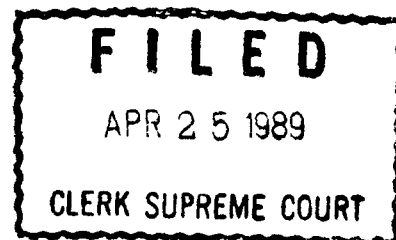


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

EARL LEROY EMERY,)

Defendant-Appellant.)

419

8-710
88-863

Appeal from the Iowa District Court for Polk County
(No. 36004), Richard Strickler, Judge.

Defendant appeals from his conviction, following a
bench trial, of first-degree murder. **AFFIRMED.**

Chris T. Odell, Office of Citizen Advocate, Des Moines,
for defendant-appellant.

Thomas J. Miller, Attorney General; Christie J. Scase,
Assistant Attorney General; and James Ramey, Assistant
County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Habhab,
JJ.

HABHAB, J.

Defendant-appellant Earl Leroy Emery appeals his conviction of first-degree murder, contending there was insufficient evidence linking him to the murder weapon or the shooting or the victim, Melissa Sheets.

Our standard of review 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).

The following facts were established during defendant's bench trial: On July 15, 1987, three witnesses saw defendant enter the bedroom of Patricia Benge. The witnesses heard two gunshots and defendant came out of the room tucking a large handgun into his waistband. One witness observed Patricia had been shot. Another testified she had seen defendant with this gun several times in the past two weeks. At defendant's request, two of the

witnesses drove him to Kenny Sheets' trailer located behind William Wetherly's house. Kenny lived with his daughter, the murder victim, Melissa. The two witnesses dropped defendant off in front of the house, but drove away before seeing where defendant went. The two witnesses called the police, who went to Patricia's home. They were then directed to the Wetherly house.

Mr. Wetherly and his roommate testified defendant came to the house that day asking if Kenny Sheets was there. Defendant was told "no." The police soon arrived and defendant was arrested without incident. A gun was found under a living room rug. This gun was positively identified as the gun used to shoot Patricia and which the witnesses saw defendant tuck into his waistband. The gun had three live and three spent rounds of ammunition in it when found.

Soon after the arrest, Wetherly's roommate discovered Melissa dead after being shot in the forehead from close range by a large handgun. A D.C.I. firearms specialist testified the slug removed from Melissa's hair was fired from the handgun defendant used to shoot Patricia.

We agree with the trial court that the testimony of the witnesses who saw defendant the day of the shooting and the ballistic evidence provides sufficient evidence to conclude defendant was responsible for the shooting of both Patricia and Melissa. The evidence is primarily circumstantial.

Such is often the case in murder cases. Circumstantial and direct evidence are equally probative. Iowa R. App. P. 14(f)(16). Having applied the appropriate principles of review to the facts of this case, we affirm defendant's first-degree murder conviction.

AFFIRMED.