consequences may be not fully appreciated. Some observers have argued that the criminal law should not equate prescription drug abuse with overuse of alcohol because the effects of the latter are well known and those of the former may not be. But that argument goes to intent, not voluntariness. Here Marin had a full and fair opportunity to demonstrate to the jury that he lacked the required specific intent to commit first-degree murder, or that he was insane at the time. The testimony of his experts was received on both issues. The jury rejected both defenses.

Accordingly, we conclude the district court did not err in declining Marin's proposed jury instruction on involuntary intoxication. We agree with the district court that it would be inappropriate to give such an instruction when the

"overmedication was with the Defendant's knowledge, and at the Defendant's hands."[4]

**IV. Conclusion.**

Upon our review, we find the district court did not err in denying Marin's motion to suppress or his proposed jury instructions. We affirm.

**AFFIRMED.**

[4] Additionally, the State argues that Marin's voluntary, excessive consumption of alcohol should eliminate any question of an involuntary intoxication instruction in this case. We do not rely on that argument because Marin's expert attributed Marin's actions to the excessive consumption of prescription medicine, rather than the excessive consumption of alcohol (alone or in combination with the drugs). Since Marin's "involuntary intoxication" defense centered on the alleged effects of prescription drugs alone, we think it appropriate to confront that defense directly.