

SUPREME COURT OF IOWA

State v. Folkerts

703 N.W.2d 761 (Iowa 2005) · No. No. 03-1862 · Decided September 16, 2005

SUMMARY

The Iowa Supreme Court held that a criminal defendant may be absent from the portion of an eyewitness deposition addressing the perpetrator's identity when the defendant's presence would create an impermissibly suggestive identification procedure. The court reversed the district court's order requiring Melissa Folkerts to attend the entire deposition and remanded for further proceedings. Two justices dissented, arguing that the majority improperly created a per se rule and that existing confrontation and due-process principles required affirmance.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Wiggins, Justice; Cady, Justice; Larson, Justice
JURISDICTION	Iowa
DECIDED	September 16, 2005
DOCKET	No. 03-1862
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant sought discretionary review of an interlocutory order denying her motion to be absent from the identity-questioning portion of an eyewitness deposition. The Supreme Court transferred the matter to the court of appeals, which affirmed the district court. The Supreme Court vacated the court of appeals decision and reversed and remanded.
STANDARD OF REVIEW	Interpretation of Iowa criminal procedural rules was reviewed for correction of errors at law; the due-process identification claim was reviewed de novo.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion; precedential
PARTIES	Melissa Jean Folkerts v. State of Iowa

TOPICS

- criminal procedure
- due process
- evidence
- fourteenth amendment

PRACTICE AREAS

criminal procedure

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether a criminal defendant may be absent from the portion of an eyewitness deposition in which the parties question the witness about the identity and physical characteristics of the alleged perpetrator.
2. Whether requiring the defendant to sit beside counsel during such questioning would create an impermissibly suggestive identification procedure violating due process.
3. Whether Iowa Rule of Criminal Procedure 2.27 and prior Iowa decisions required the defendant's presence throughout the deposition.

HOLDINGS

1. When the identity of the perpetrator is at issue and the defendant timely moves to be absent, the district court may allow the defendant to be absent while the parties question an eyewitness about the perpetrator's identity. Identity questioning should occur at the beginning of the deposition, and the defendant must be present after all parties complete that questioning.
2. The admissibility of an identification obtained through an allegedly suggestive procedure is analyzed first by determining whether the procedure was impermissibly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances.

KEY QUOTATIONS

"In order to avoid an impermissibly suggestive identification of the defendant during the course of a deposition, we hold the defendant is not required to be present at the deposition until the parties have completed questioning the eyewitness as to the identity of the perpetrator." (762)

"It is the likelihood of misidentification which violates a defendant's right to due process.... Suggestive confrontations are disapproved because they increase the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous." (764)

"As to all cases pending, if the identity of the perpetrator of the crime is at issue and a defendant makes a timely motion to be absent from that part of the deposition when the parties question an eyewitness concerning the identity of the perpetrator of the crime, the court may allow the defendant to be absent during that part of the deposition." (766)

FACTUAL BACKGROUND

At approximately 3:00 a.m. on July 17, 2003, three people allegedly broke into an elderly woman's apartment and stole a television and VCR. The victim described one intruder as a white female in her mid-twenties wearing a pink shirt and jeans, and police later found Folkerts outside the residence. The victim subsequently identified Folkerts from a photo lineup. Before the victim's deposition, Folkerts sought to be absent while the parties questioned the victim about the physical characteristics and identity of the perpetrator.

PROCEDURAL HISTORY

Folkerts was charged with second-degree burglary and fourth-degree theft after an eyewitness identified her from a photo lineup. She moved to establish identification procedures and requested permission to be absent while counsel questioned the eyewitness about the perpetrator's identity. The district court denied the motion, the court of appeals affirmed, and the Supreme Court granted discretionary review.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must permit Folkerts to be absent during the portion of the victim's deposition concerning the identity of the perpetrator. Identity questions should occur at the beginning of the deposition, and Folkerts must be present after all parties complete that questioning. The court of appeals decision was vacated and the district court order was reversed.

CASES CITED

- State v. Davis, 259 N.W.2d 812 (Iowa 1977)
- State v. Randle, 603 N.W.2d 91 (Iowa 1999)
- State v. Davis, 679 N.W.2d 651 (Iowa 2004)
- State v. Hendren, 311 N.W.2d 61 (Iowa 1981)
- Stovall v. Denno, 388 U.S. 293 (1967)
- Neil v. Biggers, 409 U.S. 188 (1972)
- State v. Webb, 516 N.W.2d 824 (Iowa 1994)
- State v. Taft, 506 N.W.2d 757 (Iowa 1993)
- State v. Hamilton, 309 N.W.2d 471 (Iowa 1981)
- State v. Peterson, 219 N.W.2d 665 (Iowa 1974)
- United States v. Archibald, 734 F.2d 938 (2d Cir. 1984)
- United States v. Brown, 699 F.2d 585 (2d Cir. 1983)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- State v. Lawrence, 167 N.W.2d 912 (Iowa 1969)
- State v. Eads, 166 N.W.2d 766 (Iowa 1969)
- Hall v. Washington County, 2 Greene 473 (Iowa 1850)