IN THE COURT OF APPEALS OF IOWA

No. 7-812 / 05-0883
Filed December 28, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER DEANGILO SPATES,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge.

Christopher Spates appeals following his conviction for first-degree murder. **AFFIRMED.**

Clemens Erdahl and Sara L. Smith of Nidey Peterson Erdahl & Tindal, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple and Raymond Walton, Assistant County Attorneys, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Baker, JJ.

BAKER, J.

Christopher Spates appeals following his conviction for first-degree murder.[1] We affirm.

I. Background Facts and Proceedings.

In *State v. Spates*, No. 05-0926 (Iowa Ct. App. April 25, 2007), a case involving Christopher's brother/co-defendant Ricardious Matavis Spates (hereinafter Carl), we recounted the facts of the incident that led to the charges of first-degree murder against the brothers. We recount the facts and procedure relevant to the current appeal here:

> At approximately 2:00 a.m. on October 10, 2004, a violent fight broke out in the parking lot of a Waterloo bar between a group of men calling themselves "L-Block" and a group of men calling themselves "the Hood." An hour later, the L-Block group approached the Hood's "afterset" house party bearing multiple firearms. Someone fired a shot, and a gunfight ensued. Thyanna Parsons, a young female standing in the kitchen at the afterset party, was killed when a bullet fired by an SKS assault rifle went through her arm and pierced her chest.
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> On October 22, 2004, four people in the L-Block group—Carl, Christopher Spates, Damean Spates, and Dorondis Cooper—were charged with first-degree murder on the theory of felony murder for the death of Thyanna Parsons.
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> Damean Spates and Dorondis Cooper pled guilty to second-degree murder in exchange for their testimony against Carl and Christopher Spates. Paul Ackerman, a person who transported some of the men to the afterset party, pled guilty to a misdemeanor in exchange for his agreement to testify at trial.
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> Prior to trial, the State filed a notice of its intent to use hearsay and videotape evidence at trial pursuant to Iowa Rule of Evidence 5.803(24). The State sought to introduce evidence of videotaped interviews with one witness who spoke with Carl in the moments after the shooting. The court admitted the videotape under the residual exception to the hearsay rule.

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[1] The supreme court has ordered that a motion made by the State to strike certain portions of Spates's reply brief should be submitted with the appeal. Upon consideration, we grant the State's motion and strike the portions of the reply brief referring to *State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006).

> The matter proceeded to a joint trial of Carl and Christopher Spates. Damean and Dorondis both testified Carl was with them during the gunfight and he carried the SKS assault rifle. In addition to his testimony placing Carl at the scene of the shooting, Paul Ackerman testified that he sold the assault weapon to Carl weeks before the shooting. Carl relied on an alibi defense, claiming he was at home at the time of the shooting. At the conclusion of the five-week jury trial, Carl and Christopher were both convicted of first-degree murder.

State v. Spates, No. 05-0926 (Iowa Ct. App. April 25, 2007).

Christopher moved to sever his trial from that of his co-defendants. After a hearing, this request was denied. On February 23, 2005, Christopher filed a notice with the Black Hawk County Clerk of Court essentially noting that he had fired both of his attorneys. Following a hearing on that motion, the court denied Christopher's request for new counsel and gave him the option of continuing with both of his current counsel or proceeding pro se. Christopher chose to continue with counsel. At trial, Christopher relied on an alibi that he was at home all night around the time of the shooting incident.

II. Claims on Appeal.

Now on appeal, Christopher raises five claims. First, he claims the court erred in refusing to sever his trial from that of Carl. Second, he claims the court inappropriately denied his request for new counsel. Third, he claims the jury's verdict was not supported by substantial evidence and was inconsistent with the weight of the evidence. Fourth, he claims the court erroneously instructed on the subjects of "mutual combat" and felony murder, and should have granted his request for a voluntary manslaughter instruction. Fifth, he claims the court erroneously rejected his challenges to certain evidence and his request for jury instructions on some of that evidence.

III. Request for Severance.

We first address Christopher's claim he was "denied his Fifth and Sixth Amendment rights when the trial court overruled his requests for severance." In particular, he asserts the court was required to sever the trials because: (1) while Carl's attorney was ready to proceed to trial, Christopher's counsel was not prepared and wished to continue his case; (2) prejudicial evidence in the form of a videotaped statement from Ashley Scott, which would have been inadmissible against him, was admitted; and (3) his defense was "completely at odds" with Carl's.

The general rule is "defendants who are indicted together are tried together." *State v. Sauls*, 356 N.W.2d 516, 517 (Iowa 1984). Iowa Rule of Criminal Procedure 2.6(4)(*b*) provides, in pertinent part:

> When an indictment or information jointly charges two or more defendants, those defendants may be tried jointly if in the discretion of the court a joint trial will not result in prejudice to one of the parties. Otherwise, defendants shall be tried separately.

A district court's refusal, in the exercise of its discretion, to grant a severance will be reversed on appeal "only if the defendant demonstrates an abuse of discretion." *State v. Belieu*, 288 N.W.2d 895, 900 (Iowa 1980). The court will not be found to have abused its discretion unless the challenging defendant demonstrates a joint trial prejudiced his or her right to a fair trial. *Id.*

We conclude the court did not abuse its discretion in failing to sever Christopher's trial from Carl's. The joint trial did not prejudice Christopher. First, we conclude the court's apparent concern about the efficient use of judicial resources was an appropriate, if small, reason to deny severance in this case.

Holding a joint, rather than separate, trial clearly served this purpose. Second, the brothers' alibis were not mutually exclusive or inconsistent, and were not "completely at odds," as Christopher argues on appeal. In fact, their defenses were in harmony, as both Christopher and his brother maintained they were at their different residences at the time of the shooting.[2] Finally, the statement given by Ashley Scott to a police officer was not incriminating against Christopher. Her statements did not implicate Christopher; in fact she never told officers she had seen him on the night of the shootings. Thus, her statements did not impeach Christopher's alibi and could not have prejudiced Christopher in a joint trial.

IV. Substantial Evidence.

Christopher next claims the State's evidence does not support the jury's finding of guilt. Specifically, he asserts the witnesses against him were not credible, no ballistic or other forensic evidence implicates him, and his alibi evidence was strong. In ignoring these claims, he believes the district court "abdicated" its role in considering the motion for directed verdict.

A jury's finding of guilt is binding on appeal if substantial evidence supports it. *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). 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,

[2] Christopher presented a defense that he was at 133 Lewis Street in Waterloo at the time of the shooting, while Carl claimed he was at his home at the time Parsons was shot and killed.

671 (Iowa 1996). We review this claim for the correction of errors at law. *State v. Bower*, 725 N.W.2d 435, 440-41 (Iowa 2007).

We conclude substantial evidence supports Christopher's conviction of first-degree murder. While the evidence may not support a finding that Spates fired the shot that killed Thyanna Parsons, it would support a finding that he aided and abetted the individual that did. *State v. Doss*, 355 N.W.2d 874, 877 (Iowa 1984). Substantial evidence supports Christopher's presence at the scene. Damean Spates testified that Christopher fired a shotgun during the incident. Empty shotgun shell casings were located near the area where the shooting occurred. A vehicle that Christopher regularly drove was placed at the scene of the shooting. Testimony was given that he drove one of the accomplices, Dorondis Cooper, to the hospital after he was shot during the melee. This was confirmed by DNA evidence confirming that blood belonging to Cooper was in the vehicle Christopher drove.

V. Weight of the Evidence.

Christopher claims the court abused its discretion in denying his motion for new trial because the verdict was against the weight of the evidence. He argues the State failed to prove he aided and abetted a principal. A trial court may grant a new trial "[w]hen the verdict is contrary to law or evidence." Iowa R. Crim. P. 2.24(2)(*b*)(6). "Contrary to . . . [the] evidence" means "contrary to the weight of the evidence." *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). A verdict is contrary to the weight of the evidence where "a greater amount of the evidence supports one side of an issue or cause than the other." *Id.* at 658. The weight of the evidence standard is distinguishable from the sufficiency of

the evidence standard in that it is broader. *State v. Nicther*, 720 N.W.2d at 559. We review the denial of new trial motions for abuse of discretion. *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003). For similar reasons expressed above, we affirm the court's refusal to grant a new trial.

VI. Request for New Counsel.

Because he was charged with the class "A" felony of first-degree murder, the district court appointed two attorneys to represent Christopher. Prior to trial, in a pro se pleading, Christopher indicated he had "dismissed" both attorneys because of "personal differences about the progress of the case . . . ." At a hearing on the motion, Christopher clarified that he was dissatisfied primarily with only one of his attorneys, John Standafer.

Christopher claims that "the failure to grant new counsel combined with the Court's determination to insist on a joint trial violated his constitutional rights." He argues that Standafer was abrasive and that he had lost trust in him. He desired to proceed with only one of his attorneys.

We find that Christopher has waived any claim of constitutional error on the failure to replace his counsel. No claim of constitutional error was made in either the pro se letter or at the hearing on the request. *See In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal."). Accordingly, we review the court's denial of the request for substitute counsel for an abuse of discretion. *State v. Lopez*, 633 N.W.2d 774, 778 (Iowa 2001). To establish an abuse of discretion, Christopher must show that "the

court exercised the discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997).

To justify the appointment of substitute counsel, a defendant must show sufficient cause. *State v. Martin*, 608 N.W.2d 445, 449 (Iowa 2000). "Sufficient cause includes 'a conflict of interest, irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant.'" *Id.* (quoting *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994)). In determining whether to grant a request for substitute counsel, "the court must balance 'the defendant's right to counsel of his choice and the public's interest in the prompt and efficient administration of justice.'" *Id.* (quoting *Webb*, 516 N.W.2d at 828). Ordinarily, a defendant must show prejudice when the court denies a motion for substitute counsel "unless [the defendant] has been denied counsel or counsel has a conflict of interest." *State v. Brooks*, 540 N.W.2d 270, 272 (Iowa 1995).

Essentially, Christopher complained that he and his trial counsel were not compatible. Incompatibility is insufficient to support a claim of ineffective counsel due to a conflict of interest. The Sixth Amendment right to the assistance of counsel does not "guarantee a 'meaningful relationship' between an accused and his counsel.'" *State v. Tejeda*, 677 N.W.2d 744, 749 (Iowa 2004) (citations omitted).

With respect to his proposition that he had an absolute right to replace one of his attorneys, Christopher offers no case law or statutory authority for his. On the contrary, Iowa case law makes clear that a court may deny a request for substitute counsel based on such considerations as "the prompt and efficient administration of justice," and such a request may not be used to delay or disrupt

the trial. *Lopez*, 633 N.W.2d at 779. Moreover, on appeal, Christopher offers no example of having suffered prejudice.

VII. Jury Instructions.

Christopher claims the court erred in: (1) refusing to instruct on the lesser-included offense of voluntary manslaughter; (2) instructing the jury on mutual combat; and (3) by giving a felony murder instruction. We review the district court's refusal to give a jury instruction for abuse of discretion. *State v. Holtz*, 548 N.W.2d 162, 164 (Iowa Ct. App. 1996). Error in giving or refusing to give a particular instruction does not warrant reversal unless the error is prejudicial to the party. *Thavenet v. Davis*, 589 N.W.2d 233, 236 (Iowa 1999).

A. Voluntary Manslaughter. Christopher first contends the district court committed reversible error by refusing to instruct the jury on voluntary manslaughter. "Parties to lawsuits are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record." *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). Generally, a district court commits reversible error by failing to instruct on all lesser-included offenses. *State v. Anderson*, 636 N.W.2d 26, 38 (Iowa 2001).

By statute, voluntary manslaughter "is an included offense under an indictment for murder in the first or second degree." Iowa Code § 707.4 (2003); *State v. Jefferies*, 430 N.W.2d 728, 737 (Iowa 1988). Because this is a statutorily-mandated lesser-included offense, the district court must apply the factual test to determine if substantial evidence supports each element of the crime of voluntary manslaughter. *State v. Inger*, 292 N.W.2d 119, 122 (Iowa 1980).

We previously dealt with this precise issue in his brother's companion case. There, we stated:

> At first blush, the voluntary manslaughter instruction appears appropriate because, by statute, voluntary manslaughter "is an included offense under an indictment for murder in the first or second degree." Iowa Code § 707.4 (2003); *State v. Jefferies*, 430 N.W.2d 728, 737 (Iowa 1988). However, because this is a statutorily-mandated lesser-included offense, the district court must apply the factual test to determine if substantial evidence supports each element of the crime of voluntary manslaughter. *State v. Inger*, 292 N.W.2d 119, 122 (Iowa 1980); *State v. LeGrand*, 442 N.W.2d 614-15 (Iowa Ct. App. 1989).
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> Iowa Code section 707.4 (2003) sets forth the definition of voluntary manslaughter.
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> . . . .
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> Our supreme court has held section 707.4 contains both a subjective requirement and an objective requirement. *Inger*, 292 N.W.2d at 122. The subjective requirement is that the defendant must have acted "solely as a result of sudden, violent, and irresistible passion." *Id.* The objective requirement is that the sudden, violent, and irresistible passion "must result from serious provocation sufficient to excite such passion in a reasonable person." *Id.*
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> The objective standard is not disputed in this case. While there is some question as to which group fired the first shot, multiple witnesses testified that the first shot came from the afterset party. A reasonable person could find this sufficient provocation to excite an irresistible passion to retaliate. However, there is no evidence in the record which indicates it excited an irresistible passion *in Carl* and no evidence that Carl fired his gun *solely* as a result of a sudden, violent, and irresistible passion. On the contrary, Carl asserted an alibi defense and, through the testimony of other witnesses, claimed he was not present at the murder scene. Carl did not present evidence outlining his subjective state of mind at the time of the shooting; instead, he invited the fact finder to speculate that if he had been there, he would have only returned fire as a result of sudden, violent, and irresistible passion.
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> We reject this argument because evidence that only generates speculation is not substantial evidence. *State v. Hutchison*, 721 N.W.2d 776, 780 (Iowa 2006). Without some type of evidence indicating Carl's state of mind at the time of firing the gun, we cannot infer his decision to fire the gun was solely as a result of an irresistible passion simply because gunfire *could* be

> sufficient provocation to excite an irresistible passion in a reasonable person.
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> Because there was no evidence to support the subjective requirement that Carl acted out of passion resulting from serious provocation, the court properly refused to submit the manslaughter instruction to the jury.

State v. Spates, No. 05-0926 (Iowa Ct. App. April 25, 2007)

A similar analysis is applicable here. Christopher did not testify, and there is simply no evidence in this record from which a fact-finder could determine Christopher acted in the heat of passion; thus, there is not substantial evidence of provocation. The roots of the shooting lie in the fight at the Waterloo bar's parking lot. The shooting, which killed Parsons, happened approximately an hour later in a residential neighborhood. The evidence supports that Christopher, who was not even present at the time of the initial fight, took the time to arm himself and only then proceeded to the area where he knew the men who referred to themselves as The Hood would be. His specific purpose appears to have been to confront The Hood about the fight. This conduct, with no other evidence as to Christopher's state of mind, negates any necessity to instruct the jury on the crime of voluntary manslaughter. *See* Iowa Code § 707.4 (defining voluntary manslaughter as when "the person causing the death acts solely as the result of sudden, violent, and irresistible passion resulting from serious provocation").

Similarly, like his brother, Christopher contends he was not even present when the shooting occurred. There was no evidence that Christopher acted out of passion. The trial court properly refused to give this instruction.

B. Mutual Combat Instruction. The court instructed the jury as follows:

> If you find that either of the defendants, or any person or persons that either of the defendants was acting together with, were voluntarily engaged in mutual combat by shooting guns at each other and that, by exchanging gunfire, they jointly created a zone of danger likely to result in the death or injury of innocent bystanders, then you may also find that each of the combatants, including the defendant, aided and abetted each of the other combatants and it makes no difference which of the combatants fired the first shot or which of the combatants fired the shot which struck and killed Thyanna Parsons.
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> To constitute "mutual combat" there must exist a mutual intent and willingness to fight and this intent may be manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.

Christopher argues this instruction "gave undue prominence to evidentiary facts to be determined by a jury" and erroneously stated that "*any* combatant was equally guilty for any crime that any other combatant committed . . . ." We conclude this instruction was a proper statement of law in that the court had a reasonable basis of law from which to form this instruction. *See State v. Brown*, 589 N.W.2d 69, 74-75 (Iowa 1998), *overruled on other grounds by State v. Reeves*, 636 N.W.2d 22 (Iowa 2001) ("In consideration of the mens rea element of second-degree murder, we hold that if death to an innocent bystander ensues from gang-style gunplay in a crowded urban area, each participant in the lethal encounter has exhibited malice."); 40 Am. Jur. 2d *Homicide* § 26, at 476-77 (1999) ("If two men engage in shooting at each other in a crowded place, and a bystander is killed, both are guilty of murder, one as principal and the other as an aider and abettor."). The instruction did not give any undue emphasis to certain facts; it merely correctly states the law of criminal responsibility when two opposing sides engage in mutual gunplay. Therefore, we find it was not improper for the court to instruct the jury on this matter.

C. Felony Murder Instruction. First-degree murder was submitted solely on the theory of felony murder. Under the marshaling instruction, the jury was required to find Parsons was shot while Christopher was participating in the forcible felony of intimidation with a dangerous weapon or assault causing serious injury. Christopher asserts the court should not have instructed the jury on felony murder. He believes "[s]ubstantial evidence of a clearly defined forcible felony was not presented to the jury in this case."

Felony murder requires participation in an underlying forcible felony and that a "murder" was committed during participation. *State v. Ragland*, 420 N.W.2d 791, 793 (Iowa 1988). Felony murder may be proved by showing that one of the persons involved in the underlying felony killed another person with malice aforethought. *Id.* It is not necessary for the State to prove Christopher had malice aforethought, so long as it proved the principal did. *Id.* at 793-94.

We conclude substantial evidence in the record supports that both assault causing serious injury and intimidation with a dangerous weapon occurred. A jury question was presented as to whether Christopher aided and abetted any of the other participants in both of these crimes. Thus, no error occurred in permitting the jury to consider the two forcible felonies under the felony murder instruction.

VIII. Admission of Evidence.

Christopher makes a variety of attacks on the admission of evidence in this case. We find most of these claims are not preserved for appellate review and, thus, will not address the merits of them in this appeal. First, Christopher argues the testimony of his alleged accomplices was so lacking in credibility that

it should have been excluded. Christopher never objected to the admission of this evidence on this ground. This claim is therefore waived on appeal. Second, he makes a variety of challenges to the admissibility of Ashley Scott's pretrial statement to police and to a jury instruction that discussed this evidence. No objection was lodged to either this evidence or the instruction, therefore this challenge is waived. During its deliberations, the jury was given a laptop computer to view the Ashley Scott statement. He claims this was in error. Christopher did not object contemporaneously, and his motion for new trial, which appears to raise this topic, is insufficient to preserve error. *See Jacobson v. Benson Motors, Inc.*, 216 N.W.2d 396, 405 (Iowa 1974) (argument, made for the first time as part of movant's after-the-verdict motion for new trial, came too late for consideration on appeal).

Therefore we proceed to address the remaining evidentiary claims. Christopher maintains the court improperly allowed Benigna Garcia to testify. After the State rested, Jennifer Raley testified in support of Christopher's alibi defense. On cross-examination the State asked Raley whether she knew anybody named "B. Garcia," whose phone number appeared on a cell phone that Spates used. She denied any knowledge of a B. Garcia. The State was later allowed to call Benigna Garcia to testify that she knew Christopher and had exchanged a number of phone calls with him around the time of the shooting. Christopher now claims she was not a true rebuttal witness in that the State asked Raley about her, thereby creating for itself a basis to call Garcia. He also appears to claim her testimony was improper in that Garcia had been present at

earlier portions of the trial even though witnesses had been sequestered from attending trial.

We first note Christopher has cited no authority for this claim of error, and we could therefore consider this claim waived. Iowa R. App. P. 6.14(1)(*c*) However, even if properly before us, we would reject the claims. The record supports the trial court's finding that the State was unaware Garcia was going to have to be called to testify and that she had attended an earlier portion of the trial. *See, e.g*., *Greiman v. State*, 471 N.W.2d 811(Iowa 1991). The prosecutor explained it only became necessary to call Garcia following Raley's testimony and that he had no idea what Garcia looked like so he could not have asked her to leave the courtroom.

We also reject Christopher's claim he was denied a fair trial by admission of evidence he believes suggests gang involvement in the incident. In particular, he believes the terms "L Block" and "The Hood" implied gang affiliation and thus were highly inflammatory. He also argues the admission of a neoprene mask that was found in the vehicle he had on the night of the incident. The terms "L Block" and "The Hood" referred to geographic affiliations of the individuals involved in the shooting. They told the story of why a fight was started at the bar and why that fight was continued later by way of the gunfire. The mask was found by police in a vehicle driven by Christopher after the murder. All of this evidence was relevant and admissible to show the complete story of the crime. *See State v. Garren*, 220 N.W.2d 898, 900 (Iowa 1974) (holding circumstances that immediately surround an offense may be shown even though they may incidentally show commission of another crime); *see also State v. Nowlin*, 244

N.W.2d 596, 601 (Iowa 1976) (noting evidence is admissible when it is an inseparable part of the whole deed).

IX. Conclusion.

We have considered all arguments presented and find no basis for overturning the defendant's conviction. Accordingly, we affirm the decision of the district court.

AFFIRMED.