

IN THE COURT OF APPEALS OF IOWA

No. 1-852 / 10-2093
Filed January 19, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

HAYES ELBERT BAKER,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Steven J. Andreason, Judge.

Defendant appeals multiple criminal charges, claiming the district court should have severed two of the charges from the remainder. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Patrick Jennings, County Attorney, and Drew Bockenstedt, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.**I. Background Facts & Proceedings.**

Hayes Baker was charged with seven criminal counts. He filed a motion to sever Count VI, stalking, and Count VII, possession of marijuana, from the other five counts, claiming they arose from separate incidents.

The court denied the motion, finding the stalking charge included the incidents that formed the basis of Counts I through V. The court also found the possession-of-marijuana charge was a continuation of evidence that formed the basis of the stalking charge. The court found the offenses were part of the same circumstances or chain of facts and concluded that in the interest of judicial economy the motion to sever should be denied.

The case progressed to a jury trial. The jury entered guilty verdicts in six counts. The jury found Baker not guilty of Count VI, stalking. Baker filed a motion for new trial, once again claiming the district court should have severed Counts VI and VII from the other counts. The court denied the motion.

Baker was sentenced on his convictions. He now appeals the district court's denial of his motion to sever.

II. Standard of Review.

We review a district court ruling on a motion to sever for an abuse of discretion. *State v. Thornton*, 506 N.W.2d 777, 779 (Iowa 1993).

III. Merits.

Iowa Rule of Criminal Procedure 2.6(1) provides:

Two or more indictable public offenses which arise from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan, when

alleged and prosecuted contemporaneously, shall be alleged and prosecuted as separate counts in a single complaint, information or indictment, unless, for good cause shown, the trial court in its discretion determines otherwise.

Baker contends the charges of stalking and possession of marijuana were not part of the same transaction or occurrence as the other five counts. Transactions and occurrences are considered to be part of a common scheme or plan under rule 2.6(1), “when they are the ‘products of a single or continuing motive.’” *State v. Elston*, 735 N.W.2d 196, 198 (Iowa 2007) (citation omitted). In determining whether there is a common scheme or plan, a court should consider “factors such as intent, modus operandi, and the temporal and geographic proximity of the crimes.” *Id.* at 199. The court considers whether the facts of a charge can be adequately explained only by drawing upon the facts of another charge. See *State v. Geier*, 484 N.W.2d 167, 172 (Iowa 1992).

Iowa Rule of Criminal Procedure 2.6(1) permits the court to sever the counts in its discretion “for good cause shown.” In order to show the court abused its discretion in denying the motion to sever, Baker must show prejudice resulting from joinder of the charges outweighed the State’s interest in judicial economy. See *Elston*, 735 N.W.2d at 199. We agree with the court’s finding that the stalking charge included the incidents that formed the basis of Counts I through V. We also agree the possession-of-marijuana charge was a continuation of evidence that formed the basis of the stalking charge.

We therefore conclude the requirements of rule 2.6(1) were met and the court struck a balance between the defendant’s right to a fair trial and the State’s interest in judicial economy. *Geier*, 484 N.W.2d at 173. Counts VI and VII were

part of the same circumstances or claim of facts and granting of the motion to sever was not required and would have been contrary to the interests of judicial economy. *State v. Smith*, 576 N.W.2d 634, 636 (Iowa Ct. App. 1998).

We determine the district court did not abuse its discretion by denying Baker's motion to sever Counts VI and VII from the other five counts.

AFFIRMED.