

IN THE COURT OF APPEALS OF IOWA

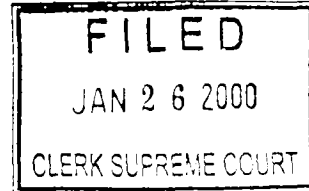
No. 1999-435 (9-692) / 98-1101

Filed January 26, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TERRY SCOTT DUDLEY,
Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

Terry Dudley appeals the district court's judgment following a jury verdict of guilty of murder in the first degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John P. Sarcone, County Attorney, and Nan Horvat, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., Vaitheswaran, J., and Schlegel, S.J.*

***Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).**

SCHLEGEL, S.J.

Defendant-appellant, Terry Dudley, appeals his conviction following a jury verdict of murder in the first degree. He claims the court erred in entering the verdict because there was insufficient corroborative evidence of his confessions to convict him. We affirm.

Background. The victim, Curtis Pizinger, was discovered on a gravel frontage road near Interstate 80 in Altoona, shot seven or eight times. A cellular telephone was found near the victim. Evidence at the murder scene showed Pizinger struggled around the scene after being shot and had tried twice to call for help on the cell phone. His car was not at the scene. Police traced Pizinger's activities in his last hours by questioning the people he spoke to on his cell phone that day.

Pizinger called Shawn Daly just before 8 p.m. to ask Daly to come downstairs and open the security door to Daly's apartment building. Dudley came to the door with Daly. The three spent some time together in Daly's apartment. While there Pizinger paid Daly for some stereo equipment, giving him a \$100 dollar bill. Pizinger had just been paid nearly \$850 in wages and over \$500 in bonus from his employer. When Pizinger left around 8:30, he offered Dudley a ride to the east side of Des Moines. **Dudley**, Chad Daly, and Pizinger left together.

At about 9 p.m. a motorist on I-80 saw a car stopped on the gravel frontage road, where Pizinger's body was found later. He could see two people standing by the car and what appeared to be a body on the ground. Between 10 and 11 p.m. Dudley arrived on foot at Katrina Schmidt's apartment at 2414 Drake Park. While there, Dudley took a bath and threw away his shirt and jeans. Schmidt later gave

Dudley a ride to a house on Martin Luther King Jr. Parkway. Police found Pizinger's car the next day, abandoned at 666 - 24th street near Woodland Cemetery.

At the house on Martin Luther King Jr. Parkway, Dudley spoke with Liana Gerstenberger. He told her he was leaving town; that he did not want to spend the rest of his life in jail; and that he murdered someone. The next day, Dudley spent time with Daly. He asked Daly, "Have you ever seen anybody get shot eight times and get up before they get ran over?" Daly and Dudley stayed in a motel, where the police found Dudley on the third day after the murder. At the motel, Dudley told Daly he was leaving town and mumbled to himself, "He might have had a cell phone on him."

The day after the murder, Dudley visited Raymond Jones. Dudley asked Jones if he had heard about the murder in Altoona. Dudley said he had done something wrong; that he "fucked up" and probably was going to have to leave town; that he had wanted to take Pizinger's car; and that he shot Pizinger.

On the third day after the murder, the police arrested Dudley at the motel. After his arrest, Dudley told one of the officers "that things got out of control about three days ago."

Jury trial. The State charged Dudley with first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (1997). At trial, the State presented evidence of several admissions Dudley made to friends after the murder. The State also presented evidence Dudley was the last person seen with the victim. A jury found him guilty, and the court entered the verdict and sentenced him to life in prison. Dudley appeals.

Claims on appeal. He contends he cannot be convicted based on his out-of-court confessions without corroboration connecting him to the crime. See Iowa R. Crim. P. 20(4).¹ He also claims the State's evidence is insufficient.

Scope of review. Our review is for errors of law. Iowa R. App. P. 4; see *State v. Liggins*, 524 N.W.2d 181, 187 (Iowa 1994). A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. See *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). 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. See *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. See *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). The relevant question in our review "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

We view the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record. See *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). Circumstantial evidence is just as probative as direct evidence. See *State v. Parrish*, 502 N.W.2d 1, 3 (Iowa 1993); *State v. Garr*, 461 N.W.2d 171, 173 (Iowa

¹ Iowa Rule of Criminal Procedure 20(4) provides:

The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense.

1990). We consider all the evidence at trial, not just the evidence that supports the verdict. *Upms*, 524 N.W.2d at 186. A verdict is binding unless the finding is clearly against the weight of the evidence. See *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981); *State v. Pierson*, 554 N.W.2d 555, 558-59 (Iowa App. 1996).

Analysis. Dudley conceded in oral argument of this case that the statements made to individuals after the murder comprised a confession. For the sake of our analysis, we assume this to be true. Under Iowa Rule of Criminal procedure 20(4), a confession is insufficient to convict unless corroborated by "other proof." Iowa R. Crim. P. 20(4). Dudley challenges the State's evidence as "highly suspect," claiming all the key players in the case are "embroiled in the world of marijuana and/or methamphetamines" and that there is no "scientific evidence" connecting him with the murder. He argues Chad Daly also is a suspect. These challenges go to the sufficiency of the evidence, not the existence of corroborating evidence. "The existence of corroborative evidence is a question of law for the court; its sufficiency is ordinarily for the jury." *State v. Capper*, 539 N.W.2d 361, 364 (Iowa 1995). Corroboration need not be strong nor need it go to the whole case, so long as it confirms some material fact connecting a defendant with the crime. Dudley's statements to others about murdering a person in Altoona by shooting him eight times are corroborated by the discovery of Pizinger's body in Altoona shot eight times. Dudley's statements displaying concern that the victim may have had a cellular telephone are corroborated by the cell phone found near Pizinger's body and evidence he tried twice to call for help. Dudley claims Shawn Daly should be considered an accomplice, whose testimony needs independent corroboration. Even if we assume, for the sake of this analysis, that Shawn Daly was involved in

~~the events that~~ eventually led to the robbery of Pizinger, his statements are corroborated. The motorist who saw two men standing by the car on the frontage road corroborates Daly's statement that Chad Daly and Terry Dudley left with Pizinger. We conclude the trial court did not err in determining corroborative evidence existed and submitting the case to the jury.

Dudley claims the evidence was insufficient to convict him. The jury is in the best position to assess credibility. See *State v. Knox*, 536 N.W.2d 735, 742 (Iowa 1995); *State v. Hulbert*, 481 N.W.2d 329, 332 (Iowa 1992). It is the jury's duty to sort out the credibility of witnesses and place credibility where it belongs. See *State v. Schertz*, 328 N.W.2d 320, 322 (Iowa 1982); *State v. McCullough*, 226 N.W.2d 216, 217 (Iowa 1975); *State v. Hawkins*, 519 N.W.2d 103, 104 (Iowa App. 1994); *State v. Trammell*, 458 N.W.2d 862, 863 (Iowa App. 1990). The jury may believe or disbelieve the testimony of witnesses as it chooses. See *State v. Blair*, 347 N.W.2d 416, 421 (Iowa 1984); *Hawkins*, 519 N.W.2d at 104. It is the jury's duty to assign the evidence presented whatever weight it deemed proper. *Knox*, 536 N.W.2d at 742; *State v. Simpson*, 528 N.W.2d 627, 632 (Iowa 1995); *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994); *State v. Pierson*, 554 N.W.2d 555, 559 (Iowa App. 1996). A verdict will be upheld where there is substantial evidence to support the charge. See *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). The same standard for substantial evidence applies to both jury trials and trials to the court. See *State v. Frake*, 450 N.W.2d 817, 818 (Iowa 1990); *State v. Ledezma*, 549 N.W.2d 307, 310-11 (Iowa App. 1996). The evidence need not, independent of the confession, be sufficient to prove commission of the crime charged beyond a reasonable doubt. See *State v. Dunn*, 199 N.W.2d 104, 108-09 (Iowa 1972). We conclude substantial

evidence exists in the record from which the jury could find Dudley guilty beyond a reasonable doubt.

AFFIRMED.