

IN THE COURT OF APPEALS OF IOWA

No. 6-368 / 05-0766
Filed October 25, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DOUGLAS D. DEBRUIN,
Defendant-Appellant.

Appeal from the Iowa District Court for Jackson County, J. Hobart Darbyshire, Judge.

Defendant appeals his convictions, following jury trial for first-degree murder and first-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland and James Kivi, Assistant Attorneys General, and John L. Kies, County Attorney, for appellee.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

SACKETT, C.J.

Defendant Douglas DeBruin was charged with killing Greg May and stealing from him. Following a jury trial, defendant was convicted of first-degree murder, in violation of Iowa Code sections 707.1 and 707.2(1) (1999), and first-degree theft, in violation of sections 714.1(1), 714.14) and 714.2(1). Defendant on appeal contends (1) his motion for speedy trial should have been sustained, (2) there was not sufficient evidence to support his conviction of murder in the first degree, (3) he received ineffective assistance of counsel, and (4) he was denied access to the courts. We affirm.

BACKGROUND FACTS

Defendant and decedent were friends when May, a tattoo artist and collector of Civil War and Indian war artifacts, moved into a home in Bellevue, Iowa. Defendant, who was on parole in the state of Wisconsin, changed his name and moved in the basement as did defendant's girlfriend, Julie Miller. In mid-January of 2001 May's family and friends became concerned about May's whereabouts, and a missing person's report was filed with the Bellevue police in February of that year. Foul play was suspected and an investigation ensued. By this time defendant and Miller had left the area. Miller was ultimately found in Arizona in April of 2001. She told officers that defendant killed May and the body was in the Mississippi River. Miller initially related she was not present during the murder but subsequently told officers defendant strangled May with a yellow rope and she helped defendant dismember May's body and dispose of the body parts.

Defendant, who testified in his own defense, admitted assisting Miller in dismembering and disposing of the body but contended May died from a stab wound to his chest that Miller inflicted.

SPEEDY TRIAL

The defendant contends the district court erred in denying his motion to dismiss based on a denial of his right to a speedy trial. On appeal, he raises only the claim the State did not bring him to trial within the ninety-day period of Iowa Rule of Criminal Procedure 2.33(2)(b).

The defendant was arrested in Arizona on April 10, 2001, on an unrelated matter. On December 9, 2003, more than two years later, the defendant wrote to the Jackson County Attorney and the district court requesting that the murder investigation against him in Iowa be pursued. Because there was no pending criminal charge, the letters were file stamped by the clerk of court and a miscellaneous file was created for the documents. The letters are not included in the record for this appeal.

The State filed a trial information on January 9, 2004, charging the defendant with May's murder, and an arrest warrant issued. At that time, the defendant was in federal custody in Arizona. Because of a pending Wisconsin warrant for probation violation, federal authorities would not release the defendant to Iowa, but instead sent him to Wisconsin. On February 12, the defendant refused to waive extradition. On February 18, the State submitted its extradition request. The governor signed the request on February 26. On March 10, the State received an extradition approval letter from the governor of

Wisconsin.¹ Wisconsin then paroled the defendant back into federal custody, and he was transferred to federal prison in Indiana on March 22. On May 16, the defendant again refused to waive extradition to Iowa. On June 10, the State requested temporary custody of the defendant under the Interstate Agreement on Detainers (IAD), Iowa Code chapter 821 (2003). On June 19, the defendant filed a pro se motion to dismiss the trial information on speedy trial grounds. On June 22, the State submitted a written request to federal authorities requesting temporary custody of the defendant. On June 29, federal authorities in Indiana sent the State the IAD forms with a note that the defendant had thirty days (until July 28) to object to the transfer to Iowa. On July 12, federal authorities offered temporary custody of the defendant to Iowa.

In a telephonic hearing on July 16, the defendant agreed to continue the hearing on his motion to dismiss until after his return to Iowa in August, appointment of counsel, and arraignment. On August 6, Iowa sent its approval of the federal offer of temporary custody. The defendant was transferred from Indiana to Iowa on August 25, and had his initial appearance on August 27. On August 31, the defendant filed a written arraignment form that included a notice of his speedy trial rights and his demand for a speedy trial. The arraignment order filed the same day set the pretrial conference for October 8 and trial for November 8.

On October 7, the defendant filed a written waiver of speedy trial. The next day he moved to continue the pretrial conference and trial. The court

¹ There is some indication the defendant had a thirty-day period within which to appeal his extradition from Wisconsin. It is unclear whether he was available for transfer to Iowa before any appeal period expired.

continued trial to January 31, 2005. On November 1, the defendant moved for a change of venue. In open court on November 10, the defendant orally waived the speedy-trial limitation of the IAD.

On December 23, the defendant filed a motion to dismiss on speedy trial grounds, alleging violation of both the ninety-day limit under Iowa Rule of Criminal Procedure 2.33 and the one-hundred-eighty-day limit of the IAD. The State resisted on January 11, 2005, and the hearing on the motion occurred on January 14. On January 27, the court issued its order denying the defendant's motion. Concerning the ninety-day period, the district court found there was good cause for the delay and the delay was attributable to the defendant. Concerning the IAD, the court found the defendant waived his right to a speedy trial orally and in writing within the applicable period.

In deciding speedy trial questions, our scope of review is for correction of errors at law. See *State v. Miller*, 637 N.W.2d 201, 204 (Iowa 2001) (citing *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991)). Because our review is at law, we are bound by findings of fact supported by substantial evidence. *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). Therefore, the appellant is entitled to prevail only if the evidence was so strong the trial court was compelled to rule for the appellant as a matter of law. *Id.* A district court's ruling on a motion to dismiss based on a speedy-trial ground is reviewed for an abuse of discretion. *State v. Winters*, 690 N.W.2d 903, 907 (Iowa 2005). The district court's discretion in ruling on such motions is narrow. *Id.*

The defendant contends the court erred in not dismissing the charges against him based on a violation of his right to a trial within ninety days of the date the State filed the trial information. Rule 2.33(2)(b) provides:

If a defendant indicted for a public offense has not waived the defendant's right to a speedy trial the defendant must be brought to trial within 90 days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be found.

Under Rule 2.33, a criminal charge must be dismissed if the trial does not commence within ninety days from the date of the indictment “unless the State proves (1) defendant's waiver of speedy trial, (2) delay attributable to the defendant, or (3) ‘good cause’ for the delay.” *Winters*, 690 N.W.2d at 908 (quoting *State v. Nelson*, 600 N.W.2d 598, 600 (Iowa 1999)). Although the rule specifies an indictment, it “applies with equal force to charges brought by trial information.” *State v. Olson*, 528 N.W.2d 651, 653 (Iowa Ct. App. 1995) (citing *State v. Clark*, 351 N.W.2d 532, 534 (Iowa 1984)). “The burden of proving an exception to the rules deadline rests squarely with the State.” *Miller*, 637 N.W.2d at 204 (citing *Olson*, 528 N.W.2d at 653).

In ruling on the defendant’s motion to dismiss, the district court found:

First of all, he complains . . . he was not brought to trial within ninety days of the date the trial information was filed. At no time between the date the trial information was filed, however, and the date defendant was actually returned to the State of Iowa under the Agreement on Detainers Compact was defendant actually available within the State of Iowa for trial. Throughout that period of time he continued to refuse to waive extradition back to Iowa to stand trial. The court finds there is good cause for delay, and the delay is attributable to defendant’s unwillingness to waive extradition.

The record reveals the defendant refused to waive extradition from Wisconsin on February 12, 2004. He acknowledges also refusing to waive extradition from

Indiana on May 16. “Delay attributable to defendant may constitute statutory good cause preventing the State from carrying out its obligation to bring him to trial.” *State v. Keys*, 535 N.W.2d 783, 787 (Iowa 1995) (quoting *State v. Donnell*, 239 N.W.2d 575, 579 (Iowa 1976)). “A defendant may not actively or passively participate in the events which delay his or her trial and then later take advantage of that delay to terminate the prosecution.” *State v. Orte*, 541 N.W.2d 895, 898 (Iowa 1995) (citing *State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa Ct. App. 1992)); see also *Finn*, 489 N.W.2d at 694. Substantial evidence supports the district court’s finding the delay was attributable to the defendant and its conclusion his right to a speedy trial was not violated. Accordingly, we affirm on this issue.

INSUFFICIENT EVIDENCE

In determining whether the evidence is sufficient to support a conviction, the relevant inquiry is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560, 573 (1979) (emphasis omitted); *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980). Judicial review must be based on all the evidence in the record. *Id.* at 340. The evidence must at least raise a fair inference of guilt as to each essential element of the crime. *State v. LaPointe*, 418 N.W.2d 49, 51 (Iowa 1988). Evidence which merely raises suspicion, speculation, or conjecture is insufficient. *Id.*

Defendant contends the only evidence linking him to May’s death is the testimony of Julie Miller. The defendant contends she is an accomplice and her testimony is not corroborated and lacks credibility. He also argues that there was

no medical evidence as to the cause of May's death and there was no way it could be determined.

Iowa of Evidence Rule 2.21 (3). provides:

(3) Corroboration of accomplice or person solicited. A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. Corroboration of the testimony of victims shall not be required.

The existence of corroborating evidence is a legal question for the court. *State v. Dickerson*, 313 N.W.2d 526, 529 (Iowa 1981). Once the legal adequacy of the corroborating evidence is established, the sufficiency of the evidence is for the jury. *State v. Brown*, 397 N.W.2d 689, 695 (Iowa 1986). Because defendant's challenge is to the district court's determination that corroborating evidence existed to warrant submission of these cases to the jury, our review is for correction of errors of law. See Iowa R. App. P. 6.4. We view all the evidence in the light most favorable to the State, even if contradicted, and indulge in every legitimate inference that may be fairly and reasonably deduced from this evidence. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980); *State v. Cuevas*, 281 N.W.2d 627, 629 (Iowa 1979).

Corroborative evidence may be direct or circumstantial. *State v. Bugely*, 562 N.W.2d 173, 176 (Iowa 1997); *State v. Vesey*, 241 N.W.2d 888, 890 (Iowa 1976). It "need not be strong and need not be entirely inconsistent with innocence." *Dickerson*, 313 N.W.2d at 529. It must, however, support some material part of the accomplice's testimony and tend to connect the accused to

the commission of the crime. *Brown*, 397 N.W.2d at 695; *Vesey*, 241 N.W.2d at 890.

An accomplice is a person who “could be charged with and convicted of the specific offense for which an accused is on trial.” *State v. Berney*, 378 N.W.2d 915, 917 (Iowa 1985) (citation omitted). Thus, proof that the person had knowledge that a crime was planned or proof that the person was present when the crime was committed is insufficient standing alone to make the person an accomplice. *Id.* It must be established by a preponderance of the evidence that the person was involved in some way in the commission of the crime. *Id.*

When the facts and circumstances are undisputed and permit only one inference, whether a witness is an accomplice is a question of law for the court. *State v. Douglas*, 675 N.W.2d 567, 571 (Iowa 2004); *State v. Harris*, 589 N.W.2d 239, 241 (Iowa 1999). If the facts are disputed, however, or give rise to different inferences, the question is for the jury. *Id.*

We assume without deciding that Miller is an accomplice; therefore we look at her testimony and then determine if her testimony is sufficiently corroborated.

Miller testified as a witness for the State. She related that, on January 11, 2001, defendant covered the basement laundry room in May’s house with plastic and then stood behind May, who was seated in a chair and strangled him by putting a yellow rope around his neck. Miller said she helped defendant drag May’s body to the basement and put the body on top of the washer where defendant slit May’s throat and drained the blood out of his body. The two of them then started dismembering May’s body with a knife and a chainsaw. Miller

said she and defendant put parts of May's body in garbage bags. Defendant then mixed cement and water in a five-gallon bucket and put May's dismembered head there. May's arms and legs were thrown in a ravine near Bellevue, Iowa. His torso was thrown in the Mississippi River, and his skull in the bucket was ultimately left at a Missouri truck stop parking lot. Miller further testified they moved May's car so it would appear he had left town, and they got rid of May's clothes and furniture. Miller related she and defendant then traveled south with part of May's Civil War collection and attempted to sell portions of it along the way.

Miller's testimony is corroborated in part by defendant's admissions. Defendant admitted he and Miller dragged May's body downstairs and that he put down a plastic sheet, helped cut up May's body, and put his head in the bucket. Defendant further admitted throwing May's torso in the Mississippi and tossing May's arms and legs in a ditch. Defendant also admitted he left May's car in Illinois to make it look as if May left town, and he dropped May's clothing at Goodwill and put the bucket with the head in the parking lot. Defendant contends this is not sufficient corroboration, as we must separate the killing from the dismemberment of the body.

There is other evidence corroborating Miller's testimony. Among other things, the skull identified as May's was found at the Missouri truck stop and May's femur was found in the ravine. May's car was found where Miller testified it was left. Dogs trained to pick of the scent of human cadavers indicated that there was such a scent in defendant's Volvo, the car that Miller testified was the

vehicle used by the couple when disposing of May's body. Rolls of plastic and yellow rope were found in defendant's truck.

We also consider defendant's arguments that Miller gave conflicting stories, that there was testimony she was angry with May because he did not want her to join the men in going to Florida, that at or near the time of May's death May's girlfriend testified she saw through a window of the house Miller pacing behind May's unmoving body and doing something like she was wiping something off and that at the time she did not see defendant. That said, we find Miller's testimony is sufficiently corroborated and, when viewed in the light most favorable to the State, is sufficient to allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. See *Jackson*, 443 U.S. at 318-19, 99 S. Ct. at 2789, 61 L. Ed. 2d at 573.

INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant's appellate attorney makes an allegation that his trial attorney was ineffective in failing to object to what he refers to as irrelevant and prejudicial evidence.

Defendant, in a pro se brief, contends his trial attorney was ineffective in several ways. The record is insufficient for us to address these claims and they would best be addressed in postconviction proceedings. See *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006) (preserving claims for postconviction proceedings when the record is insufficient for direct review).

DENIAL OF ACCESS TO THE COURTS

In his pro se brief, the defendant contends he was denied access to the courts. We have considered this argument and his other arguments and find them to be without merit.

AFFIRMED.