IN THE COURT OF APPEALS OF IOWA

No. 3-578 / 92-1006

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STATE OF IOWA,

Appellee,

vs.

DESHONE T. OUTLAW,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

The defendant appeals his conviction, following a jury trial, for second-degree murder in violation of Iowa Code section 507.3 (1991). **AFFIRMED.**

Paul T. Shinkle of Gottschalk & Shinkle, Cedar Falls, for appellant.

Bonnie J. Campbell, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Thomas N. Bower and Peter B. Newell, Assistant County Attorneys, for appellee.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

SCHLEGEL, P.J.

The defendant, Deshone T. Outlaw, appeals his conviction, following a jury trial, for second-degree murder in violation of Iowa Code section 507.3 (1991). Outlaw argues: (1) he was denied his right to be tried by a randomly selected jury of his peers pursuant to Iowa Code section 607A.1 (1991); (2) substantial evidence does not exist in the record to support Outlaw's conviction of aiding and abetting in the commission of second-degree murder; and (3) the district court abused its discretion in failing to admit the testimony of former police officer Eddie Denton with regard to whether a reasonable person would have been apprehensive of the victim.

In the early morning hours of November 14, 1991, Michael Holmes shot Patrick Adams in front of Goodies II saloon in Waterloo. On February 15, 1992, Outlaw was charged by trial information with first-degree murder in connection with the Adams slaying. According to the record, Holmes and Outlaw were at Goodies II at approximately 2 a.m. when Adams pounded on the door and told the owner to send out Outlaw.

Earlier in the evening, Outlaw and Adams had a confrontation when Outlaw apparently broke up a fight between Adams and one of Outlaw's friends. Adams left the bar but returned twice to confront Outlaw. Holmes and Outlaw exited the bar and confronted Adams, who appeared to have been drinking. According to witness Jerry Burk,

Outlaw stated to Adams that he was not going to fight him, he was going to shoot him. An argument ensued, and Outlaw handed Holmes the gun. Between a few seconds and five minutes later, Holmes shot Adams after Adams taunted Holmes to shoot him. Adams later died from his wounds.

The State amended the trial information to include felony-murder. At a May 4, 1992, hearing, Outlaw raised the issue of racial balance in the jury pool, arguing the jury was not selected at random by the jury commissioners.

A joint trial was held from May 4-14, 1992. Numerous witnesses testified on behalf of Holmes and Outlaw. Dee Johnson testified that Adams had been drinking throughout the day and had been involved in an earlier altercation with another person named Big John Moore. She also testified that Outlaw broke up a fight between Adams and Damian Frazier. Jerry Burk testified that it appeared that Adams was the original aggressor, since he pounded on the bar door demanding that Outlaw come outside and confront him. Other witnesses testified that Holmes was the one who shot Adams, and that the gun was at Holmes's side just seconds prior to being fired.

Outlaw testified he was at Goodies II earlier in the day and then went to his mother's house for dinner. After dinner, he went back to Goodies II, where he had a drink with Adams. After he broke up the fight between Frazier and Adams, Outlaw went across the street to another bar, bought a few rounds of drinks, and returned to Goodies II

at approximately 2 a.m. Outlaw claims that when Adams yelled for him to step outside, Outlaw handed a gun to Holmes. Outlaw denied telling Holmes anything at the time. Outlaw admitted he fled the scene. He was found several hours later hiding in the basement of his girlfriend's mother's house. Gas had to be used to extract Outlaw from the house.

The jury found Outlaw guilty of second-degree murder. The district court sentenced Outlaw to a term of imprisonment not to exceed fifty years, to be served consecutively to a probation revocation. Outlaw appeals. We affirm.

Outlaw first contends one of the three Black Hawk County jury commissioners did not use a random procedure when compiling the portion of the list of potential jurors for which that commissioner was responsible. One of the jury commissioners testified that the commissioners were charged by the district court to select a jury reflecting differences in ages, occupations, geographical differences, and minorities in an effort to achieve equal representation across the board of people that could serve on the jury.

To accomplish that end the commission utilized voter registration lists, the Cedar Falls City Directory, the telephone directory, driver's license lists, and the University of Northern Iowa student directory. The jury commissioner about which the defendant complains also relied upon her mother, "who knew a lot of the parents, the

children that were out of my range kind of," as well as her son, "who got around a lot and he knew a lot of people." The record reveals that the one-third portion of the jury pool which this jury commissioner was responsible for compiling was not chosen randomly.

The total list compiled by the three jury commissioners contained 7,500 names. From this list, the clerk of court, the auditor, and the recorder selected 500 names at random for summoning persons for jury service. The defendant argues African-Americans were handpicked purposely by the jury commissioner for inclusion in the jury pool. He contends this procedure violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Iowa Code section 607A.1 (1991).

However, we find the applicable constitutional rule in the present case to be the Sixth Amendment requirement that the petit jury be drawn from a jury pool which reflects a fair cross-section of the community. See State v. Watkins, 463 N.W.2d 411, 414 (Iowa 1990). When a defendant is alleging error involving a constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such an error was made. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975); State v. Jeffries, 417 N.W.2d 237, 239 (Iowa App. 1987).

Although the Sixth Amendment does prohibit the exclusion of members of a distinctive group in an amount

which is not fair and reasonable in relationship to the members of that group in the community, it does not prescribe a detailed code of procedure as to how juries shall be drawn consistent with the fair cross-section requirement. See Taylor v. Louisiana, 419 U.S. 522, 537-38, 95 S. Ct. 692, 701, 42 L. Ed. 2d 690, 702 (1975); State v. Williams, 243 N.W.2d 658, 662 (Iowa 1976). The Sixth Amendment regulates the result of drawing a jury from a jury pool; it does not regulate every detail of the process of compiling the jury pool itself. The defendant makes no attempt, in terms of the Sixth Amendment's fair cross-section requirement, to demonstrate any significant underrepresentation of a distinctive group in the jury pool, and we find none.

The defendant also claims the jury selection procedure violated Iowa Code section 607A.1 (1991). This section provides in relevant part: "It is the policy of this state that all persons be selected at random from a fair cross-section of the population of the area served by the court . . . ." Having reviewed the record in the present case, we find no violation of this provision under the facts of this case. While it is true that one of the jury commissioners engaged in nonrandom procedures in compiling the list of one-third of the 7,500 prospective jurors from which Outlaw's jury was ultimately picked, we find the pool of prospective jurors constituted a fair cross-section of the population of Black Hawk County.

The parties stipulated at the hearing held to address the defendant's jury challenge that the 500 people selected from the prospective juror pool were chosen randomly. Therefore, we conclude that the jurors ultimately chosen to serve on Outlaw's jury were in fact "selected at random from a fair cross-section of the population of the area served by the court." Accordingly, we do not agree with the defendant's contention that the selection procedure violated section 607A.1.

Next, Outlaw seeks reversal of his conviction for second-degree murder, which was premised upon his having aided and abetted his codefendant, Holmes, who shot the victim, Adams. Outlaw argues the conviction must be reversed because: (1) the conviction resulted from a compromise verdict (the codefendant was convicted of first-degree murder); (2) the element of malice aforethought was not proved beyond a reasonable doubt; and (3) the State failed to prove Outlaw aided and abetted the shooting, since Outlaw claims the codefendant shot the victim based on the codefendant's "independent decision"--not as a result of any encouragement or facilitation by Outlaw.

Our standard of review on this issue is well settled. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the

defendant is guilty of the crime charged beyond a reasonable doubt. Id. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

Having carefully reviewed the record, we find substantial evidence to support Outlaw's conviction. Upon hearing the victim yelling for him to come outside, Outlaw took a gun from codefendant Holmes and said he was "going to shoot the motherfucker." Outlaw then went outside to confront the victim, along with Holmes and another man. Once outside, the victim argued with Outlaw and Holmes in a manner manifesting his desire to fight Outlaw. Outlaw stated, "I'm not fighting, I'm shooting." Very soon after that, according to the record, Outlaw cocked the gun used to shoot the victim and handed it to Holmes, stating, "Smoke his ass, Mike." Within seconds after Outlaw's directive, Holmes shot the victim, and the two defendants fled the scene.

Outlaw contends that certain witnesses testified that approximately five minutes elapsed between the time Outlaw handed Holmes the gun and the time Holmes shot the victim. Outlaw argues that "given this gap in time, it is quite clear that the actions of Holmes were not predicated on

anything that Outlaw had advised or encouraged him to do." We find this argument to be unpersuasive.

Finally, Outlaw contends the district court abused its discretion by failing to admit the proffered testimony of Eddie Denton, a former Waterloo police officer. According to Denton, he had seen the victim earlier on the evening the victim was shot and noted that Adams was drunk and looking for a fight. Denton testified that it was Adams who appeared to be provoking confrontations. Outlaw maintains this evidence would have assisted the jury in judging the reasonableness of Holmes' actions and in determining the plausibility of codefendant Holmes' claim of self-defense or provocation by the victim.

Outlaw argues this evidence would have been probative on the issue of Outlaw's own degree of guilt. Outlaw argues the jury's knowledge of the proffered testimony would have indicated to the jury that the victim's aggressive conduct in the earlier altercation constituted persuasive evidence that the victim's conduct prior to the altercation leading to the shooting would have led a reasonable person to believe his safety was in danger. We review this issue for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting Weeks v. Burnor, 326 A.2d 138, 140 (Vt. 1974)).

We reject Outlaw's contention that the district court's decision to disallow this evidence was clearly unreasonable. The issue before the jury in this regard was whether codefendant Holmes' act of shooting the victim was done out of a reasonable belief that such action was necessary to defend himself from death or injury at the hands of the victim. We cannot say the district court abused its discretion in disallowing evidence of Denton's opinion regarding whether the victim presented such a threat on a prior occasion which did not involve either of the defendants in the present case. This is equally true with respect to Outlaw's contention that Denton's opinion was necessary on the issue of provocation under the lesser-included offense of voluntary manslaughter.

The court admitted ample evidence regarding the altercation leading to the victim's death upon which the jury could conclude for itself whether or not codefendant Holmes' claims of self-defense and provocation were rebutted. The record indicates the victim was not armed with a weapon at the time of the shooting. The record further reveals the victim had made no movements or statements prior to the shooting which indicated that he was armed with a weapon. The jury was permitted to hear evidence regarding the victim's belligerent and drunken behavior toward the defendants prior to the shooting, as well as evidence regarding the victim's apparent desire to fight either or both of the defendants. The court admitted

evidence upon which the jury had a sufficient basis to determine whether Holmes was justified in shooting the victim five times. The defendant has failed to demonstrate that the district court abused its discretion by not admitting the proffered testimony of Denton.

Accordingly, for the above-mentioned reasons, we affirm Outlaw's conviction for second-degree murder in violation of Iowa Code section 507.3 (1991).

AFFIRMED.