

IN THE COURT OF APPEALS OF IOWA

No. 6-662 / 05-0990
Filed November 16, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD LEE CHRISTIANSEN,
Defendant-Appellant.

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

Defendant appeals his conviction following a jury trial for two counts of first-degree murder. **AFFIRMED.**

Scott L. Bandstra, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Dan Voogt and Mike Hunter, Assistant County Attorneys, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Richard Lee Christiansen appeals from his conviction following a jury trial for two counts of first-degree murder. We affirm.

I. Background Facts and Proceedings

On February 26, 2001, the bodies of Steve Jenkins and Jeff Johnson were found in Johnson's home in Des Moines. Each man had been shot twice with a shotgun. In October 2004 the State filed a trial information charging Christiansen and Robert Jordan, Jr. with two counts of first-degree murder, in violation of Iowa Code sections 707.1 and 707.2 (2003). The district court denied Christiansen's motion to suppress, and the matter proceeded to jury trial.¹

Christiansen, testifying in his own defense at trial, described himself as a "professional criminal" and an "authority on armed robbery." He explained his involvement in manufacturing methamphetamine, burglary, car theft rings, and fencing operations. He added,

One of the things that I do, and have done for many years in California, I had never done it in Iowa, but I have done it for many, many years, countless times, is collect money for people in the drug business who are owed, who can't collect it themselves for one reason or another.

In early February 2001 Christiansen abandoned his job and failed to return to the work release center where he was living at the time. He drove to Rockford, Illinois, to the home of Mark and Emily Tongue. Mark was in jail in Las Vegas, and Emily was behind in her rent and in need of money. Christiansen decided to commit a robbery to help Emily. He returned to Des Moines,

¹ Jordan was convicted by a jury of two counts of first-degree murder in a separate trial.

committed a robbery using a shotgun owned by Mark Tongue, and returned to the Tongues' house in Rockford on February 13 or 14.

Jordan, a close friend and "crime partner" of Christiansen's, showed up at Christiansen's house in Des Moines after being released from prison. Jordan agreed to participate in another robbery Christiansen had planned. Jordan traveled to Rockford, and the two men committed a second robbery on February 16, using Mark Tongue's shotgun. Two days later, Christiansen and Jordan returned to Des Moines.

Around February 20, Christiansen and Jordan visited Christiansen's friend Mike Hardin, a drug dealer, to get methamphetamine. Hardin complained of a fellow drug dealer who had owed him a \$1500 drug debt for six months and would not pay. Hardin asked Christiansen to collect the debt. Christiansen testified at trial that he refused.

On Friday, February 23, Steven Jenkins borrowed his girlfriend's car with the understanding he would bring it back later in the evening. Jenkins did not return the car, and his girlfriend, Glenda Chiles, did not hear anything from him for several days.² On Monday, February 26, Chiles and her niece drove to the home of Jeff Johnson, Jenkins's friend and a fellow drug user, and found the bodies of Johnson and Jenkins inside. Each had been shot twice with a shotgun that police eventually determined was the one belonging to Mark Tongue. The medical examiner opined that based on the state of decomposition of the bodies,

² Chiles testified she did not call police because she knew Jenkins used drugs and she did not want to get anyone "in trouble."

the shooting had occurred in the late evening of February 23 or early morning of February 24.

Christiansen testified that he and Jordan drove to Hardin's house the evening of February 23-24, looking for Hardin. Jordan waited in the car, and Christiansen went into the house and spoke to Hardin's girlfriend, who told him Hardin was not there. James "Wally" Marts, who lived in Hardin's basement, testified Christiansen appeared "high" or "high strung" and told him that "something had gone bad."

On February 24, Christiansen's wife, Erika, picked up Mark Tongue, who had been released from jail, at the bus station in Des Moines and took him to the motel where Christiansen and Jordan were staying. Erika also brought a 9mm pistol she had bought that day. Christiansen, Jordan, and Tongue drove to Rockford on February 26. Christiansen and Jordan stayed with the Tongues for several days.

On March 2 Christiansen and Jordan robbed a bank in Rockford. Christiansen carried the 9mm pistol during the robbery, and Jordan carried the shotgun that had been used to kill Jenkins and Johnson. The two men were arrested for the robbery two days later, and Christiansen was eventually sentenced to federal prison.

In January 2002 police discussed the murders of Jenkins and Johnson with Hardin, who was in jail on drug charges. As a result of this conversation, officers traveled to Rockford, where they interviewed the Tongues and took custody of evidence, including the shotgun and pistol, that officers had seized when Christiansen and Jordan were arrested. The ongoing investigation led

officers to the federal penitentiary in Terre Haute, Indiana, where they spoke with Christiansen.

The State eventually charged Christiansen and Jordan with two counts of first-degree murder. At trial, Christiansen claimed that Jordan admitted killing Jensen and Johnson while trying to collect the \$1500 debt on his own. The jury found Christiansen guilty of two counts of first-degree murder. The court sentenced Christiansen to two consecutive terms of life imprisonment.

Christiansen appeals, arguing the district court erred in (1) failing to grant his motion to suppress, (2) failing to grant his motion for new trial, and (3) admitting certain evidence at trial. Christiansen also asks us to preserve potential claims for postconviction relief proceedings.³

Additional facts will be presented as they relate to the issues raised on appeal.

II. Evidentiary Rulings

A. Motion to Suppress

1. Statements to Officers. On July 10, 2002, Des Moines Police Officers David Ness and Dennis O'Donnell traveled to the federal penitentiary in Terre Haute, Indiana, hoping to interview Christiansen about the murders of Jenkins and Johnson. Christiansen was brought into an office where the officers were waiting. The officers introduced themselves and explained they were there

³ Christiansen asks us to preserve for possible postconviction proceedings claims of prosecutorial misconduct and trial counsel's failure to interview unidentified witnesses. These claims are too general in nature to address or preserve. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). *But see* Iowa Code § 814.7(1) (2005) (An ineffective assistance of counsel claim "need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction relief purposes.").

to find out whether Christiansen knew anything about the murder of two men in Des Moines in February 2001. Before officers had an opportunity to advise Christiansen of his rights or present the waiver-of-rights form they had prepared prior to the meeting, Christiansen said, "That's it," stood up, left the room, and asked the prison staff for a pass to return to his area. The officers left the room.

Christiansen started down the hall, then returned to the officers and said, "I have a few questions." The officers and Christiansen returned to the room. He told officers he had information about the case, asked about a possible deal, and expressed frustration that authorities did not appear interested. He stated that he and Jordan went to Johnson's house to collect a debt and that he had been in another room when the shots were fired. He expressed sympathy for the victims' families and indicated Jordan was willing to take the blame for what had happened.

After two or three minutes, Christiansen again said the interview was over. He stood up and walked out of the room with his pass in his hand. During the exchange, the officers asked only why Jordan was willing to "take the fall" for the murders. The other statements by Christiansen were volunteered.

Christiansen filed a motion to suppress his admissions to the officers, claiming he had been subjected to custodial interrogation without a prior waiver of his rights, in violation of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Following a hearing, the district court denied Christiansen's motion, concluding Christiansen was neither in custody, for purposes of *Miranda*, nor interrogated. On appeal, Christiansen argues the district court erred in denying his motion.

We review the district court's refusal to suppress evidence de novo. *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997). We give weight to the district court's fact findings, because it had the opportunity to assess the credibility of the witnesses. *Id.* We consider evidence from the suppression hearing and that introduced at trial. *Id.*

"The requirements of *Miranda* are not triggered 'unless there is both custody and interrogation.'" *State v. Turner*, 630 N.W.2d 601, 607 (Iowa 2001) (quoting *State v. Davis*, 446 N.W.2d 785, 788 (Iowa 1989)). "Incarceration does not automatically render an inmate in custody for purposes of *Miranda*." *State v. Deases*, 518 N.W.2d 784, 789 (Iowa 1994). In a prison setting,

there must be some added restriction on the inmate's freedom of movement stemming from the interrogation itself. The focus is on whether a reasonable person in the inmate's position would understand himself to be in custody. Relevant factors in making this determination include the language used to summon the individual, the purpose, place and manner of the interrogation, the extent to which the defendant is confronted with evidence of his guilt, and whether the defendant is free to leave the place of questioning.

Id. (citations omitted).

We agree with the district court's conclusion that Christiansen was not in custody when he spoke with the officers. He was free to leave the room, and did so twice. The encounter with officers that produced the admissions Christiansen sought to suppress was the result of Christiansen's voluntary return to the room, not any summons by the officers. He was not confronted with evidence of his guilt at any point during the exchange.

We also agree that Christiansen was not interrogated by the officers. The officers asked only one question—why Jordan was willing to "take the fall"—and

the answer, if any, was not offered into evidence. Christiansen's admissions were not elicited by any sort of police questioning, but volunteered by Christiansen himself. See *Miranda*, 384 U.S. at 478, 86 S. Ct. at 1630, 16 L. Ed. 2d at 726 ("Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today."). We affirm the district court's denial of Christiansen's motion to suppress his admissions to officers.

2. Statements to Spouse. Upon his entry into the federal prison in Indiana, Christiansen signed and dated a form which included a notification on the monitoring of telephone calls. By signing the document, Christiansen acknowledged he understood "that telephone calls I make from the institution telephones may be monitored and recorded." The telephones in the prison bore a label stating that any calls made from them would be recorded.

Christiansen made several phone calls to his wife, Erika, while in prison. During these calls, which were automatically recorded, Christiansen talked about the "angle" in Iowa, a coded reference to the murders, and told his wife Jordan was "already prepped and prepared" to take the blame for both murders. He told Erika to get rid of his and Jordan's clothes right away and coached her to say she had given them to Goodwill. The recordings showed that while Christiansen and Erika were speaking, they were interrupted numerous times by a recorded announcement that "this call is from a federal prison."

Christiansen moved to suppress the recordings of his conversations with Erika, claiming their use in evidence would violate the marital privilege, Iowa Code section 622.9. The court denied the motion, concluding the marital

privilege had been waived because Christiansen and his wife knew the conversations were being recorded.

Christiansen contends the court erred in denying the motion. The State argues Christiansen has failed to preserve error on the issue because he did not object to the admission of the recordings at trial. We agree. See *State v. Terry*, 569 N.W.2d 364, 369 (Iowa 1997) (holding defendant waived his objection to the admission of evidence where defendant moved to suppress the evidence, but at trial expressly stated he had no objection to its admission).

In his brief, Christiansen essentially concedes that error was not preserved, but argues he was “prejudiced by defense counsel’s failure to object to the admission of the recorded statements.” However, Christiansen’s bare mention of an ineffective-assistance-of-counsel claim, without more, leaves us nothing to review. See *Soo Line R. Co. v. Iowa Dep’t of Transp.*, 521 N.W.2d 685, 689 (Iowa 1994) (holding that mention of an issue without substantive argument or supporting authority is insufficient to raise the issue for appellate review); see also Iowa R. App. P. 6.14(1)(c). Accordingly, we affirm the district court’s denial of Christiansen’s motion to suppress the recorded statements.

B. Other Evidentiary Rulings

Christiansen argues the district court erred when it admitted certain evidence at trial, including photographs from the March 2, 2001 bank robbery in Rockford and testimony concerning Christiansen’s use of illegal drugs. Christiansen waived these claims by failing to raise them at trial. See *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) (“Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was

not first sung in trial court.”). As he did in regard to the admission of the recorded statements, Christiansen admits trial counsel failed to preserve error and argues he was prejudiced as a result. Again, Christiansen’s bare mention of an ineffective-assistance-of-counsel claim, without more, leaves us nothing to review. *Soo Line*, 521 N.W.2d at 689; see also Iowa R. App. P. 6.14(1)(c).

IV. Motion for New Trial

Christiansen argues the evidence was insufficient to support his convictions. In addition, he contends the district court abused its discretion in overruling his motion for new trial and rejecting the claim that the verdicts were contrary to the weight of the evidence.

A. Sufficiency of the Evidence

We review sufficiency-of-the-evidence claims for errors at law. *State v. Keeton*, 710 N.W.2d 531, 532 (Iowa 2006). We will uphold a verdict if substantial record evidence supports it. *State v. Heard*, 636 N.W.2d 227, 229 (Iowa 2001). “Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.” *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). We consider all record evidence, not just the evidence supporting guilt. *Heard*, 636 N.W.2d at 229. Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.14(6)(p). We view the evidence in the light most favorable to the State, “including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence.” *Biddle*, 652 N.W.2d at 197.

Viewing the evidence in the light most favorable to the State, we find sufficient evidence supports Christiansen’s convictions. From the evidence

presented at trial, including Christiansen's admissions to officers, statements to his wife, and his own trial testimony, along with testimony from other witnesses and other evidence, rational jurors could find Christiansen was guilty of the murders, either on the theory that he himself was the shooter, or on the theory that he aided and abetted Jordan in the shooting. We affirm the district court's denial of Christiansen's motion for new trial on this ground.

B. Weight of the Evidence

Iowa Rule of Criminal Procedure 2.24(2)(b)(6) permits the trial court to grant a new trial "[w]hen the verdict is contrary to the law or evidence." "Contrary to the . . . evidence" means "contrary to the weight of the evidence." *State v. Reeves*, 670 N.W.2d 199, 201 (Iowa 2003) (citation omitted). Our review of a ruling denying a new trial is for an abuse of discretion. *Id.* at 202. We will not find an abuse of discretion unless defendant shows "that the district court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.*

The district court's discretion, in considering a motion for new trial based on weight-of-the-evidence grounds, "should be exercised with caution, and the power to grant a new trial on this ground should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict." *Id.* at 202 (citation omitted). This is not a case in which the evidence "preponderate[d] heavily against the verdict." We conclude the district court acted well within its considerable discretion in denying Christiansen's motion for new trial pursuant to rule 2.24(2)(b)(6).

VII. Conclusion

We affirm Christiansen's conviction and sentence.

AFFIRMED.