

SUPREME COURT OF MINNESOTA

State of Minnesota v. Gary H. Tomassoni

778 N.W.2d 327 (Minn. 2010) · No. No. A08-1879 · Decided February 18, 2010

SUMMARY

The Minnesota Supreme Court affirmed Gary Tomassoni's conviction for first-degree premeditated murder and his sentence of life imprisonment without the possibility of release. The court held that any error in the prosecutor's substantive use of a Miranda-violative statement admitted for impeachment, and in the related jury instruction, did not affect Tomassoni's substantial rights. The court also rejected his pro se claims concerning ineffective assistance, witness examination, jury instructions, jury selection, and alleged gender-based prejudice.

CASE DETAILS

COURT	Supreme Court of Minnesota
WRITING FOR THE COURT	Magnuson, Chief Justice
JURISDICTION	Minnesota
DECIDED	February 18, 2010
DOCKET	No. A08-1879
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tomassoni appealed his conviction for first-degree premeditated murder and sentence of life imprisonment without the possibility of release to the Supreme Court of Minnesota.
STANDARD OF REVIEW	Because Tomassoni did not object at trial, the court reviewed the prosecutorial-argument and jury-instruction claims for plain error. Under that standard, the defendant must show error that was plain, after which the State must show that the error did not affect substantial rights. Ineffective-assistance and other unpreserved claims were reviewed under the applicable prejudice and plain-error principles.
PRECEDENTIAL VALUE	Published Minnesota Supreme Court opinion; precedential.
PARTIES	Gary H. Tomassoni v. State of Minnesota

TOPICS

criminal procedure

prosecutorial misconduct

evidence

jury instructions

harmless error

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the prosecutor committed reversible misconduct by using Tomassoni's statement to a child-protection worker, admitted only for impeachment because of a Miranda violation, as substantive evidence of premeditation during closing argument.
2. Whether the district court committed reversible plain error by instructing the jury that Tomassoni's statements could be considered for all purposes, despite the statement's limited admissibility for impeachment.
3. Whether Tomassoni received ineffective assistance of counsel.
4. Whether the prosecutor improperly guided the informant's testimony.
5. Whether the informant's testimony improperly suggested that Tomassoni had been incarcerated.
6. Whether the district court gave an incorrect jury instruction concerning the jury's duty to follow the law.
7. Whether the district court improperly limited the trial's duration or otherwise prejudiced the defense through comments to the jury.
8. Whether the gender composition of the participants in the trial prejudiced Tomassoni.
9. Whether the jury-selection procedures systematically excluded lower-income people and violated the fair-cross-section requirement.

HOLDINGS

1. The prosecutor's use of Tomassoni's statement to the child-protection worker as substantive evidence of premeditation was error because the statement was admissible only to impeach conflicting trial testimony, but the error did not affect Tomassoni's substantial rights.
2. The district court erred by instructing the jury that Tomassoni's statements could be considered for all purposes, but the error did not affect his substantial rights and was not reversible plain error.
3. Tomassoni failed to establish ineffective assistance based on counsel's pregnancy-related absence or counsel's failure to seek a mental-illness evaluation.
4. Tomassoni failed to establish a prima facie fair-cross-section violation because he did not show that the allegedly excluded group was distinctive, was underrepresented in the jury venire, and was systematically excluded.
5. Tomassoni was not entitled to relief based on the prosecutor's questioning of the informant, the possible inference that he had been incarcerated, the district court's jury instruction to follow the law, the judge's comment about the expected trial length, or the gender composition of the trial participants.

KEY QUOTATIONS

"We hold that the State has met its burden of showing that the error did not affect Tomassoni's substantial rights because there is no reasonable likelihood that the jury's verdict would have been different if the

prosecutor had not made the argument.” (333-334)

“Although the jury might have followed the erroneous instruction and used the child protection worker's statement for the substantive purpose of deciding whether Tomassoni acted with premeditation, the evidence was one small piece of the otherwise extensive evidence of premeditation.” (334)

FACTUAL BACKGROUND

Tomassoni shot his wife twice in the head in the family home and initially claimed that an intruder had committed the killing. Police found forensic evidence linking Tomassoni to the gun, gloves, duct tape, blood, and efforts to stage an intruder scenario. The State presented evidence of Tomassoni's substantial debts, gambling losses, and his wife's life-insurance policies as evidence of motive and premeditation. Tomassoni admitted the killing but testified that he had intended to commit suicide and did not plan to kill his wife.

PROCEDURAL HISTORY

A grand jury indicted Tomassoni for first-degree premeditated murder after he shot and killed his wife. At trial, he admitted the killing but argued that it was not premeditated. The jury found him guilty, and the district court imposed a life sentence without the possibility of release. The Supreme Court of Minnesota affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Ramey, 721 N.W.2d 294, 299, 302 (Minn. 2006)
- State v. Davis, 735 N.W.2d 674, 682 (Minn. 2007)
- Miranda v. Arizona, 384 U.S. 436, 444 (1966)
- State v. Thieman, 439 N.W.2d 1, 5 (Minn. 1989)
- Oregon v. Hass, 420 U.S. 714, 722-24 (1975)
- State v. Slowinski, 450 N.W.2d 107, 111 (Minn. 1990)
- State v. Jackson, 714 N.W.2d 681, 697 (Minn. 2006)
- State v. Ray, 659 N.W.2d 736, 743 (Minn. 2003)
- State v. Bartylla, 755 N.W.2d 8, 22-23 (Minn. 2008)
- State v. Manthey, 711 N.W.2d 498, 506 (Minn. 2006)
- United States v. Norton, 846 F.2d 521, 524-25 (8th Cir. 1988)
- State v. Willis, 559 N.W.2d 693, 700 (Minn. 1997)