

IN THE COURT OF APPEALS OF IOWA

No. 2-420 / 11-0007
Filed July 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD ROBERT MUTCHLER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant appeals his convictions for first-degree murder challenging the sufficiency of the evidence, failure to sever the two murder charges, and the effectiveness of his trial counsel. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Jeffrey K. Noble and Michael T. Hunter, Assistant County Attorneys, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DOYLE, J.

Richard Mutchler appeals from his convictions for murder in the first degree, in violation of Iowa Code sections 707.1 and 707.21 (2007). He contends the district court erred in denying his motion for judgment of acquittal. He also claims he was denied the effective assistance of counsel when his trial counsel failed to pursue severance of the two murder charges against him. Additionally, Mutchler asserts numerous claims pro se. We affirm his convictions and preserve his pro se claims of ineffective assistance of counsel for possible postconviction relief proceedings.

I. Background Facts and Proceedings.

From the evidence produced at trial, the jury could have found the following facts. In the early hours of July 10, 2008, Stanley Long and Charlene Ann Gordon were murdered in their homes in Des Moines in similar fashions. Both died of multiple stab wounds.

Mutchler was acquainted with both victims. All three were crack-cocaine users, and Mutchler often smoked crack with each victim. Long had a reputation for being well-connected to suppliers of crack. He also had a reputation of borrowing money and being slow to pay it back. Long borrowed money from Mutchler in the past, and Mutchler had threatened Long, stating on one occasion that he would “mess [Long] up” if Long failed to repay him thirty dollars he had borrowed.

On the evening of July 9, 2008, Long bought some crack and returned to his apartment to smoke it. A friend, who suffered from memory loss and paranoia from his crack use, came over at 6:30 p.m., and he and Long drank

some beer. Long sought to obtain more crack, making calls to his contacts, but was unsuccessful. Around 8:30 p.m., Mutchler and Gordon stopped by Long's apartment, wanting to buy \$100 worth of crack. Long told them he had been looking for some but had had problems finding any.

Mutchler and Gordon left Long's apartment to find some crack, and they headed to an area in Des Moines known for drug sales and use. There, Gordon gave a drug dealer \$30 for some crack, and Mutchler and Gordon sat in Gordon's vehicle awaiting the dealer's return with the crack. Mutchler was wearing whitish-colored sweat pants.

A prostitute, who knew Gordon, was best friends with the drug dealer, and had a long criminal record, was working the area where Mutchler and Gordon were waiting. The prostitute got in the backseat of Gordon's car and talked to Gordon and Mutchler while Gordon was waiting for the drug dealer to return. The prostitute observed there was a bunch of stuff in Gordon's car, but she did not see any stereo equipment in the car.

They were approached by a woman Mutchler used to date. The woman was an ex-prostitute and had several criminal convictions. She was also a drug user, as well as Gordon's former roommate. The woman and Gordon did not get along; there was a history of violence between them. Mutchler and Gordon asked the woman for some crack, and Mutchler also asked her where he could get a gun. In response to why he wanted the gun, Mutchler replied, "[Long] has [fifty dollars]; I want it." The woman told them she had some crack but was not going to get it out there. She told them she would bring it over to Gordon's apartment later, though she had no intention of doing so because she thought

Mutchler “was just acting really weird,” he “smelled like he had been drinking. . . . And [he was] just being very aggressive with [her].” She then left.

At approximately 10:00 p.m., Gordon gave up on waiting for the drug dealer to return and she left, leaving Mutchler and the prostitute behind. Gordon encountered the drug dealer a block away, and he gave her the crack. She left and did not return to Mutchler and the prostitute’s location. The dealer did return to the location, and Mutchler asked him where the crack was. After being told that he had given it to Gordon because she paid for the drugs, Mutchler became mad and extremely agitated. He told the dealer, “You shouldn’t have did that.” The prostitute told the dealer that he needed to get Mutchler out of there. Two more of the dealer’s customers pulled up in a truck. The dealer asked them if they would give Mutchler a ride. They agreed, and Mutchler hopped in the truck. Mutchler told the driver his old lady had his “stuff,” and Mutchler directed the driver to a location between 15th and 16th on Grand. This location was less than a block from Gordon’s apartment. The driver saw Mutchler stagger across the street in front of his truck. He did not know where Mutchler went from there.

Meanwhile, Long continued his search to obtain some more crack. After obtaining a small amount, Long and his friend smoked it at Long’s apartment. Between 10:15 and 10:45 p.m., Long’s friend left to get beer. When he returned, Mutchler was there. He did not see Gordon. Long’s friend saw Long was getting ready for bed and left. He did not see Long again.

Another friend of Long’s came to Long’s apartment between 11:00 p.m. and midnight to pick Long up, after receiving a call that someone had some crack for him. This friend did not go inside Long’s apartment. He and Long left to get

the crack, and the friend dropped Long back home after getting the crack between midnight and 12:30 a.m. on June 10.

Between 1:00 and 2:00 a.m., Gordon's next-door neighbors awoke from their sleep, hearing pounding on Gordon's door so loud they believed some kind of object was used to make the sounds. Gordon was heard screaming and moaning. The neighbors went back to sleep without calling the police.

At 6:30 or 7:00 a.m., the drug dealer was at Sam Heard's thrift shop, located near the known drug area where he, Mutchler, and Gordon had been the night before. While the dealer was waiting for someone, Mutchler walked up on foot to the shop and asked the dealer to help him start a car. Mutchler's pants and shirt had blood all over them. After asking Mutchler what happened, Mutchler stated he had been "in a bar and had almost snatched some guy's arm off or something." They walked about seven blocks to the car, which was Gordon's. Gordon was not there, but Mutchler had her keys. Mutchler and the dealer were unsuccessful at starting the car, and the dealer ultimately returned to Heard's shop. While the dealer was waiting for Heard to show up, Mutchler, driving Gordon's car, parked at Heard's. Mutchler turned the car off, and it would not start again. At that point, the dealer saw there were a television, a DVD player, and a stereo in the backseat of the car. Mutchler asked the dealer if he knew anyone who wanted to take the equipment, and the dealer told him it was too early. Mutchler and the dealer pushed the car about 200 feet, and the dealer left Mutchler.

Shortly after 8:00 a.m., Mutchler attempted to steal a car battery from a parked car at a service station. The station's owner saw Mutchler and confronted

him; Mutchler claimed he needed the battery from his wife's car to start his own car, pointing to Gordon's car parked in the street. The owner thought Mutchler seemed nervous and that he might become violent. Mutchler ran away thereafter, and the owner called the police.

Around 9:15 a.m., Mutchler was seen going into Long's apartment. Mutchler's pants were stained with what appeared to be blood. Mutchler was later seen at a bus stop wearing sweatpants with red spots that looked like blood.

After Long failed to arrive at work that morning, a family member stopped by Long's apartment to check on him and found Long lying dead with multiple stab wounds. Police were dispatched to Long's apartment at 11:00 a.m. that morning. On the floor of the apartment, officers found Long's wallet with its contents pulled out and scattered about. Officers also found a key ring with a key and identification cards bearing Gordon's name.

After noon the same day, Gordon was discovered lying dead in her apartment with multiple stab wounds, similar to those found on Long. The contents of Gordon's purse were emptied and scattered about. Mutchler's billfold with his driver's license was found under a chair near Gordon's body. Also nearby was a small pile of mail and mailed glossy advertisements. A shoeprint in what appeared to be blood was found on one of the advertisements, and the shoeprint matched Mutchler's shoe. Mutchler's DNA was found on two liquor containers in Gordon's apartment.

Mutchler was arrested at 7:00 p.m. that day. At that time, Mutchler was wearing a blue shirt and denim shorts covered with blood. Most of the blood had resulted from an earlier incident between Mutchler and Heard. However, a

smear of blood matching Heard's DNA profile and Gordon's DNA profile was found on Mutchler's big toe, though it could not be determined whether Gordon's DNA came from blood.

The television, DVD player, and stereo found in Gordon's car belonged to Long. A smear of blood containing Long's DNA was found on one of the stereo speakers. Additionally, bloodstains found on the driver's side floor mat and a sock in the car matched Gordon's DNA.

On August 8, 2008, the State filed its trial information charging Mutchler with two counts of first-degree murder, along with first-degree robbery and ongoing criminal conduct. Thereafter, Mutchler filed a motion to sever the counts, arguing, among other things, that the four counts were not based on a common scheme or plan relating to the other counts, and the State resisted. Ultimately, the State and Mutchler reached an agreement that the murder charges would be tried together, the robbery charge would be severed and tried separately, and the ongoing criminal conduct charge was dismissed.

Following a jury trial on the first-degree murder charges, Mutchler was found guilty as charged. He now appeals, contending the district court erred in denying his motion for judgment of acquittal. He also claims he was denied the effective assistance of counsel when his trial counsel failed to pursue severance of the two murder charges against him. Additionally, Mutchler asserts numerous claims pro se.

II. Discussion.

A. Motion for Judgment of Acquittal.

In appealing the district court's denial of his motion for judgment of acquittal, Mutchler essentially argues the circumstantial evidence presented at trial was insufficient to prove he was guilty beyond a reasonable doubt of first-degree murder. He particularly challenges the credibility of the testimony of various witnesses, emphasizing witnesses' drug use and memory issues, as well as asserting possible self-serving reasons for the witnesses' testimony against him. He also asserts the investigation in the case by law enforcement officers was "shoddy."

Our review of Mutchler's motion for judgment of acquittal "requires us to examine the sufficiency of the evidence supporting the jury's guilty verdict." *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). We review Mutchler's challenge to the sufficiency of the evidence for correction of errors at law, and we will uphold the jury's verdict if it is supported by substantial evidence. *Id.* Evidence is considered substantial if a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999). We consider all the evidence in the light most favorable to the State, drawing all reasonable inferences. *State v. Milom*, 744 N.W.2d 117, 120 (Iowa Ct. App. 2007). The evidence must "raise a fair inference of guilt as to each essential element of the crime," and must not raise only suspicion, speculation, or conjecture. *State v. Speicher*, 625 N.W.2d 738, 741 (Iowa 2001) (citing *Casady*, 597 N.W.2d at 787).

“Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence.” *Nitcher*, 720 N.W.2d at 556 (quoting *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994)). “A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive.” *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). The “very function of the jury is to sort out the evidence and ‘place credibility where it belongs.’” *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993) (citation omitted). The “credibility of witnesses is for the factfinder to decide except those rare circumstances where the testimony is absurd, impossible, or self-contradictory.” *State v. Neitzel*, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011).

We first observe that a defendant’s commission of a crime may be proven by circumstantial evidence alone. See *State v. Hearn*, 797 N.W.2d 577, 580 (Iowa 2011). Here, numerous witnesses acquainted with Mutchler, Long, and Gordon testified as to Mutchler’s actions the night prior to and the day of the murders, and their circumstantial evidence raises a fair inference of guilt as to each essential element of the crime. Mutchler’s trial counsel questioned the witnesses’ testimony, specifically challenging their credibility on cross-examination. The members of the jury were free to believe or disbelieve these witnesses’ testimony and to give the testimony such weight as they thought the testimony should receive. See *Liggins*, 557 N.W.2d at 269.

However, in this case there was also physical evidence linking Mutchler to the murders. In Gordon’s apartment, Mutchler’s fingerprints were found on containers and a shoeprint in what appeared to be blood matched Mutchler’s

shoe. A smear of blood matching Gordon's DNA profile was found on Mutchler's big toe. Bloodstains found on the driver's side floor mat and a sock in Gordon's car, which had been in Mutchler's possession, matched Gordon's DNA. The television, DVD player, and stereo found in Gordon's car and seen with Mutchler while in possession of the car belonged to Long. A smear of blood containing Long's DNA was found on one of the stereo speakers.

Considering all of the evidence in the record in the light most favorable to the State and making all reasonable inferences that may fairly be drawn, we find the evidence in this case substantially supports the jury's guilty verdicts. Finding no error in the district court's denial of Mutchler's motion for judgment of acquittal, we affirm the convictions.

B. Ineffective Assistance of Counsel.

Mutchler next asserts he was denied the effective assistance of counsel when his trial counsel failed to pursue severance of the two murder charges against him.¹ We review his ineffective-assistance-of-counsel claims de novo. *State v. Ondayog*, 722 N.W.2d 778, 783 (Iowa 2006). "Although claims of ineffective assistance of counsel are generally preserved for postconviction relief proceedings, we will consider such claims on direct appeal where the record is adequate." *State v. Horness*, 600 N.W.2d 294, 297 (Iowa 1999).

¹ Mutchler agreed to trying the two murder charges together and therefore failed to preserve error on the issue. See *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal."). Accordingly, we address his alternative argument that his trial counsel were ineffective. See, e.g., *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011) ("Ineffective-assistance claims are an exception to our normal rules of error preservation.").

To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). Mutchler must prove both elements, or his claim will fail. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001). We presume counsel is competent, and miscalculated trial strategies and mere mistakes in judgment normally do not rise to the level of ineffective assistance. *Millam v. State*, 745 N.W.2d 719, 721 (Iowa 2008). Trial counsel has no duty to raise an issue that has no merit. *State v. Graves*, 668 N.W.2d 860, 881 (Iowa 2003). To prove prejudice, Mutchler must show there is a reasonable probability that, but for counsel's errors, the result of the case would have been different. *Ledezma*, 626 N.W.2d at 143. While ineffective-assistance-of-counsel claims are generally preserved for postconviction relief proceedings, we will address his claim concerning the motion to sever, as we find the record adequate to do so. *Graves*, 668 N.W.2d at 869.

Iowa Rule of Criminal Procedure 2.6(1) permits multiple charges arising from the same or multiple occurrences constituting parts of a "common scheme or plan" to be prosecuted in a single trial unless the trial court determines otherwise for good cause shown. A "common scheme or plan" requires more than the commission of two similar crimes by a single person. *State v. Delaney*, 526 N.W.2d 170, 174 (Iowa Ct. App. 1994). In short, the offenses must be the products of a single or continuing motive. *State v. Oetken*, 613 N.W.2d 679, 688 (Iowa 2000). Factors indicating a common scheme or continuing motive include intent, modus operandi, and temporal and geographic proximity of the crimes. *Id.*

In this case, we conclude the occurrences constitute parts of a common scheme or plan. Mutchler's intent to obtain crack was a continuing motive throughout the night. Mutchler took property from both victims that morning: Long's electronic equipment and Gordon's car. The murders occurred in temporal proximity in similar fashions. We conclude the charged offenses constitute "a common scheme or plan." Any motion to sever would not have been successful; therefore, counsel did not render ineffective assistance in failing to make such a motion. *Graves*, 668 N.W.2d at 881.

Furthermore, even if we were to assume Mutchler's trial attorneys did have a duty to pursue the severance of the murder charges, we find on our de novo review that Mutchler cannot establish the requisite prejudice. We agree with the State that had Mutchler's attorneys continued to pursue their request to sever the trials and the district court granted their request, there is no reasonable probability the verdicts would have been different if tried separately. The same general evidence as to Mutchler's actions the night of and the morning of the murders would have been admitted in separate trials of each of the two murders. Accordingly, we conclude Mutchler's trial attorneys did not render ineffective assistance of counsel in not pursuing the motion to sever.

C. Pro Se Claims.

Mutchler also asserts numerous ineffective-assistance-of-counsel claims pro se. We find the record is not adequate to address his pro se claims and accordingly preserve those claims for possible postconviction relief proceedings. *Id.* at 869.

III. Conclusion.

In conclusion, we affirm the district court's denial of Mutchler's motion for judgment of acquittal based on the sufficiency of the evidence. We deny a meritless ineffective-assistance claim and preserve the rest for possible postconviction relief proceedings. Mutchler's convictions and sentences for first-degree murder are affirmed.

AFFIRMED.