

IN THE COURT OF APPEALS OF IOWA

No. 0-233 / 08-2039
Filed May 12, 2010

PABLO BENAVIDEZ,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

Pablo Benavidez appeals from the dismissal of his application for
postconviction relief. **AFFIRMED.**

Tammi Blackstone, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney
General, John P. Sarcone, County Attorney, and Joseph Weeg, Assistant County
Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

Pablo Benavidez appeals an order of the district court dismissing his application for postconviction relief. In 2004 Benavidez was convicted of first-degree murder in the Polk County District Court. He was sentenced to life in prison without the possibility of parole. We subsequently affirmed his conviction and sentence. See *State v. Benavidez*, No. 04-1782 (Iowa Ct. App. Dec. 21, 2005). The relevant facts, as discussed in our prior opinion, are as follows:

Juan Mandujano was shot and killed in his home by intruders during the early morning hours of November 26, 2001. Benavidez and two other men were subsequently charged with first-degree murder in violation of Iowa Code sections 707.1 (2003) and 707.2.

At trial, two key witnesses testified on behalf of the State. The first, Vonvichit “Shorty” Vilaysack, testified pursuant to a plea agreement based on a first-degree robbery charge stemming from the events surrounding Mandujano's death. Vilaysack testified a man known to him as “Dang”¹ contacted Vilaysack and asked him to help steal a car which contained drugs. Vilaysack met Dang, Rodolfo Tables Rodriguez, and Benavidez at Dang's apartment. Vilaysack drove the four men in Dang's car to Mandujano's home. Benavidez directed Vilaysack to the home and told him they intended to steal a red car parked in the driveway. A second car was parked behind the red car, blocking it. Vilaysack parked the car, and the four men climbed a fence into a neighboring yard. Benavidez and Dang were carrying semi-automatic handguns. When Dang asked Vilaysack to knock down the back door of Mandujano's home, Vilaysack refused and went back to Dang's car. Dang, Rodriguez, and Benavidez kicked in the back door and ran into the house. Vilaysack heard two gunshots shortly after the men entered the house, then observed the three men run out of the house. Benavidez and Dang fired at the house as they ran to Dang's car. The three men got in the car and told Vilaysack to drive off.

The State presented expert evidence that two guns were used in the shooting. Police found twelve fired cartridge casings at the crime scene, two of which were inside the house. This physical

¹ “Dang” a/k/a Vongphachanh Siharath was tried for first-degree murder in 2007 and acquitted.

evidence corroborated Vilaysack's testimony that Benavidez and Dang were armed with semi-automatic handguns.

Brenda Ramirez, Mandujano's girlfriend, also testified on the State's behalf. She testified that she and Mandujano had returned from California with three and one-half pounds of methamphetamine on November 25, the day before the shooting. The drugs had been hidden inside a car door during the trip back to Iowa. Mandujano had removed the drugs and hidden them in the basement of his home upon their return. Ramirez and Mandujano were sleeping in their bedroom when Ramirez woke up after hearing two people speaking in low voices and walking slowly through the house. She awakened Mandujano and told him people were in the house. When the intruders entered the bedroom, she jumped out of bed and hid in a closet. She heard a gunshot, followed by Mandujano's screams. Then she heard Benavidez swear and more gunshots.

Although she did not see Benavidez, Ramirez recognized his voice. She and Benavidez had dated several months earlier. Ramirez later told police she was 100 percent certain it was Benavidez's voice she had heard. Ramirez was eventually charged with drug offenses and entered into a plea agreement in exchange for her testimony at Benavidez's trial.

Mandujano died as a result of two gunshot wounds. On December 20, 2001, police officers went to a Des Moines residence seeking Benavidez as a material witness relevant to the murder investigation. Police also had a misdemeanor arrest warrant for Benavidez. Officers found Benavidez hiding in the attic of the residence. After struggling with the officers, ultimately crashing through the ceiling and falling onto the kitchen floor, Benavidez was placed in custody.

On November 28, 2006, Benavidez filed an application for postconviction relief. The application raised a number of issues, only two of which are the subject of the present appeal. Specifically, Benavidez maintained that his trial counsel was constitutionally ineffective (1) for failing to obtain and use the cell phone records of "Shorty" and "Dang" and for failing to use Benavidez's cell phone records at trial and (2) for not requesting a voice identification lineup to test Brenda Ramirez's claimed ability to identify his voice. On October 28, 2008, the district court held an evidentiary hearing at which Benavidez, his mother, and

his sister testified. On November 20, 2008, the court entered a lengthy written order dismissing Benavidez's application. Regarding the cell phone records, the district court concluded they were *inculpatory* rather than exculpatory as to Benavidez. On the voice identification issue, the district court noted the considerable evidence that Ramirez was familiar with Benavidez's voice—having had a brief romantic relationship with him. Thus, the district court concluded that trial counsel had not failed to perform an essential duty, nor was there a reasonable probability that the outcome of the trial would have been different but for trial counsel's alleged errors. See *Ledezma v. State*, 626 N.W.2d 134, 142-43 (Iowa 2001). Benavidez now appeals.

The district court's opinion dismissing Benavidez's application is exhaustive and well-reasoned. It contains a thorough treatment of the applicable law and the facts and we approve of the reasons and conclusions therein. Accordingly, we affirm pursuant to Iowa Court Rule 21.29(1)(d).

AFFIRMED.