

**IN THE COURT OF APPEALS OF IOWA**

No. 9-428 / 08-1180  
Filed July 22, 2009

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

**vs.**

**BENAI AH MABLIN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Clinton County, Mark D. Cleve,  
Judge.

Defendant appeals his second-degree murder conviction, alleging the  
district court erred in admitting testimony that was covered by the priest-penitent  
privilege. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor and James Kivi, Assistant  
Attorneys General, and Michael L. Wolf, County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

**MANSFIELD, J.**

Defendant Benaiah Mablin appeals his conviction for second-degree murder, asserting that testimony from one of his pastors was admitted into evidence in violation of the priest-penitent privilege as set forth in Iowa Code section 622.10 (2007). We conclude that if an error occurred, it was harmless, and therefore affirm Mablin's conviction.

**I. Facts and Procedural History.**

At 3:00 p.m. on December 13, 2007, the manager of the Tucker Apartments in Clinton saw Sandra Chambers-Singh, a resident, entering the complex. Chambers-Singh was accompanied by Mablin and was holding her three-year-old son on her shoulder. Later that afternoon, a neighbor of Chambers-Singh saw Mablin exiting the building alone. Mablin was bleeding from his nose or hand.

Around 5:00 p.m. that evening, neighbors noticed the boy playing alone and became concerned. The manager was called, and the boy was asked, "Where's your mom?" He replied, "My mom's sleeping." The boy then led the manager to Chambers-Singh's bedroom. The bedroom was covered with blood stains on the floor, walls, doors, and bed, and Chambers-Singh's dead body was lying on the floor.

It was subsequently determined that Chambers-Singh had died after suffering eighteen to twenty stab wounds, including wounds to her chest, face, skull, and neck and "defense wounds" to her wrists and hands. Several of the wounds were located on the back of Chambers-Singh's neck. DNA analysis was

performed later, and it was determined the blood in the apartment came from both Chambers-Singh and Mablin.

Mablin appeared at his aunt's house around 4:30 p.m. that same afternoon of December 13, with cuts on his own neck and hands, and wearing bloody clothes. His aunt helped him wash his clothes and took Mablin to the hospital for treatment. Mablin told his aunt he had injured himself when someone tried to rob him and he had to jump from a moving vehicle. Mablin repeated a similar story to the emergency room paramedic.

Soon thereafter, an officer from the Clinton Police Department was dispatched to the emergency room because Mablin wanted to file an assault complaint. Mablin again repeated the story about having to jump from a moving vehicle, adding more details including the cash he supposedly lost, descriptions of the alleged occupants of the vehicle, and the purported make of the vehicle (a Cadillac). At 7:30 p.m., another officer from the Clinton Police Department arrived. Once again, Mablin told the story about being robbed of his cash by several individuals and having to jump from a Cadillac.

By this time, the officers had become aware of the homicide of Chambers-Singh and noticed that Mablin's coat matched the description given by witnesses at the apartment building. Accordingly, they asked Mablin to come to the police station for more questioning. Mablin complied that evening, and over the course of a four-hour interview with a Clinton Police Department detective and an Iowa Division of Criminal Investigation special agent he repeated essentially the same story about having to jump out of a Cadillac. Although the detectives suspected

Mablin of involvement in Chambers-Singh's death, they decided for tactical reasons to broach that subject slowly. At the end of the interview, the detectives had still not asked Mablin directly about Chambers-Singh. However, they did ask Mablin if he would turn over to them the tennis shoes he was wearing. Mablin adamantly refused.

The next morning, December 14, 2007, Chambers-Singh's minivan was found near the house of Mablin's aunt. There were blood stains on the driver's side door and inside the minivan. That afternoon the detectives went to the Victory Center Rescue Mission, where Mablin had been staying. During a two-hour interview at the center, the detectives asked Mablin if he knew the victim and posed hypothetical questions about why his blood or hair might be in her apartment. Mablin became evasive during these questions and initially denied knowing the victim. After the detectives made it clear they did not believe him, Mablin stated he would talk if he had a support person with him. The detectives decided to terminate the interview and resume it at a later time.

The Victory Center is a homeless shelter in Clinton, providing meals and lodging to the poor and needy, as well as faith-based instruction. The center was founded by Pastor Ray Giminez, the executive director, in April 1987. Rob Miltenberger is an assistant pastor at the shelter. Mablin had been a resident of the center off and on since spring or early summer in 2007. Pastor Giminez testified that Mablin's stays at the center involved Bible study and attending preaching services, and that he had maintained a good relationship with both

pastors. He also testified that Mablín “absolutely” considered him his pastor on December 14, 2007.

After a fellowship dinner with members of the board of directors, Pastors Giminez and Miltenberger returned to the center around 8:30 p.m. on December 14, 2007. Both men were aware of Mablín’s meeting with authorities that afternoon and decided to question Mablín to learn exactly what had happened. While in Pastor Miltenberger’s office, Mablín admitted to the two men that he had not told the truth to the detectives. Mablín indicated that the lack of an attorney was the reason he had not told the truth, but now he was ready to come clean.

Mablín related a different version of events to the pastors. He told them he and Chambers-Singh had gone to Davenport and bought drugs, and then returned to her apartment. They proceeded to take the drugs and have sex. At that point, Mablín claimed that a couple of unidentified men entered the apartment. One of them hit Mablín hard on the back of the neck. Mablín pulled up his pants and ran out of the apartment, driving off in Chambers-Singh’s minivan. As he was leaving the apartment, Mablín said he heard the victim screaming and felt bad for not going back to save her. According to Mablín, the minivan ran out of gas and he had to walk part of the way to his aunt’s house. While en route, he fell, cutting his hand. After listening to this story, Pastor Giminez told Mablín he “needed to tell the truth,” and Mablín volunteered to go to the police station. Pastor Miltenberger phoned the Clinton Police Department,

made arrangements for an interview, and both pastors accompanied Mablin to the station.

The final interview took place at the Clinton Police Station and lasted from approximately 10:30 p.m. on December 14 to around 1:00 a.m. on December 15. It was recorded in its entirety, and the entire recording was played for the jury. Mablin asked at the beginning that both pastors be present for the interview because he had “confided in them.” His request was granted. At various times during the interview, the pastors encouraged Mablin to tell the truth for religious reasons. For example, the pastors told Mablin that “Jesus is standing right here,” that he needs to “do right before the Lord,” that “God knows,” and that “God loves you either way.”

For approximately the first forty minutes, Mablin related in considerable detail essentially the same fabricated story he had told the pastors. Thus, he claimed that unknown individuals had entered Chambers-Singh’s apartment after he and Chambers-Singh had done drugs and had sex. Mablin said that he had been hit on the back of his head by one of these individuals, and had to run out of the apartment for his own safety, leaving Chambers-Singh behind. He claimed this story was the “honest to God truth.” Mablin appeared to be in tears about what happened to Chambers-Singh.

At this point (around 11:15 p.m. on December 14), the Clinton Police Department captain who was leading the interview confronted Mablin. He made it clear that he did not believe this story. Thereafter, Mablin slowly began to provide yet another version of events. Mablin said that after he had done drugs

and had sex with Chambers-Singh, they had had a disagreement. Chambers-Singh wanted some additional rocks of crack cocaine that were in Mablin's coat, and Mablin resisted. Chambers-Singh came after him in the bedroom with a knife that she had obtained in the kitchen. According to Mablin, he did not even notice that she cut him. Mablin then picked up the same knife. He admitted stabbing Chambers-Singh numerous times. Mablin said he was "swinging." Mablin admitted that "I could have walked away, but I wasn't thinking."<sup>1</sup> After Mablin was done stabbing Chambers-Singh, he left the apartment, drove off in her minivan, and proceeded to his aunt's house—intentionally leaving the minivan some distance from the house.<sup>2</sup>

Mablin was arrested at the conclusion of the interview and subsequently charged with first-degree murder. Prior to trial, Mablin filed a motion in limine, seeking to exclude any reference to conversations that occurred between him and the pastors at the Victory Center on the basis of the privilege contained in Iowa Code section 622.10. The case proceeded to jury trial. After allowing the parties to make a record outside the presence of the jury, the district court denied the motion in limine. Pastor Giminez was thus allowed to testify to what Mablin had told him and Pastor Miltenberger during their meeting at the center.

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<sup>1</sup> Mablin was approximately nine inches taller than Chambers-Singh and outweighed her by about sixty pounds.

<sup>2</sup> As the State has pointed out, even the final story told by Mablin raises some unanswered questions: Although Mablin claimed to have dropped the knife in the bedroom after stabbing Chambers-Singh, no knife was found. In addition, although Mablin claimed Chambers-Singh previously had gone into the kitchen and returned with the knife, her dead body was found with nothing on below the waist, and her t-shirt and bra pushed up. We agree with the State that it seems odd Chambers-Singh would have walked into and out of the kitchen disrobed in that manner.

Following the close of evidence, in addition to first-degree murder, the jury was instructed on the lesser-included offenses of second-degree murder, voluntary manslaughter, and involuntary manslaughter. Mablín was convicted by the jury of second-degree murder, and sentenced to an indeterminate fifty-year term of imprisonment on July 10, 2008.

Mablín appeals. He contends that he should be granted a new trial because the district court erred in admitting Pastor Giminez's testimony concerning his meeting with the two pastors on December 14, 2007. According to Mablín, that evidence was covered by the priest-penitent privilege contained in Iowa Code section 622.10 and was therefore privileged.

## **II. Standard of Review.**

"Because evidentiary privilege in Iowa is based on statute, our review is on error." *State v. Richmond*, 590 N.W.2d 33, 34 (Iowa 1999). However, we do not reverse for errors in the admission of evidence unless substantial rights are affected. See Iowa R. Evid. 5.103(a).

## **III. Legal Analysis.**

Iowa Code section 622.10 protects communications with a member of the clergy when the communication is "(1) confidential, (2) entrusted to a person in his or her professional capacity, and (3) necessary and proper for the discharge of the function of the person's office." *State v. Alspach*, 524 N.W.2d 665, 668 (Iowa 1994). This statute "is to be construed liberally to carry out its manifest purpose." *Id.* However, section 622.10 does not shield all communications with a clergy member.



In *Richmond*, 590 N.W.2d at 35, our supreme court held the privilege did not apply where the defendant consulted a priest not “in his priestly capacity,” but in his capacity as an unlicensed marriage and family counselor. Mablin contends that he spoke with Pastors Giminez and Miltenberger on the evening of December 14 in their capacity as pastors, whereas the State counters that he spoke to them in their capacity as administrators of the Victory Center homeless shelter.

Mablin’s arguments are not entirely without force. During the voir dire that took place out of the jury’s presence, Pastor Giminez testified as follows when questioned by Mablin’s attorney:

Q. Do you believe that Ben Mablin considered you his pastor on December 14th? A. Oh, absolutely. Yes.

Q. And you had come to him to talk about the witness situation? A. Yes.

However, Pastor Giminez also testified as follows when questioned by the prosecutor:

Q. And it is fair to say that the reason that you sought him out was because you were concerned, among other things, about the safety of the Victory Center? A. That’s correct . . . . I decided I better get involved in this because this is a very serious situation here.

. . . .  
Q. So you got involved in this situation as the executive director of the Victory Center? A. That’s correct.

The foregoing testimony suggests that there are two possible answers to the “capacity” of Pastors Giminez and Miltenberger, depending on whether one considers the matter from the pastors’ perspective or from Mablin’s. In

*Richmond*, the court noted that both perspectives, i.e., that of the defendant and that of the alleged spiritual advisor, supported the same conclusion:

The record strongly supports the trial court's finding that Richmond did not consult Fr. Osing in his priestly capacity. Richmond himself concedes that it was not for any spiritual reason but for advice on his relationship with Krell. Fr. Osing testified he was under the same impression. The claim of priest-penitent privilege thus fails.

*Richmond*, 590 N.W.2d at 35.<sup>3</sup> However, in the end we need not decide whether Mablin's communications with the pastors at the Victory Center were privileged because any error in admitting Pastor Giminez's testimony about those discussions was harmless.

Iowa Rule of Evidence 5.103(a) provides that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected."

Thus, error in an evidentiary ruling that is harmless may not be a basis for relief on appeal. We presume prejudice under this approach, unless the contrary is affirmatively established. When a nonconstitutional error is claimed, as in this case, the test is whether the rights of the objecting party have been "injuriously affected by the error" or whether the party has "suffered a miscarriage of justice."

*State v. Parker*, 747 N.W.2d 196, 209 (Iowa 2008) (internal citations omitted).

We believe that Mablin was not "injuriously affected" by the alleged error, which, as in *Parker*, was not of constitutional dimensions. See *id.* In the overall picture of this case, Giminez's testimony about the meeting in Miltenberger's office was

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<sup>3</sup> Notably, although the State has consistently contended that Mablin spoke with Giminez and Miltenberger in their capacity as administrators of the Victory Center, in closing argument the State referred to their role as Mablin's pastors. In particular, the prosecutor told the jury, "Of course, he had not told any number of stories prior to that that were wrong, that were not truthful, including to *his pastors* at the Victory Center." (Emphasis added.) However, as noted below, the closing argument references to this meeting were quite brief.

a relatively small vignette that corroborated other evidence properly in the record. See *State v. Jurgenson*, 225 N.W.2d 310, 312 (Iowa 1975) (“[E]rror in the admission of evidence is not prejudicial where substantially the same evidence is in the record without objection.”).

We reiterate the essential facts of this case: After stabbing Chambers-Singh eighteen to twenty times and leaving her body to be found by her three-year-old son, Mablin took the keys to her minivan and drove off. He hid the minivan some distance away from his aunt’s house. He then went into the house and washed his clothes. After that, he sought medical attention for himself. During the remainder of that day, he told the same made-up story about having been robbed and having to jump out of a car five separate times, adding more and sometimes different details as he went along.

The next day, Mablin was re-interviewed by police at the Victory Center. Initially, he stuck to his story about being robbed, although he started to waver when asked specific questions about Chambers-Singh. He then spoke to the pastors that evening, and they persuaded him to speak to the police once more. At the police station late that night, Mablin initially told a detailed false story for about forty minutes about being assaulted by an unknown assailant at Chambers-Singh’s apartment, before ultimately confessing that he was the person who stabbed her multiple times and killed her.

In this trial, as in any trial, some items of evidence loom larger than others. Here we believe the critical evidence consisted of the physical evidence of Chambers-Singh’s wounds, and Mablin’s final recorded interview, which the jury

viewed in its entirety. Pastor Giminez's testimony took up only nine transcript pages, and the State referred to it only briefly in closing argument. Even without Pastor Giminez's testimony, the State would have proved that Mablin told a false story about jumping out of a car at least five separate times. The State would have proved that with two pastors by his side, Mablin told an elaborate forty-minute lie to the detectives about having been hit on the back of his neck by an unknown assailant, a story that he proclaimed was the "honest to God" truth and at the end of which he broke down in tears of regret for having supposedly left Chambers-Singh to this assailant and other unknown individuals.

Thus, we cannot see how Mablin suffered a miscarriage of justice by the admission of Pastor Giminez's brief testimony, which merely corroborated a large volume of other evidence demonstrating Mablin's calculating untruthfulness. Moreover, we believe some of the other evidence, particularly the video of the final interview, was considerably more powerful. Additionally, the jury could have logically inferred that Mablin had previously spoken untruthfully to the pastors from statements that were made during the final, recorded police interview itself. See, e.g., *State v. Sullivan*, 679 N.W.2d 19, 29 (Iowa 2004) (stating where the "same evidence was overwhelmingly clear in the record, any error in the admission of the challenged evidence was deemed not prejudicial"); *State v. Trudo*, 253 N.W.2d 101, 108 (Iowa 1977) ("[O]rdinarily, a defendant may not claim prejudice where the same evidence is otherwise supplied by the defendant or is made overwhelmingly clear in the record."); *In re Estate of Hettinga*, 514 N.W.2d 727, 733 (Iowa Ct. App. 1994) ("Evidence which is cumulative, which

only corroborates other evidence properly in the record, does not constitute reversible error.”).

**IV. Conclusion.**

For the foregoing reasons, we conclude Mablin was not prejudiced by the admission of Pastor Giminez’s testimony, whether privileged or not, and accordingly affirm his conviction.

**AFFIRMED.**