

IN THE COURT OF APPEALS OF IOWA

No. 0-162 / 09-0636
Filed May 26, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GENE EARL CAMPBELL, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister,
Judge.

The defendant appeals his conviction for first-degree murder contending there is insufficient evidence to support his conviction and his counsel was ineffective. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Thomas J. Ferguson, County Attorney.

Heard by Sackett, C.J., and Eisenhauer and Mansfield, JJ. Tabor, J., takes no part.

EISENHAUER, J.

Gene Campbell appeals his conviction for the first-degree murder of James Hendrix, Jr., contending there is insufficient evidence to support his conviction and his counsel was ineffective. We affirm.

I. Background Facts and Proceedings.

Hendrix, age sixty, had suffered a disabling stroke and walked with a cane. He lived independently with the assistance of a Goodwill trainer for household chores and the assistance of a conservator for finances. Andre Buckner previously stayed with Hendrix for a week and, after getting his own apartment, would walk over to visit. On Friday, November 30, 2007, Buckner visited Hendrix's apartment and they watched television and smoked crack cocaine.

On Monday, December 3, 2007, around 5:30 p.m., Buckner returned to Hendrix's apartment building. When he reached Hendrix's door, Buckner could tell the lock was meeting the latch, but it wasn't connected. Buckner pushed open the door, discovered Hendrix's lifeless body, and called 911.

Digital video recordings show all activity at Hendrix's apartment door from 3:30 p.m. Friday, November 30, to 6:00 a.m. Monday, December 3. The tapes show defendant Campbell is the last person to enter and exit Hendrix's apartment on Friday, November 30. Additionally, no one enters or exits Hendrix's apartment on Saturday/Sunday/early Monday up to 6:00 a.m. Buckner's 5:30 entry is the first entry after the taping resumed Monday at 3:30.

On December 5, the police interviewed Campbell and seized his clothing. On January 24, 2008, Campbell was charged with murder in the first degree. See Iowa Code § 707.2 (2007). On March 16, 2009, after a jury trial, Campbell was found guilty as charged. In April 2009, Campbell was sentenced to life in prison and this appeal followed.

II. Sufficiency of the Evidence.

Campbell argues the evidence is insufficient¹ to support his conviction for first-degree murder, which required the jury to find: (1) Campbell strangled Hendrix; (2) Hendrix died as a result of being strangled or choked; (3) Campbell acted with malice aforethought; and either (4A) Campbell “acted willfully, deliberately, premeditatedly and with the specific intent to kill” Hendrix or (4B) Campbell was “participating in the forcible felony of robbery.” We review sufficiency of the evidence issues for correction of errors at law. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005).

The jury’s verdict is binding unless there is an absence of substantial evidence in the record to sustain it. *Fenske v. State*, 592 N.W.2d 333, 343 (Iowa 1999). Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). “When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and

¹ We resolve this issue without consideration of Hendrix’s phone records. Campbell challenges the admission of the phone records in his ineffective assistance of counsel claim.

reasonably be deduced from the evidence in the record.” *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). Additionally, the jury is “free to reject certain evidence and credit other evidence.” *State v. Nitchee*, 720 N.W.2d 547, 559 (Iowa 2006).

The evidence, viewed in the light most favorable to the State, shows overwhelming circumstantial and DNA evidence supporting the jury’s verdict. Hendrix lived in a secure apartment building with one public entrance requiring either a key or assistance from a resident to gain access. Hendrix’s individual apartment door has a deadbolt lock and can only be locked from the outside by using a key. Both Hendrix’s building and his apartment are monitored by security cameras. While the cameras are running, no one can enter or exit either the building or the Hendrix apartment without appearing on video footage. The cameras operate from 3:30 p.m. until 6:00 a.m. on weekdays and for twenty-four hours on weekends and holidays.

Video footage starting on 3:30 p.m. Friday, November 30, shows five visits by three people coming and going from Hendrix’s second-floor apartment Friday evening. First, starting at 5:17 p.m., Campbell is inside Hendrix’s apartment for about fifteen minutes. Next, from 6:09-6:45 p.m. and 7:27-8:10 p.m., Andre Buckner visits Hendrix. Two minutes after Buckner’s last visit, at 8:12 p.m., Hendrix briefly leaves his apartment, locks his door, goes to the vending room, makes a purchase, and returns to his apartment. Next, a man the police were unable to identify visits from 8:49-9:17 p.m. Finally, Friday’s footage shows Hendrix leaving his apartment, locking his door, and going to the first floor around

9:39 p.m. to let Campbell in the building's front door. Campbell is not carrying a bag. The two men go to the second floor and Campbell uses Hendrix's keys to gain entry for himself and Hendrix. Campbell leaves the apartment alone at 10:01 p.m. carrying a brown plastic bag. Hendrix's keys and wallet are never found.

No one entered or exited Hendrix's apartment, or even knocked on the door, after Campbell left on Friday evening to 6:00 a.m. Monday morning when the video footage temporarily stops. Therefore, Campbell is the last person to enter or leave Hendrix's apartment during the twenty-four hour weekend videotaping.

Around 3:00 p.m. Monday, Randy Lee knocks on Hendrix's door and, getting no answer, slips an envelope with a check for Hendrix's monthly bus pass under the door. The security footage restarts at 3:30 Monday, December 3, and first shows Bernie Bagg, a building resident, knocking on Hendrix's door at both 4:21 p.m. and 5:25 p.m. and leaving without entering. Next, at 5:30 p.m., Andre Buckner knocks and enters the apartment. Buckner discovers Hendrix's body face up in a pool of dried blood. Hendrix is wearing the same clothes he was wearing when he was last seen going into his apartment with Campbell on Friday evening. Buckner calls 911. Buckner finds the Lee envelope on the floor and moves it to the kitchen counter, where it was found by the police.

Accordingly, Hendrix is not shown on any video footage after entering his apartment with Campbell Friday evening. Hendrix did not leave his apartment to pick up his Saturday mail, delivered around 10:00 a.m.

Officer Devine responded to the 911 call and found Hendrix on his back on the living room floor next to an overturned chair with a cord wrapped around his body and another cord underneath him. Devine described the condition of Hendrix's clothing: "The clothing was saturated in what appeared to be blood to us and it was completely dried to the point where it was stiff like cardboard." Officers Boyland and Smith arrive and note dried and cracking blood on Hendrix's face, neck, hand, and clothing. Smith stated the pool of blood near Hendrix's head "was dry to the point where it was cracked" and opined the blood was "several days old." Additionally, Boyland discovered moldy chili in a kitchen crockpot. Consistent with the murder occurring in the evening, lights were on in the apartment and the blinds were closed. The apartment's window screens were intact and locked and could only be locked from the inside. The police seized Buckner's clothing, searched his apartment, and obtained a DNA sample from him.

Medical examiner McLemore performed an autopsy and found cocaine in Hendrix's system as well as meat and red beans (consistent with chili) in his stomach. McLemore explained that when he is able to identify the stomach contents, as he could here; it "usually means that the interval between the time the person ate and died is shorter." McLemore stated ligature strangulation caused Hendrix's death. Based on specific postmortem changes to the body, McLemore opined the time of death was more consistent with the time Hendrix was last seen alive on Friday than on Monday, the day he was found. McLemore thought it was "highly unlikely" Hendrix died on Monday, December 3.

Bonita Jones, Campbell's live-in girlfriend, explained the events of Friday, November 30. Jones stated she left Campbell in charge of their two young sons while she worked from midmorning to 6:30 p.m. Upon returning home at 7:15 p.m., Campbell and the boys were not there. Jones was upset and found the boys in another apartment building where Campbell had left them since Friday morning. Jones slept on the couch Friday night waiting for Campbell to return. Campbell returned home Saturday morning wearing jeans and white tennis shoes.

The State presented testimony from DCI criminalist Pollpeter who tested Campbell's clothes. Pollpeter used two screening tests to detect blood and these tests indicated small blood stains on both of Campbell's tennis shoes and on the inside of his right jeans pocket. Pollpeter then ran DNA tests on these stains.

Specifically, Campbell's right tennis shoe had a very small stain test "light positive," which generally "indicates a very small amount of blood." Pollpeter tried to do a DNA test, but found "[t]here just wasn't enough DNA there for me to interpret whose DNA it might have been."

Pollpeter was able to do successful DNA testing on the left tennis shoe's small stain. This stain showed a mixture of DNA with the Hendrix DNA being the major contributor and matching Hendrix at fourteen of fifteen locations. The fifteen locations tested are different among all persons except identical twins. Pollpeter explained getting fourteen matches "can be caused by the fact it was a small stain so there wasn't . . . enough DNA to get a full DNA profile." With a fourteen out of fifteen match, the Hendrix DNA was categorized under the

highest-level matching statistic utilized by the lab: “fewer than one out of 100 billion unrelated persons would be expected to have that same profile.” Pollpeter explained why it was likely Hendrix’s blood, and not Hendrix’s skin cells, was the major contributor to this DNA result.

Q. And in your opinion, based upon your testing . . . is that consistent with blood being at that location? A. It is consistent, yes.

Q. And why is that? A. With blood being the body fluid at that location, that’s going to be the strongest contributor to most DNA profiles. Blood has a lot of DNA in it. All the white blood cells that are in it, all of the other factors in the blood have DNA, so it’s a very good source of DNA. It’s very possible that this—this stain contained blood and something else, but the blood would probably show up in the profile and in almost all the stains I’ve ever tested the blood has almost always been the major contributor if there is one obviously discernible.

Q. As far as the sluff off of [Hendrix’s] skin cells . . . would you expect it to give the profile results of 14 to 15 loci at that location? A. No, I will not.

Q. Okay. Why? A. Not from skin cells. Skin cells don’t deposit a large amount of DNA. . . . And this profile, it would be stronger than what I would expect for just skin cells, especially since my screening test did indicate that there was blood there as well. That blood profile is going to show up in my DNA profiling.

Finally, the DNA testing of the pocket stain showed a mixture of contributors, Campbell, Jones, Hendrix, and one unidentified person. Pollpeter could not eliminate Hendrix as a contributor toward this stain.

Campbell’s DNA expert, Harman, stated the two screening tests for blood used by Pollpeter did not conclusively prove a substance was blood. An additional, confirming test could make that conclusive determination, but was not performed. Harman also explained:

Oftentimes you’re dealing with very, very small samples when you’re dealing with biological substances on forensic casework and you have to make a decision as to what tests are going to provide

you the most information possible from that limited sample. So you may screen something for the presence of blood . . . but eliminate the confirmation step in favor of doing perhaps a DNA test.

While Harman agreed with Pollpeter's genetic interpretation, she opined the Hendrix DNA could be from a substance other than blood because skin cells, saliva, and urine are easily transferred. Harman did agree the partial DNA profile was "almost complete."

When viewing the evidence in the light most favorable to the State, we conclude a rational trier of fact could have found Campbell guilty of first-degree murder. Because substantial evidence supports the jury's determination, we affirm the verdict.

III. Ineffective Assistance: Hearsay--Business Records Exception.

Campbell argues his counsel was ineffective by failing to object to the admission of Hendrix's telephone records as inadmissible hearsay. See Iowa R. Evid. 5.803(6) (business records exception). In order to prevail on his claims of ineffective assistance of counsel, Campbell must show (1) counsel failed to perform an essential duty, and (2) prejudice resulted. See *State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007). His inability to prove either element is fatal. See *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999). We evaluate the totality of the relevant circumstances in a de novo review. *Lane*, 726 N.W.2d at 392.

We normally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). Direct appeal is appropriate, however, when the record is adequate to

determine as a matter of law the defendant will be unable to establish one or both of the elements of the ineffective-assistance claim. *Id.*

We can resolve Campbell's ineffective-assistance-of-counsel claim on this direct appeal because we conclude, as a matter of law, Campbell cannot prove "prejudice resulted." To meet the prejudice prong, Campbell is required to show that, but for counsel's error, there is a reasonable probability that the results of the trial would have been different. See *State v. Carey*, 709 N.W.2d 547, 559 (Iowa 2006). "The most important factor under the test for prejudice is the strength of the State's case." *Id.* Because other evidence, properly admitted and described above, overwhelmingly proved Campbell was guilty of first-degree murder, there is no reasonable probability the verdict would have been different if Campbell's counsel had objected to the phone records at issue. Any alleged failure by counsel did not cause prejudice to Campbell sufficient to establish ineffective assistance of counsel and we affirm his conviction.

AFFIRMED.