IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 8-024 / 97-0417
Filed February 25, 1998

STATE OF IOWA,
Appellee,

vs.

STACEY K. GRUNDER,
Appellant.

Appeal from the Iowa District Court for Scott County, David J. Sohr and James E. Kelley, Judges.

Defendant appeals from the judgment and sentence entered upon her conviction of second-degree murder, willful injury, extortion, and conspiracy to commit extortion, in violation of Iowa Code sections 707.3, 708.4, 711.4 and 706.1(a) and (b) (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Julie Walton, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

HUITINK, P.J.

Defendant Stacey Grunder appeals from the judgment and sentence entered following her convictions for second-degree murder, willful injury, extortion, and conspiracy to commit extortion in violation of Iowa Code sections 707.3, 708.4, 711.4, 706.1 (1995), respectively. We affirm.

I. Background Facts and Proceedings.

Grunder and Travis Herman rented an apartment from Harold Sanders. After Sanders initiated eviction proceedings, Grunder and Herman agreed to force Sanders to abandon those proceedings by obtaining photographs of sex acts between Grunder and Sanders and threatening to give these photographs to Sanders' wife.

When Sanders visited Grunder's apartment on September 1, 1996, Herman hid in a bedroom closet while Grunder lured Sanders to the bedroom for sex. After Sanders and Grunder were engaged in a sex act, Herman emerged from the closet and took the desired photographs.

Sanders' attempts to take the camera from Herman resulted in an altercation during which Sanders was stabbed in the back. Grunder joined the fray by striking Sanders and yelling at Herman, telling him to kill Sanders. Sanders died as a result of his wounds.

Grunder and Herman were charged with first-degree murder, willful injury, extortion, and conspiracy to commit extortion. Grunder's pretrial motion to sever her trial from Herman's was denied. At trial, Herman claimed he killed Sanders in self-

defense. Grunder did not testify. Both were convicted of second-degree murder, willful injury, and conspiracy to commit extortion. Grunder was sentenced to an indeterminate term of incarceration not to exceed fifty years.

On appeal, Grunder asserts the district court abused its discretion by denying her motion to sever the trial. She argues she was unfairly prejudiced by a joint trial because her innocent bystander defense was in irreconcilable conflict with Herman's justification defense.

On appeal, Grunder asserts the district court abused its discretion in denying her motion to sever the trial.[1] She argues she was prejudiced by the joint trial because her defense that Herman was the sole actor in stabbing Sanders conflicted with Herman's contention the stabbing was justified by self-defense.

II. Motion for Separate Trial.

Iowa Rule of Criminal Procedure 6(4)(b) provides:

> 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 or more of the parties.* Otherwise, defendants shall be tried separately. When jointly tried, defendants shall be adjudged separately on each count.

We will not overturn the district court's denial of the motion for separate trial unless Grunder establishes her right to a fair trial was prejudiced. *State v. Brown*, 397 N.W.2d 689, 695 (Iowa 1986).

To cause the type of prejudice that prevents codefendants from obtaining

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[1] Herman appeals his convictions in a separate action.

> a fair trial, the defenses must be more than merely antagonistic, they must conflict to the point of being irreconcilable and mutually exclusive. This level of conflict and antagonism is reached if the jury, in order to believe the core testimony offered on behalf of one defendant, must necessarily disbelieve the testimony offered on behalf of a codefendant.

State v. Clark, 464 N.W.2d at 864 (citations omitted).

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show 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)). In reviewing the district court's denial of a motion for separate trial, we examine the information available at the time of the court's ruling. *State v. Clark*, 464 N.W.2d 861, 864 (Iowa 1991).

We agree with the district court's determination that Herman's justification defense and Grunder's innocent bystander defense were not mutually exclusive. The jury's acceptance of one of these two defenses did not require rejection of the other. *See Id.; see also State v. Brown,* 397 N.W.2d at 696. Moreover, at the time of the district court's ruling on Grunder's motion to sever, there was no indication either defendant intended to testify against the other. Grunder failed to show the prejudice necessary for severance. We find no abuse of discretion. The decision of the district court is affirmed.

AFFIRMED.