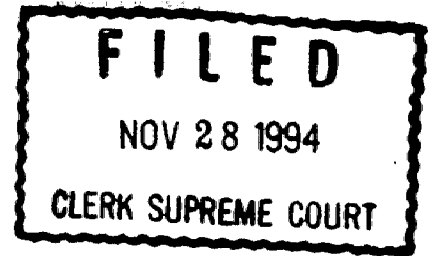


IN THE COURT OF APPEALS OF IOWA

No. 4-278 / 93-554



STATE OF IOWA,

Appellee,

vs.

JOHN ALLEN HOLMES,

Appellant.

Appeal from the Iowa District Court for Des Moines
County, John C. Miller, Judge.

Defendant appeals judgment and sentence, following jury
trial, entered upon his conviction of first-degree murder.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and B. John
Burns, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Richard J.
Bennett, Assistant Attorney General, Patrick C. Jackson,
County Attorney, and Matthew T. Shupe, Assistant County
Attorney, for appellee.

Heard by Donielson, C.J., Huitink, J., and McCartney,
S.J.*

*Senior judge from the second judicial district
serving on this court by order of the Iowa Supreme Court.

DONIELSON, C.J.

At approximately 11 a.m. on June 13, 1992, a maintenance man at LuAnn Simms' apartment complex found a screen off of Ms. Simms' open apartment window. Later, around 10 p.m. in the evening, another maintenance man entered Ms. Simms' apartment to check on her and found her body lying on the floor of her bedroom. A brick was found near the body.

An autopsy revealed Simms had been bludgeoned to death by a blunt object. The pathologist who performed the autopsy determined Ms. Simms had received seven blows to the head. The autopsy also revealed bruising on her neck which the pathologist testified might have been the result of someone holding that area of her body in a rough manner. The pathologist estimated the time of death as sometime between 10 p.m. on June 12 and 8 a.m. on June 13.

An Iowa Division of Criminal Investigation special agent testified about the state of Ms. Simms' bedroom and the location of her body and other objects in the room. Based on his observations of the blood spatters, blood patterns, and related evidence, he concluded Ms. Simms had been on her bed when the bloodshed occurred and her body and bedding had been moved around the room afterward.

Subsequent to Simms' murder the defendant, John Holmes, told numerous people he was responsible for Simms' death, and he related details of the crime not generally known to the public. John Holmes was charged with

first-degree murder on August 27, 1992. At trial he attempted to show the details of the investigation were not kept secret and were generally common knowledge. He also attempted to cast suspicion on men who had threatened and/or been violent toward Simms in the past.

Holmes was convicted as charged and now appeals. He argues: there was insufficient evidence for the jury to find his inculpatory statements were corroborated by evidence connecting him to the murder; the trial court erred in denying him the opportunity to offer evidence he denied committing the murder; and his counsel was ineffective in failing to preserve this latter issue for appellate review.

I. Iowa Rule of Criminal Procedure 20(4).

Iowa Rule of Criminal Procedure 20(4) provides the confession of a defendant, unless made in open court, will not support a conviction unless accompanied by other proof the defendant committed the offense. State v. Gregory, 327 N.W.2d 218, 221 (Iowa 1982), cert. denied, 464 U.S. 833 (1983). Corroboration need not be strong nor need it go to the whole of the case so long as it confirms some material fact connecting the defendant with the crime. State v. Origer, 418 N.W.2d 368, 371 (Iowa App. 1987). The existence of corroborative evidence is an issue for the court, and its sufficiency is ordinarily for the jury. Id.

In determining the sufficiency of the evidence to support a guilty verdict we consider the evidence in the light most favorable to the State. Origer, 418 N.W.2d at 369. Substantial evidence means evidence which would convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id.

Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). However, whether evidence is direct or circumstantial, it must raise a fair inference of guilt; it must do more than create speculation, suspicion, or conjecture. Origer, 418 N.W.2d at 369-70. We must consider all of the evidence, not merely that supportive of the conviction, in determining the sufficiency of the evidence to support a guilty verdict. See State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

A review of the record reveals the defendant told six people he had committed the murder. He related to those individuals details which were consistent with the crime scene. Those details include: (1) his observation of Simms asleep on her bed; (2) the similarity in appearance between Simms and a woman he liked; (3) the presence of a light on in the apartment; (4) the absence of a screen from a window of the apartment; (5) his entry through the window; (6) the absence of floor covering on one of the floors; (7) the fact that Simms had a water bed; (8) his choking of Simms; (9) his use of a brick to inflict blows

to Simms' head; and (10) the loss of his glasses and his movement of the body and bedding during his efforts to find them.

Besides the defendant's detailed and accurate descriptions of the crime scene, the jury was also presented with an eyewitness who identified the defendant as the man she saw walking by Simms' apartment complex at 1:30 a.m. on June 13. Additional corroborative evidence was provided by one of the defendant's neighbors. The defendant had told four people he had burned his blood-stained clothing in his neighbor's yard behind the duplex where he lived. The neighbor testified she found two burned areas in her lawn on June 13, 1992, while mowing.

The defendant contends his knowledge of details of the crime scene was not sufficiently corroborative because details of the police investigation were not kept secret and had become public knowledge. Evidence at trial indicated some information such as the type of weapon used and the location of the victim's body and its state of undress were pieces of police information which were communicated to members of the public. However, this does not diminish the significance of the defendant's knowledge of numerous other details which had not become public knowledge, such as those pertaining to the types of floor covering and bed in the apartment, the fact that Simms was lying in her bed when the bloodshed occurred, the presence

of a light in the apartment, the choking of Simms, and the movement of her body and bedding.

We believe there was ample corroboration to support submission of the defendant's confessions for jury consideration. The confessions detailed his actions immediately before, during, and after the crime. When the circumstances are corroborated by other evidence the confessions are properly admissible. See Gregory, 327 N.W.2d at 221. The jury could have concluded the similarity between the defendant's confessions and the actual crime scene were not merely fortuitous or coincidental. There was sufficient corroborative evidence from which a rational fact finder could connect the defendant with the crime, and the verdict was supported by substantial evidence.

II. Defendant's Exculpatory Statement.

The defendant contends the trial court erred in failing to admit purportedly favorable testimony from witness LaClare Taylor. Mr. Taylor was asked by defense counsel if the defendant had ever had a conversation with him about whether he had committed the murder. The State objected to the question, and the court sustained the objection. Defense counsel made no offer of proof as to what Mr. Taylor's answer would have been. Appellate counsel argues since the witness was called by the defendant and the State objected to the question it is obvious what Mr. Taylor's answer would have been and this issue is sufficiently preserved for appellate review.

We disagree. This issue was not adequately preserved for appellate review due to the absence of an offer of proof after the State's objection was sustained. The purpose of an offer of proof is to give the trial court a more adequate basis for its evidentiary ruling and to make a meaningful record for appellate review since a reviewing court cannot predicate error upon speculation as to answers which would have been given to questions had objections thereto not been sustained. State v. Ritchison, 223 N.W.2d 207, 212-13 (Iowa 1974).

From a review of the transcript it is not readily apparent when or in what context the purported conversation between Mr. Taylor and the defendant occurred. Nor is it evident the evidence would have been clearly favorable to the defendant. We decline to address on direct appeal the defendant's claim his defense counsel was ineffective in failing to preserve this issue for appellate review. See State v. Koenighain, 356 N.W.2d 237, 238 (Iowa App. 1984). This matter is preserved for further postconviction proceedings in which the relevant facts and an adequate record may be developed.

AFFIRMED.