

IN THE COURT OF APPEALS OF IOWA

No. 9-374 / 08-0799
Filed July 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EDGARDO ESQUIVEL SERRATO,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, James E. Kelley, Judge.

Edgardo Serrato appeals his conviction for obstruction of prosecution.

REVERSED AND REMANDED.

Lori Kieffer-Garrison, Rock Island, Illinois, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney General, Gary Allison, County Attorney, and Alan R. Ostergren, Assistant County Attorney, for appellee.

Heard by Vaitheswaran, P.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

Edgardo Serrato appeals his conviction for obstruction of prosecution in violation of Iowa Code section 719.3 (2005). Serrato contends there was insufficient evidence to sustain his conviction. Additionally, Serrato asserts his counsel rendered ineffective assistance by failing to request a reporting of voir dire and by failing to move for a change of venue. Upon review, we reverse Serrato's conviction because we believe the evidence was insufficient to allow a reasonable jury to conclude that Serrato concealed "physical evidence which would be admissible in the trial of another."

I. Factual Background

The trial evidence, viewed in the light most favorable to the prosecution, was as follows: Edgardo Serrato and Victor Serrato are brothers. On the evening of October 21, 2006, both were at a dance in West Liberty, Iowa. Victor had brought some friends with him in his white Mazda. Edgardo had driven separately to the dance in a black Chevy S10 pickup truck, which was registered in Illinois in the name of his brother-in-law, Juan Carlos Vasquez. While at the dance, Victor received a call from his girlfriend, Angelica Chavez. Angelica had just had an altercation with her roommate Miriam "Mimi" Carmona at the Escorpion Bar in Muscatine. Both women were pregnant, and each claimed Victor Serrato was the father of her child.

After receiving this call, Victor left the dance early to return to Muscatine. Because Victor's friends wanted to stay at the dance, the brothers swapped vehicles. Thus, Victor drove away in the truck, and later Edgardo returned to Muscatine with the friends in the white Mazda. Edgardo parked the white Mazda

in front of his home. When he awoke the next morning, October 22, Edgardo found the truck parked in front of his home instead of the white Mazda.

The strangled body of Mimi Carmona was found that evening in Rock Island, Illinois. She was last seen in an altercation with Victor outside the Escorpion Bar, near the truck. Muscatine law enforcement officials originally believed Victor had murdered Carmona and then drove the body across the river to Rock Island in the truck and dumped the body. However, the tire tracks where the body was found did not match those of the truck. At trial, one of the State's witnesses conceded it was possible the murder had occurred later, possibly in Illinois.

For two days Edgardo went to work as usual. Then on October 24, 2006, Edgardo was advised by his sister that Mimi Carmona was dead, that Victor had been arrested, and that he (Edgardo) "needed to get rid of the truck." That same day, Edgardo received another phone call from his brother-in-law in Chicago, Juan Carlos Vasquez, who also advised him that he "needed to get rid of the truck." Edgardo left work early, took the truck to Chicago, and sold it as instructed. Because the title to the vehicle was located in Chicago, Edgardo apparently had to go to Chicago to sell the truck. After selling the truck to an individual whom he could only identify by first name, Edgardo remained in Chicago a few days, then received a ride back to Muscatine.

Several months later, the truck was impounded by the Chicago police department for excessive parking tickets. When the Muscatine police department ultimately recovered the truck in late January 2007, it was found parked in snow

and water in an outdoor impound lot. It had been exposed to the elements for some time.

The Muscatine police had the truck towed back from Chicago to Muscatine. In search of forensic evidence, the police department took off the seat covers and tore apart the interior. They found no DNA evidence. The police did not check the exterior of the truck. When asked why they did not bother to look on the outside, the testifying officer explained, "The truck had been parked outside through part of the wintertime. There wouldn't have been any DNA evidence in the bed of the truck." This officer also admitted:

Q. In all of the search warrants you did, whether in Iowa or Illinois, did you ever recover any admissible forensic evidence?

A. I don't believe we recovered anything that was used at the last trial [Victor Serrato's trial], no.

The State charged Victor Serrato with murder in the first degree and nonconsensual termination of a human pregnancy. Edgardo Serrato was charged with obstruction of prosecution, in violation of Iowa Code section 719.3, along with other offenses that were ultimately dismissed. The State's theory of prosecution against Edgardo was that if he had not sold the truck in Chicago on October 24, the Muscatine police would have been able to search it then and, potentially, would have found relevant evidence.

The district court granted a motion to sever the prosecutions of the two brothers. Edgardo's case went to trial the week after Victor's murder conviction. The court granted the media's request to have cameras and tape recorders at trial. After the presentation of evidence, Edgardo moved for a judgment of acquittal. The motion was denied. The case went to the jury, which found

Edgardo guilty. After trial, Edgardo filed a motion in arrest of judgment or in the alternative for a new trial, which was also denied. Edgardo Serrato was then sentenced to one year in county jail and a fine of \$625.

Edgardo Serrato now appeals his conviction, asserting: (1) the district court erred in denying his motions because there was insufficient evidence to convict him of obstruction of prosecution, and (2) he received ineffective assistance of counsel because his attorney failed to request a reporting of voir dire and failed to file a motion to change venue in a highly publicized case.

II. Insufficiency of Evidence

Edgardo claims the district court erred in denying his motion for judgment of acquittal and motion to arrest the judgment because the State did not present sufficient evidence for a reasonable jury to convict him of obstruction of prosecution. Insufficiency of evidence is reviewed for correction of errors at law. *State v. Maghee*, 573 N.W.2d 1, 9-10 (Iowa 1997). The jury verdict will be overturned only there was not sufficient evidence in the record to convince a rational jury the defendant is guilty beyond a reasonable doubt as to each element of the crime. *Id.* The evidence is to be viewed in a light most favorable to the State, including any reasonable inferences construed therefrom. *Id.*

Obstruction of prosecution has three elements: (1) “a person who, with the intent to prevent the apprehension or obstruct the prosecution or defense of any person,” (2) “knowingly destroys, alters, conceals or disguises,” (3) “physical evidence which would be admissible in the trial of another person.” Iowa Code § 719.3(1). The burden to prove all elements of the crime is on the State. *State v. Gibbs*, 239 N.W.2d 866, 867 (Iowa 1976). Reviewing the evidence relating to

these elements in the light most favorable to the State, we conclude it was insufficient to allow a rational jury to find the defendant guilty beyond a reasonable doubt.

A. Intent to Obstruct Prosecution

In order to prove the first element, the State must demonstrate the defendant intended to obstruct a prosecution. Because of the difficulty of knowing the defendant's mindset, intent is usually established by circumstantial evidence. *State v. Romeo*, 542 N.W.2d 543, 549 (Iowa 1996).

Edgardo received a phone call from his sister in Chicago who told him his brother had been arrested for the murder of Mimi Carmona. According to a statement that Edgardo provided to the authorities, the sister instructed Edgardo "that he needed to get rid of the pickup truck." A short time later, Edgardo received a similar phone call from his brother-in-law who also instructed him "that he needed to get rid of the pickup truck. It was registered in his [the brother-in-law's] name, and he needed to get rid of it so there was no problems with it." Edgardo also knew that his brother had borrowed the truck on the night of the dance so he could deal with the situation involving his girlfriend and Mimi Carmona. After receiving these phone calls, Edgardo left work in the middle of his job shift, took the truck to Chicago, and sold it to a man whom he knew only by his first name. A reasonable jury could conclude that Edgardo's act of getting rid of the truck was intended to obstruct the criminal prosecution of his brother.

B. Knowingly Conceal

Edgardo also argues that he did not conceal the truck. He argues that conceal means to "hide, to cover up, to keep from sight;" . . . [or] to 'sell,

alienate,' or to 'put away.'" *State v. Julien*, 48 Iowa 445, 445 (1878). After the night of October 21/22, Edgardo continued to drive the truck throughout town and to take the truck to work where it could be seen. However, on October 24, once Edgardo was notified his brother had been arrested, he did "conceal" the truck. Specifically, as directed by his relatives, he drove the truck across the state line to Illinois and sold it to someone whom he only knew by first name. There was sufficient evidence for a jury to find beyond a reasonable doubt that Edgardo knowingly concealed the truck.

C. Physical Evidence Which Would Be Admissible in the Trial of Another

The third element of the offense is the concealing of "*physical evidence which would be admissible in the trial of another.*" Iowa Code § 719.3(1) (emphasis added). The State has the burden to prove that the evidence Edgardo concealed would have been admissible at the trial of his brother. Notably, Iowa's statute appears to be somewhat distinctive. For example, under the federal obstruction of justice statute, "the record, document, or other object need not be admissible in evidence." 18 U.S.C. § 1512(f)(2). Other states have similar disclaimers in their state laws. See, e.g., N.J.S. § 2C:29-3 ("regardless of its admissibility in evidence"); N.D. Cent. Code § 12.1-08-03 ("regardless of its admissibility in evidence"); 18 Pa. Consol. Stat. Ann. § 5105(a)(3) ("regardless of its admissibility").

Upon our review, we conclude the State did not carry its burden of proof as to this required element. The Muscatine Police Department pulled out the seat covers, tore apart the interior of the truck, and did not find any evidence that

could be used at Victor's trial. The authorities did not check the exterior of the truck, because they believed any forensic evidence would have been destroyed by rain and snow after the vehicle had been sitting in an outdoor impound lot for several months. The State argues that this means Edgardo was successful in his attempt to conceal evidence. However, it is one thing to prove that any admissible evidence *would have been destroyed*; it is quite another to prove that admissible evidence *actually was destroyed*—as required by Iowa Code section 719.3.

According to the evidence presented at Edgardo's trial, the State's theory that the bed of the truck had been used to transport Carmona's dead body was only that—a theory. No rational jury could conclude that this theory was proved beyond a reasonable doubt. Accordingly, no rational jury could have found beyond a reasonable doubt that the truck contained relevant forensic evidence that was somehow lost through Edgardo's machinations. The evidence at the trial showed, in fact, that the tire tracks where the body was found did not match the tires on the truck, and no one saw Victor driving the truck after the incident at the Escorpion Bar.¹ Following the discovery of Carmona's body, the Muscatine police were interested in all the vehicles that had any connection to Victor. When asked what forensic evidence the Muscatine Police Department had recovered

¹ The State did prove that a postal receipt obtained by Edgardo on October 20 was found near Mimi Carmona's body in Rock Island on October 22. Presumably, the State believes this receipt somehow fell out of the black truck. However, even taking into account this receipt, we do not believe a rational jury could conclude beyond a reasonable doubt that the pickup was used to transport her body and thus contained forensic evidence that was subsequently lost.

from all of the warrants (including the warrant for the truck), the lead investigator testified, “I don’t believe we recovered anything that was used at the last trial.”

Furthermore, during Edgardo’s trial, the State never proved that the truck or photographs of the truck were admitted or would have been admissible at Victor’s trial even without accompanying forensic evidence. The State’s theory of prosecution against Edgardo was entirely based on the notion that the truck would have had forensic evidence if it had been recovered and searched in time.²

In denying Serrato’s motion for new trial, the district court observed that

the truck could have been admitted at the trial had it been discovered before being left out in the weather and the snow. It would be illogical to conclude that just because the Defendant was successful in preventing the discovery of the truck until more than three months after the date of the murder, he could not be charged with obstructing the prosecution.

Our problem with this line of reasoning is that it depends on an assumption that the truck would have contained relevant evidence—a proposition that the State failed to prove. While we are sympathetic to the district court’s concern that successful concealments of physical evidence should not be rewarded, we are constrained by the language of Iowa Code section 719.3, which requires proof beyond a reasonable doubt that the defendant destroyed, altered, concealed or disguised “physical evidence which would be admissible at trial.”

² Indeed, the court’s marshalling instruction required the State to prove Edgar “concealed a motor vehicle which would have been evidence in the trial of Victor Serrato for Murder in the First Degree.” Thus, the State’s theory concerned what “would have been”—a theory that we believe the State ultimately failed to prove.

III. Conclusion

For the foregoing reasons, we reverse Edgardo Serrato's conviction for violation of Iowa Code section 719.3 and remand for dismissal of the charge. Because we are reversing the district court, it is unnecessary to address the defendant's claim of ineffective assistance of counsel.

REVERSED AND REMANDED.