IN THE COURT OF APPEALS OF IOWA

No. 1-565 / 09-1938
Filed October 5, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DEANTE LORELL YOUNG,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick, Judge.

A Defendant appeals from his convictions of first-degree murder and willful injury resulting in serious injury. **AFFIRMED.**

Gary K. Koos, Bettendorf, for appellant.

Deante L. Young, Anamosa, appellant pro se.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Michael J. Walton, County Attorney, and Julie Walton and William Ripley, Assistant County Attorneys, for appellee.

Heard by Vogel, P.J., and Potterfield and Danilson, JJ.

VOGEL, P.J.

Deante Young appeals from his conviction of first-degree murder and willful injury. Young argues there was insufficient evidence to support his convictions. Additionally, he argues pro se that the district court should have granted his motion to sever his trial from his codefendant's trial. We find there was sufficient evidence to support a guilty verdict of premeditated murder and Young's pro se argument is without merit. Therefore, we affirm.

I. Prior Proceedings.

Sylvester Eddings was murdered on November 3, 2008. From the evidence presented at trial, a fact finder could have found the following: In October 2008, Eddings and Young were together when Young was shot in the face. Young gave his crack cocaine to Eddings, who drove Young to the hospital. However, when Young later sought the return of his crack cocaine, Eddings gave him a baggie of fake crack cocaine.

On November 3, 2008, Christopher Pullman was driving a blue Oldsmobile Aurora and Young was riding in the front passenger seat. When they saw Eddings walking along a street, they stopped and called Eddings over to the car. Eddings got into the back seat on the driver's side, and the car traveled from Rock Island to an area north of Davenport. At some point during the trip, Young shot Eddings multiple times in the chest and then Eddings's body was dumped in a pole barn north of Davenport. Two days later, Eddings's body was found, with a baggie of fake crack cocaine in his pocket.

On December 16, 2008, Young and Pullman were jointly charged with first-degree murder in violation of Iowa Code section 707.2(1) and (2) (2007) and

willful injury in violation of Iowa Code section 708.4(1). On November 2, 2009, Young filed a notice of an alibi defense and a motion to sever his and Pullman's trials. The district court denied Young's motion to sever and in November 2009, the co-defendants were tried together, with Young being tried to the court and Pullman being tried to a jury.[1]

At the close of the State's evidence, Young moved for a directed verdict, arguing the evidence was "primarily circumstantial" and there was no evidence of premeditation and malice aforethought. The district court denied his motion. On December 2, 2009, the district court found that,

> Mr. Young murdered Mr. Eddings by shooting Mr. Eddings multiple times willfully, deliberately, premeditatedly, and with a specific intent to kill. The Court further concluded that Mr. Young's actions were with malice aforethought. The State has proven Mr. Young guilty beyond a reasonable doubt of Murder in the First Degree under Count 1 of the Trial Information.

The district court found Young guilty of first-degree murder in violation of Iowa Code sections 707.1 and 707.2(1) and willful injury resulting in serious injury in violation of Iowa Code section 708.4(1). Young appeals.

II. Sufficiency of the Evidence.

We review challenges to the sufficiency of the evidence for correction of errors at law. *State v. Webb*, 648 N.W.2d 72, 75 (Iowa 2002). The district court's factual findings are binding on appeal if supported by substantial

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[1] Pullman was convicted as charged and appealed, raising a claim based upon an erroneous jury instruction. Over Pullman's objection, the jury had been instructed on the alternative theories of felony murder and premeditated murder. This court found it was error to instruct on the felony murder alternative. *State v. Pullman*, No. 09-1897 (Iowa Ct. App. Feb. 9, 2011). Further, because the jury rendered a general verdict of guilty, it was impossible to determine whether the verdict was based upon a valid or invalid legal basis. *Id.* Therefore, we reversed Pullman's conviction of first-degree murder and vacated his sentence on that count. *Id.*

evidence. *State v. Taylor*, 689 N.W.2d 116, 130 (Iowa 2004). "If a verdict is supported by substantial evidence, we will uphold a finding of guilt. Substantial evidence is that upon which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005).

> In deciding whether substantial evidence supports the trial court's verdict, a reviewing court considers all the evidence and views the record in the light most favorable to the trial court's decision. In addition, the appellate court indulges in all legitimate inferences and presumptions that may be fairly and reasonably deduced from the record.

State v. Taylor, 689 N.W.2d 116, 131 (Iowa 2004).

Young argues the evidence was circumstantial and none of it directly incriminated him, resulting in the State's failure to prove he was guilty beyond a reasonable doubt. "As with a great bulk of the jurisdictions around the country, we follow a rule that direct and circumstantial evidence are equally probative for the 'purposes of proving guilt beyond a reasonable doubt.'" *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2008).

On October 28, 2008, when Young was shot in the face, Eddings drove Young to the hospital. Dennisha Lard testified that she visited Young in the hospital and Young's face was bandaged. She explained that Young told her that Eddings had his crack cocaine and requested that she retrieve it. Lard complied by later meeting with Eddings, who gave her a baggie of crack cocaine. She explained that Young and Pullman were good friends, and Pullman had picked up the crack cocaine on behalf of Young. Young later called Lard asking if she had "switched his shit," after which she knew that Eddings had returned fake crack cocaine to Young. She assured Young that she gave him the same

baggie that Eddings had given her. Later, she was with Young when Young called Eddings and told Eddings that he wanted his money, stating, "I want five fifty for my shit or I'm going to f*** you up." Ciara Hearn was also present and testified to the conversation, stating that Young told Eddings "he wanted his money or his shit and that if he didn't get his money or his shit something was going to happen to him."

Lard further testified that after Young was released from the hospital, she loaned him her blue Oldsmobile Aurora. On November 3, 2008, Eddings was walking along the street in Rock Island with two friends, Darceil Burrage and Mendoor Smith. Both Burrage and Smith testified that a blue Aurora stopped and picked up Eddings. Burrage testified there were two people in the Aurora. Prior to trial, Burrage reported that the passenger had a bandage on his face but Burrage did not pick Young out of a photographic array. Multiple witnesses testified that Young's face remained bandaged that day. At trial, Burrage again stated that he saw the passenger had a bandage on his face and identified Pullman as the driver and Young as the front-seat passenger. Smith testified that Pullman was driving the Aurora and there was a passenger, but he "just didn't see him."

Cell phone records indicated that Eddings, Pullman, and Young traveled together, as their cell phones used the same towers from Rock Island to Davenport and then to an area north of Davenport. The last tower used by Eddings's phone was the tower north of Davenport, but Pullman and Young continued to travel together, with their cell phones using the same towers to move from the area north of Davenport, to Davenport, and then to Rock Island.

At 5:35 p.m., Pullman and Young's cell phones used the same tower in Rock Island, but then the records indicated the men went their separate ways.

On November 5, 2008, Eddings's body was found in a pole barn north of Davenport and it was determined he had died from multiple gunshot wounds. He was wearing the same clothes that his friends saw him wearing when he got into the Aurora, and in his pocket was a baggie of fake crack cocaine. He had been shot three times in the chest, with one bullet passing through his right arm. Forensic analysis conducted on the T-shirt Eddings was wearing demonstrated that he had been shot in his chest and the bullets exited his back. The gun powder pattern on the T-shirt's right sleeve indicated the gun was between nine and twelve inches away from the right sleeve when fired, and the gun powder pattern on the T-shirt's chest area indicated the gun was between eighteen and twenty-four inches away from the chest when fired.

After learning of Eddings's death, Lard repeatedly called Young. When she asked for Young to return her car, Young first requested that he borrow it for a few more days. On November 11, 2008, Young drove the Aurora to Silvis, Illinois. He purchased a van from a used car dealership and abandoned the Aurora in a nearby motel parking lot. Young then told Lard that he had wrecked the Aurora in Peoria, Illinois. He also told Lard to report to police either that Eddings last had the Aurora or that she did not know who last had the Aurora.

On November 13, 2008, the motel owner reported the abandoned Aurora to police. The evidence from the car demonstrated that someone had been shot while sitting in the back seat on the driver's side of the Aurora. There were three bullet holes in the back seat on the driver's side, and three bullets along with

Eddings's blood were later found in the seat. In addition to Eddings's DNA, a mix of DNA was found in the back seat. With the likelihood of a chance match to be less than one in 920,000, this mix was shown to be that of Eddings's and Young's. Additionally, Young's fingerprints were found on the Aurora—on the exterior driver's side door and on the front passenger visor mirror.

A criminalist testified that the bullets took three paths in the back seat of the Aurora, utilizing a trajectory kit to determine the area from which the shots were fired. The trajectory of the bullets was consistent with a right-handed person sitting in the front passenger seat turning to shoot someone in the back seat on the driver's side of the vehicle. When asked on cross-examination whether the shots could have been fired from outside of the vehicle, the criminalist testified that it was possible for the shots to have been fired anywhere along the trajectory rod. However, he further explained that two of the shots could not have originated from outside of the vehicle because they would have had to travel through parts of the vehicle that were not damaged. It was possible that one bullet could have come from outside the vehicle because it came from "over the top of the passenger side front seat." Nevertheless, the criminalist also testified that the gun powder patterns on Eddings's shirt demonstrated the gun shots were made at a close range.

On November 26, 2008, police officers went to Pullman's sister, Vanessa Pullman's apartment. Although Vanessa was not at home at the time, Darneshia McQueen, Cleo Grandberry, and Young were there. McQueen testified that prior to the officers arriving, she heard Young talking on his cell phone, stating he did not want to ride all the way to Silvis with a gun on him. She also testified that

when the officers knocked and announced their presence at the door, Young ran into the bathroom, but then quickly came out before the door was opened for the officers. Grandberry and Young were arrested. Officers searched the apartment and found a loaded semiautomatic pistol in a laundry basket in the bathroom, which was later identified as the gun that had been used to kill Eddings. A few days after the gun was found, Young called Vanessa Pullman and told her to claim that the search of her apartment had been illegal.

The State presented evidence as to Young's motive, which was supported by testimony from two different witnesses, a video from the hospital the night Young was shot in the face, and the baggie of fake crack cocaine found in Eddings's pocket. *State v. Newell*, 710 N.W.2d 6, 21 (Iowa 2006) (indicating that motive is not an element of murder but may be considered in determining whether the defendant acted with malice aforethought); *State v. Buenaventura*, 660 N.W.2d 38, 48 (Iowa 2003) (stating that one way premeditation may be shown is through evidence of "motive based on the relationship between the defendant and the victim").

In arguing there was not sufficient evidence to sustain his convictions, Young directs our attention to several pieces of evidence viewed in isolation.[2]

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[2] In examining the evidence, the district court stated,

> The State's evidence against Mr. Young is much like a mosaic of tiny tiles. When the tiles are examined closely, they reveal scratches, cracks, and color variations or inconsistency. However, when one steps back and views the mosaic of tiles in their entirety, a clear and unmistakable picture emerges. The flaws and frailties of the individual tiles do not matter.

The district court carefully examined the evidence and concluded that the totality of the evidence led to the "inescapable conclusion" that Young shot and killed Eddings. In his brief, Young puts too much weight on the descriptive language and not enough on the district court's careful analysis of the evidence.

However, many different pieces of evidence, taken together, show that Young was the front-seat passenger who shot Eddings. He was the person that borrowed the Aurora from Lard and had possession of it on the day of the shooting. Pullman was identified as the driver, and prior to trial Burrage reported that the front-seat passenger had a bandage on his face and at trial also identified Young as the front-seat passenger. Young's fingerprint was found on the passenger-seat visor mirror. Cell phone records demonstrated that Eddings, Pullman, and Young traveled together from Rock Island to the area north of Davenport where Eddings's body was dumped, and then only Pullman and Young traveled back to Rock Island. The forensic evidence demonstrated that Eddings was shot while sitting in the back seat of the Aurora from a range of nine to twelve inches in distance with one shot, and one and one half to two feet with another shot, both from the direction of the front passenger seat area. The trajectory rods demonstrated that at least two of the shots necessarily originated from within the vehicle, as had possibly the third shot. After the murder, Young abandoned the Aurora, lied about what happened to the Aurora, and had possession of the murder weapon. When reviewing the evidence as a whole, we find there is sufficient evidence to support Young's convictions. Therefore, we affirm on this issue.

III. Motion to Sever.

Young, pro se,[3] challenges the trial court's denial of his motion to sever. Although Young raised this argument himself, pro se litigants are held to the

[3] Young raises an additional pro se argument. He argues that the district court erred in not granting his motion for a directed verdict on the felony murder alternative and cites to

same standard as attorneys. *See State v. Piper*, 663 N.W.2d 894, 913–14 (Iowa 2003) ("[A]ny consideration of the merits of the defendant's complaints by this court on appeal would require the court 'to assume a partisan role and undertake the [defendant's] research and advocacy', a task we will not accept."); *Metro. Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991) (discussing that "[w]e do not utilize a deferential standard when persons choose to represent themselves" and pro se litigants are held to the same standards as attorneys).

Young states that error was preserved on this issue because a motion to sever was filed, and in its brief the State agreed. In spite of the State's acquiescence, we may consider the issue of error preservation sua sponte. *See Top of Iowa Co-op. v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000) ("In view of the range of interests protected by our error preservation rules, this court will consider on appeal whether error was preserved despite the opposing party's omission in not raising this issue at trial or on appeal.").

Error is not preserved simply because a motion to sever was filed. Rather, the argument advocated on appeal must have been made in the motion to sever. *See State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002) ("Generally, we will only review an issue raised on appeal if it was first presented to and ruled on by the district court."). Young does not raise the argument set forth in his motion to sever, but rather makes a new argument that was not

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State v. Heemstra, 721 N.W.2d 549 (Iowa 2006). Young, however, was not convicted under the felony murder alternative. He was convicted of premeditated murder under Iowa Code sections 707.1 and 707.2(1). Therefore, this argument is not applicable to his conviction.

before the district court. *See State v. Spates*, 779 N.W.2d 770, 776 (Iowa 2010) (finding that although the defendant objected to the jury instruction at trial, it was not on the same ground raised on appeal and the issue raised on appeal was not preserved); *State v. Sanborn*, 564 N.W.2d 813, 815 (Iowa 1997) ("A defendant may not rest an objection on one ground at trial, and rely on another for reversal on appeal."). Because the argument was not presented to and ruled upon by the district court, error is not preserved.

Nevertheless, even had this argument been preserved it would fail. A district court's ruling on a motion to sever is reviewed for an abuse of discretion. Iowa R. Crim. P. 2.6(4)(*b*); *State v. Leutfaimany*, 585 N.W.2d 200, 203 (Iowa 1998); *see also State v. Clark*, 464 N.W.2d 861, 863 (Iowa 1991) ("Under [Iowa Rule of Criminal Procedure 2.6(4)], defendants may be jointly tried if in the discretion of the trial court a joint trial will not prejudice a defendant's right to a fair trial."). "To establish an abuse of discretion, a defendant must show sufficient prejudice to constitute denial of a fair trial." *Leutfaimany*, 585 N.W.2d at 203.

Young argues that he was prejudiced because the jury was excused when evidence was presented that was inadmissible as to Pullman, but the judge could not be excused when evidence was presented that was inadmissible as to Young. *See State v. Williams*, 525 N.W.2d 847, 849 (Iowa 1994) (explaining that a factor to consider in determining whether severance is warranted is "if admission of evidence in a joint trial would have been inadmissible and prejudicial if a defendant was tried alone). He points to no evidence in particular. The State responds, "On the two occasions when the State offered evidence

[that] was admissible only against Pullman, the court stated that it would not consider that evidence against Young."

During trial, the State twice introduced evidence admissible against Pullman, to which Young objected. It was evidence regarding a police officer's interview of Pullman and a phone call Pullman made from jail. On each instance, the district court specifically stated it would not consider that evidence against Young. The district court did not discuss this evidence in its fact findings and there is no evidence the district court considered this evidence in rendering its verdict. *See State v. Decker*, 744 N.W.2d 346, 356 (Iowa 2008) (explaining we presume that the district court considered the evidence solely for the limited purpose for which it was offered). Consequently, we find Young did not demonstrate he suffered prejudice. We affirm.

AFFIRMED.