

IN THE COURT OF APPEALS OF IOWA

No. 6-892 / 05-0481
Filed November 15, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT MONROE JORDAN JR.,
Defendant-Appellant.

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

Robert Jordan Jr. appeals from his convictions following a jury trial for two
counts of first-degree murder. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney
General, John P. Sarcone, County Attorney, and Daniel Voogt, Assistant County
Attorney, for appellee.

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

ZIMMER, J.

Robert Jordan Jr. appeals from his convictions following a jury trial for two counts of first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (2003). He contends there was insufficient evidence to support his convictions. He also maintains his trial counsel was ineffective in several respects. Upon our review, we affirm Jordan's convictions and preserve his ineffective assistance of counsel claims for possible postconviction relief proceedings.

I. Background Facts & Proceedings.

On February 26, 2001, Glenda Chiles entered Jeff Johnson's house in Des Moines and discovered the bodies of Johnson and her boyfriend, Steven Jenkins. Both men had been shot twice with a shotgun. Johnson had been shot in the lower back and then in the head. Jenkins had been shot in the shoulder and the back of the head. Both bodies showed signs of decomposition. Four red shotgun shell casings were discovered near the bodies. All four shells had been fired from a twelve-gauge Mossberg shotgun. Jenkins had last spoken with Chiles on February 23 when he borrowed her car with the understanding he would return it later that evening.

Following a lengthy investigation, the State jointly charged Robert Jordan Jr. and Richard Christiansen with two counts of first-murder on October 7, 2004. Jordan pled not guilty to each charge and moved to sever his trial from Christiansen's trial. Jordan and Christiansen were tried separately. A jury found Jordan guilty of two counts of first-degree murder.¹ Jordan filed a motion for new

¹ A jury convicted Christiansen of two counts of first-degree murder in a separate trial. This court affirmed his convictions on appeal.

trial, which the district court denied. Later, the court sentenced Jordan to two concurrent terms of life imprisonment. Jordan now appeals.

Viewing the evidence in the light most favorable to the State, the jury could have found the following facts from the evidence presented at Jordan's trial. Emily and Mark Tongue were residing in Rockford, Illinois, in 2001. At some point in the year 2000, Emily purchased a shotgun for Mark. Her husband removed the standard stock and installed a pistol grip to make the shotgun shorter. The Tongues stored the shotgun and red shotgun shells in a closet in a bedroom in their home in Rockford. They last saw the shotgun around Christmastime in 2000.

The Tongues were friends with Robert Jordan Jr. and Richard Christiansen. In early February 2001, Mark Tongue left Illinois and traveled to Las Vegas to serve a jail sentence for driving under the influence. Christiansen arrived at the Tongues' residence for a visit on approximately February 14. He was driving a stolen white Chevy Lumina. Jordan arrived at the Tongues' residence on or about February 16. Jordan and Christiansen were together in the Tongues' residence at times when Emily was not present. Jordan and Christiansen left the Tongues' home on February 18. Emily assumed the men returned to Des Moines.

In February 2001 Glenda Chiles lived with Steven Jenkins. Jenkins and Jeff Johnson were friends and fellow drug users. Johnson lived on Summit Street in Des Moines. At about 8:00 p.m. on Friday, February 23, Jenkins went out in a car belonging to Chiles. When Jenkins did not return home or call his

girlfriend that evening, Chiles left a message on his answering machine. Jenkins never responded to the message.

On an undetermined night in January or February 2001, Richard Christiansen went to the Des Moines residence of his friend Mark Hardin, a drug dealer. Because Hardin was not home, Hardin's girlfriend, Connie Wilcox, directed Christiansen to the basement to see James Marts, who was living in Hardin's home. According to Marts, Christiansen was "really high, high-strung," and "buggy-eyed" during his visit.² Christiansen kept pacing back and forth and told Marts "something had gone bad." At some point, Christiansen made statements implicating himself in a multiple murder. Although Marts could not recall whether he heard these statements from Christiansen or from Hardin the next morning, Marts said Christiansen told him something went wrong, and "I had to kill them," or "we had to kill them." Christiansen also said he was "going to have to kill Connie [Wilcox] because Connie knows."

Later, Hardin returned to his residence and joined Marts and Christiansen. At some point, Marts left and drove Connie to her home. When Marts returned to Hardin's home the next morning, Hardin looked scared. Marts later made a statement to a Des Moines police officer that Christiansen had said something to the effect that it or something had gone bad, and either "I" or "we" had to kill them.

After Mark Tongue finished serving his jail sentence in Las Vegas, he returned to Des Moines on a bus. He arrived in Des Moines shortly after midnight on February 26, 2001. Erika Christiansen, Richard Christiansen's wife,

² Marts could not recall the date or the day of the week that Christiansen came to visit.

picked Tongue up at the bus station and dropped him off at a Motel 6 in Des Moines where Jordan and Christiansen were staying. Later that day, Jordan was treated for a toothache by a Des Moines dentist.

Several days later, Jordan, Christiansen, and Mark Tongue drove from Des Moines to the Tongues' Rockford residence in the stolen Chevy Lumina. The trio arrived on March 1. By this time, Christiansen was in possession of a nine millimeter Taurus semi-automatic pistol.

On March 2, 2001, Jordan and Christiansen robbed a bank in Machesney Park, a city located near Rockford. Jordan used a pistol gripped shotgun during the armed robbery. Mark Tongue saw a televised news report about the bank robbery and realized Jordan and Christiansen fit the description of the armed robbers. On March 3 Tongue asked the men to leave his home, and he rented a room for them at the Clocktower Inn in Rockford. Early in the morning on March 4, the police arrested Jordan and Christiansen at the Clocktower Inn. In their motel room, the police discovered a Mossberg shotgun, a Taurus pistol, and shotgun ammunition.

During an interview with the police the morning of his arrest, Jordan told officers the shotgun used in the bank robbery belonged to him, and he stated he had possessed it "for quite a while." Jordan also admitted he had fired the shotgun before, and he said he thought the shotgun shells in the shotgun were loaded with number four buckshot. The police asked Jordan if he was "mentally . . . prepared to use that shotgun if need be," and Jordan answered, "it would depend upon the circumstances."

Jordan told the police he had known Christiansen for six or seven years, and he referred to Christiansen several times as his “partner.” Jordan admitted he and Christiansen had stolen the white Chevy Lumina. Jordan also admitted he had appeared in the surveillance videotape of the bank robbery. He stated he was the “cover man” during the bank robbery and carried the shotgun. He said Christiansen was the “money man.”

Eventually, the Des Moines murder investigation led police to the evidence recovered from Jordan’s motel room in Rockford.³ The shotgun used in the Illinois bank robbery and discovered in the motel room at the time of Jordan’s arrest was tested by the Iowa DCI Laboratory. A criminalist was able to determine the four shells recovered from the scene of the double homicide in Des Moines in February 2001 had been fired from the twelve gauge shotgun originally owned by the Tongues and seized by police at the time Christiansen and Jordan were arrested for bank robbery. Some of the live shotgun shells found in the motel room in Rockford were identical to the shotgun shells that had been used in the murders in Des Moines eight days earlier.⁴ Based on this and other information, Jordan and Christiansen were arrested for the murders of Jenkins and Johnson. We now turn to Jordan’s appellate claims.

³ In early 2002 a Des Moines police officer went to Illinois to interview Mark and Emily Tongue. Based on information gleaned from these interviews, he contacted Illinois authorities to retrieve the shotgun used in the Machesney Park robbery.

⁴ The shotgun shells found in Jordan and Christiansen’s motel room and at the murder scene were made by the same manufacturer, were the same gauge and length, bore the same markings, and contained the same number four steel shot.

II. Sufficiency of Evidence.

Jordan admits the evidence we have already described is sufficient to generate a suspicion that he may have played a role in the deaths of the victims; however, he argues the jury's verdicts are not supported by substantial evidence. For the reasons that follow, we disagree.

The State jointly charged Jordan and Christiansen with two counts of first-degree murder. The jury instructions in Jordan's case allowed the jury to convict Jordan as a principal or an aider and abettor, and included an instruction on joint criminal conduct.⁵ The jury returned general verdicts that do not show which theory or theories the jury adopted. Jordan contends he could not be convicted under any theory because the evidence fails to establish that he participated in the murders in any way.

We review sufficiency of evidence claims for the correction of errors at law. *State v Bower*, 725 N.W.2d 435, 440-41 (Iowa 2007). A jury's finding of guilt is binding on appeal if substantial evidence supports it. *State v. Nitche*r, 720 N.W.2d 547, 556 (Iowa 2007). Substantial evidence is defined as evidence that "could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt." *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980). We consider all the evidence in the record, not just evidence supporting the defendant's guilt. *State v. Randle*, 555 N.W.2d 666, 671 (Iowa 1996). We also

⁵ Jordan has not challenged any of the trial court's instructions or verdict forms on appeal. We note that our supreme court recently analyzed the concept of joint criminal conduct in *State v. Smith*, 739 N.W.2d 289 (Iowa 2007). The *Smith* opinion, filed September 7, 2007, includes the following language, "In the future if a court is going to instruct on the theory of joint criminal conduct, it should incorporate the elements of joint criminal conduct as set forth in this opinion, rather than instructing the jury with the general language of section 703.2."

consider legitimate inferences and presumptions that may reasonably be deduced from the evidence in the record, and we view the evidence in the light most favorable to the State. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999). Circumstantial and direct evidence are equally probative. Iowa R. App. P. 6.14(6)(p); *State v. Hopkins*, 576 N.W.2d 374, 378 (Iowa 1998).

As we have already mentioned, the Mossberg shotgun used to murder Jeff Johnson and Steven Jenkins was the same shotgun discovered in Jordan and Christiansen's motel room after the Illinois bank robbery, and shotgun shells discovered in the motel room were identical to the shells used to kill Jenkins and Johnson. Furthermore, Jordan admitted the shotgun was his, and he claimed he had it "for quite a while."

In his brief on appeal, Jordan concedes that he possessed the shotgun used to kill Jenkins and Johnson when he and Christiansen robbed a bank in Illinois on March 2, 2001. However, he contends he lied about owning the shotgun and lied about how long the weapon had been in his possession when he was interviewed by an FBI agent and a local police officer following his arrest after the bank robbery.⁶ In support of this argument, Jordan points out that when he was first interviewed after the bank robbery he told the law officers that he knew what they wanted and would not give it to them. He suggests that his statements to law officers that the shotgun was his and he had it for "quite a while" were made in an effort to hide information from authorities and to protect Mark Tongue, Richard Christiansen, or both.

⁶ Jordan did not testify at his trial.

The jury was free to reject the defendant's argument that he lied about the shotgun when he was interviewed following the bank robbery. *State v. Smitherman*, 733 N.W.2d 341, 349-350 (2007). It was up to the jury to assess the meaning of Jordan's statements. A reasonable jury could conclude Jordan would not have made the incriminating statement that the shotgun used in the murders belonged to him unless he was at least a possessor of the weapon if not its actual owner. Reasonable jurors could also interpret Jordan's claim that he had the shotgun "for quite a while" to mean he possessed the weapon at the time of the murders. Only about eight days had passed between the murders in Des Moines and Jordan's statements after the bank robbery.

In addition, other evidence provides support for the connection between Jordan, Christiansen, the shotgun, and the murders in Des Moines. Jordan had an opportunity to acquire the shotgun before the murders were committed because he and Christiansen were in the Tongues' residence in mid February at times when Mark and Emily were not at home. Furthermore, Emily testified she had not seen the shotgun during the month prior to the murders in Des Moines.

The State presented evidence that placed Jordan and Christiansen in Des Moines the weekend of the murders, and Jordan was seen in the company of Christiansen. It is undisputed that Jordan was in possession of the shotgun used to kill Johnson and Jenkins when Jordan and Christiansen committed a bank robbery soon after the murders in Des Moines. The videotape of the bank robbery shows that Jordan used the shotgun in the commission of that robbery. In response to a question after the robbery, Jordan stated he was prepared to use the shotgun depending upon the circumstances. The State also proved that

Jordan was in possession of ammunition identical to that used in the murders when he was arrested in Illinois.

The record also reveals Jordan had known Christiansen for six or seven years and repeatedly called Christiansen his partner. He admitted he committed at least two crimes in conjunction with Christiansen, the theft of the white Chevy Lumina and the bank robbery after the murders. Finally, Christiansen made statements implicating himself and possibly another person in multiple murders when he said something had gone wrong and “I” or “we had to kill them.” Multiple murders are not common, and Christiansen’s statement about killing “them” linked him to the murders committed in Des Moines at the same time he was in the city. A reasonable jury could conclude if Christiansen said “we had to kill them,” this statement combined with evidence linking Jordan and Christiansen to other joint criminal activity constituted evidence connecting Jordan to the murders.

Upon our review of all the evidence, we find substantial evidence supports the jury’s verdicts.

III. Ineffective Assistance of Counsel.

Jordan next claims his trial counsel was ineffective for (1) failing to investigate and present exculpatory evidence and (2) introducing prejudicial hearsay evidence. Generally, we preserve claims of ineffective assistance to allow full development of the facts surrounding counsel’s conduct. This is because postconviction proceedings are often necessary to discern the difference between improvident trial strategy and ineffective assistance. *State v. Ondayog*, 722 N.W.2d 778, 786 (Iowa 2006). In this case, we conclude the

record is inadequate to address the defendant's claims of ineffective assistance of counsel. Accordingly, we preserve these claims for possible postconviction relief proceedings.

IV. Conclusion.

We find substantial evidence supports the jury's verdicts. Therefore, we affirm Jordan's convictions of first-degree murder and preserve his ineffective assistance of counsel claims for possible postconviction relief proceedings.

AFFIRMED.