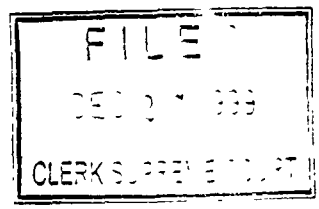
IN THE COURT OF APPEALS OF IOWA

No. 9-551 / 98-469
Filed December 27, 1999

STATE OF IOWA,

Appellee,



vs.

JAMIE BORUSHASKI,

Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, Judge.

Jamie Borushaski appeals from the judgment and sentence entered upon a jury verdict finding her guilty of two counts of first-degree murder. **AFFIRMED.**

Blair Bennett, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John Sarcone, County Attorney, Melodee Hanes and Frank Severino, Assistant County Attorneys for appellee.

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

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

VAITHESWARAN, J.

Jamie Borushaski appeals her first degree murder conviction, contending: (1) the evidence was insufficient to support the verdict; (2) the trial court improperly admitted certain evidence; (3) certain jury instructions were prejudicial; and (4) her trial counsel was ineffective. We affirm.

I. Background Facts and Proceedings

Bob and Marilyn Blewer lived on a small farm in Missouri. During the summers, they sold funnel cakes at county and state fairs. Jamie Borushaski (Borushaski) was the oldest of three Blewer children. In June 1991, she married Rodney Borushaski (Rodney). The couple and their son later moved into a trailer home on the Blewers' property. On July 6, 1996, the Borushaskis met Jerimy Sneed, who was staying at the home of mutual friend, Tim Headen. That same day, Rodney asked Sneed to kill his wife's family, so that he and Borushaski could inherit the family's money, property, and funnel cake business.

On August 12, 1996, Sneed went to the Iowa State Fair where the Blewers were operating a funnel cake stand, entered the Blewers' bus, and shot them to death. He took $22,000 in cash and a truck belonging to the Blewers' son. He gave $7,000 of this sum to Rodney. With Rodney's help, Sneed left the state and indulged in a drug and prostitution spree until August 31, 1996, when he turned himself in to Miami police. Sneed was ultimately transferred to the Polk County jail. He confessed to his role in the killings and pled guilty to the federal crime of interstate murder-for-hire. Rodney was convicted by a jury of first degree murder.

The State charged Jamie Borushaski with two counts of first degree murder under Iowa Code sections 707.1 and 707.2 (1997). A jury found her guilty of both counts and, on February 23, 1998, she was sentenced to life imprisonment. This appeal followed.

II. Sufficiency of Evidence

Borushaski contends the evidence was insufficient to support her conviction Therefore, we must determine whether there is substantial evidence to support the verdict. *State v. Kostman*, 585 N.W.2d 209, 211 (Iowa 1998). Evidence is substantial if a rational trier of fact could be convinced of the defendant's guilt beyond a reasonable doubt. *Id.* Borushaski argues a reasonable jury would find she was in a different state when the murders were committed, there is no physical evidence tying her to the crime, and only accomplices Sneed and Headen implicated her in the murders.

The state alleged Borushaski committed first degree murder by aiding and abetting Rodney and Sneed in killing her parents. To uphold a conviction based on aiding and abetting, the record must contain substantial evidence the defendant "assented to or lent countenance and approval to the criminal act either by active participation in it or by some manner encouraging it prior to or at the time of its commission." *State v. Jefferson*, 574 N.W.2d 268, 277 (Iowa 1997). Participation in a crime may be inferred from "presence, companionship, and conduct before and after the offense is committed." *Id.* (*quoting State v. Lott*, 255 N.W.2d 105, 107 (Iowa 1977)). Although Borushaski was not at the crime scene, a jury reasonably

could have found she knew of, acquiesced in, encouraged and helped Rodney and Sneed murder her parents.

Sneed, Headen, Curtis Garrison, Tracey Garrison, and Tim Johnson all testified Borushaski was present during conversations initiated by Rodney about killing her parents or wanting them dead. They all testified she acquiesced in or did not object to these statements.

Sneed stated Borushaski provided him with incentives to kill her parents by telling him: (1) she and her son had been sexually abused by Bob Blewer; (2) he would find between twenty and sixty thousand dollars in the Blewers' bus at the fair; and (3) her parents had life insurance policies on themselves and on their two younger children.

Sneed testified Borushaski helped to plan the murders by: (1) identifying Bob Blewer's favorite child in the event Sneed needed to restrain someone to gain Bob's compliance; (2) helping Sneed find a gun in the Blewer's home and assisting in purchasing ammunition for the gun; (3) determining if the gunshots could be muffled; (4) describing the layout of the bus; (5) negotiating what to pay Sneed for the murders; (6) giving him the PIN number for the Borushaskis' phone card; and (7) waking Sneed up so he would not miss the bus to Des Moines.

After the murders, a jury could have found Borushaski: (1) concealed Sneed's whereabouts from police officers; (2) repeatedly contacted the person with whom Rodney had left $4000 recovered from the Brewers; (3) lied about the source of this money; (4) advised Headen not to "say anything;" (5) consulted with Rodney during

the course of questioning by police; (6) wrote to Sneed while he was in jail; (7) paid her outstanding debts; (8) immediately moved into her parents' home; and (9) appropriated one of their cars.

We conclude the record contains substantial evidence of Borushaski's participation and encouragement in her parents' killing. Therefore, we reject her insufficiency of the evidence challenge.

III. Admissibility of Letters

Borushaski challenges the trial court's decision to admit letters she wrote to Sneed, while he was in jail, which circumstantially incriminated her. We review challenges to hearsay rulings for errors of law. *State v. Ross*, 573 N.W.2d 906, 910 (Iowa 1998).

Prior to trial, the court ruled the letters were admissible under Iowa Rule of Evidence 804(b)(3), which sets forth an exception to the hearsay rule for statements against interest when the declarant is unavailable as a witness. The ruling was based on an assumption Borushaski would not testify and, therefore, would be unavailable within the meaning of rule 804. *See* Iowa R. Evid. 804(a)(1) (stating witness deemed unavailable if not testifying on ground of privilege). When Borushaski decided to testify, the trial court amended its ruling, concluding the statements were also admissions by a party-opponent, which are not hearsay under rule 801(d)(2).

Borushaski only challenges the court's admission of the letters under rule 804(b)(3). Borushaski contends the court was obliged but failed to examine whose "interest" the statement was against. She concedes certain statements were against

someone's interest, but asserts the statements implicated Rodney and not her. Borushaski maintains that because the State had filed no charges against her at the time she wrote the letters, the damning statements in the letters could not have referred to her. Borushaski cites no authority for this creative contention, nor are we willing to create any.

Although Borushaski does not directly implicate herself in her parents' murders, her letters circumstantially support her involvement. First, the trial court aptly noted that, irrespective of the letters' contents, the fact Borushaski was corresponding with her parents' murderer was in and of itself a statement against her interest. Second, Borushaski's letters contained inculpatory language. Borushaski repeatedly made reference to subjects she wished to discuss with Sneed, but could not:

> there are a couple of things that I need to discuss with you, but it is not something that I can write where anyone can read it, since they (police) can read your mail. I'll have to figure out a way pretty-quick.

She also referred to information about Sneed she concealed from the police, stating, "I have not said anything about you." She attempted to refresh Sneed's recollection about what "was said & done before you left for Davenport & Des Moines." She commiserated with the pain Sneed had experienced his "whole life." She referred to people who came to her house and told her "Jerimy says hi and to keep your mouth shut." She repeatedly admonished Sneed not to divulge the contents of the letters, stating "please don't tell anyone about writing this letter, okay?" and "I will get in a lot of trouble if you tell anyone about this so please don't okay?"

We conclude the court did not err in admitting the letters. We accordingly affirm the court's admission of the letters as statements against interest under rule 804(b)(3). We need not address the court's ruling under rule 801(d)(2), because Borushaski did not challenge that ruling on appeal.

IV. Corroboration of Accomplice Testimony

Borushaski next contends the testimony of Sneed and Headen was not sufficiently corroborated to warrant submission to the jury. Our review is for errors of law. *State v. Bugley*, 562 N W 2d 173, 176 (Iowa App. 1999).

The testimony of an accomplice or solicited person cannot serve as the basis of a conviction unless that testimony is corroborated by other evidence tending to connect a defendant to the crime. Iowa R. Crim. P. 20(3). Corroborating evidence can be direct or circumstantial. *Id.* The only requirement is that the evidence support a material part of the testimony *State v. Palmer*, 569 N.W.2d 614, 616 (Iowa App 1997).

A. Corroboration of Sneed's Testimony

Sneed testified Borushaski encouraged and helped him plan her parents' murders. We find the post-crime evidence most compelling in corroborating Sneed's statements. *See id.* (holding events following a crime may provide corroboration).

When questioned by a police officer after the murders, Borushaski did not provide any information to help the officer identify Sneed. In addition, she stated Sneed was only an acquaintance, and she did not know his last name. A defendant's

false and misleading statements to police may be considered corroborating evidence. *See State v. Harris*, 589 N.W.2d 239, 242 (Iowa 1999).

Cindy Bacon testified Rodney gave her a stuffed bear containing four thousand dollars he received following the murders. After Rodney's arrest, Borushaski called Bacon, who told her Rodney gave her money from the sale of dogs. Borushaski subsequently left several messages on Bacon's answering machine, asking where Bacon was, why she was not home, and where Borushaski could be reached Corroborative evidence need not be strong as long as it tends to connect the accused to the crime and supports the accomplice's credibility. *State v. Berney*, 378 N.W.2d 915, 918 (Iowa 1985). We conclude the trial court did not err in denying Borushaski's motion for judgment of acquittal.

B. Corroboration of Headen's Testimony

Headen introduced Sneed to his friend, Rodney. At Borushaski's trial, Headen was treated as an accomplice. Headen testified Borushaski was jealous of her brother and sister. He also testified Rodney stated repeatedly in the presence of Borushaski that it would be nice to have his in-laws dead and have their property. Headen reported her responses were "in compliance." Curtis Garrison corroborated this testimony. According to Garrison, Rodney said in the presence of Borushaski that her parents would die sooner or later. Tracey Garrison and Tim Johnson also confirmed this testimony. We conclude the trial court did not err in denying Borushaski's motion for judgment of acquittal.

V. Jury Instructions

Borushaski argues certain jury instructions prejudiced the jury to such an extent that its verdict was tainted. Our review is for errors of law. *State v. Chang*, 587 N.W.2d 459, 460 (Iowa 1998).

Borushaski first contends the trial court's jury instruction on reasonable doubt had "negative connotations," whereas her proposed model jury instruction placed reasonable doubt in a positive light. The instruction given to the jury states:

> The burden is on the State to prove the Defendant, Jamie Borushaski, guilty beyond a reasonable doubt. A "reasonable doubt" is one that fairly and naturally arises from the evidence in this case or it may arise from a lack of evidence produced by the State and it must be such a doubt as would cause a reasonable, prudent and considerate person to pause and hesitate before acting in the graver and more important affairs of life. But you should not ignore credible evidence to hunt for doubt, and you should not entertain such doubt as is purely imaginary or fanciful or based on groundless conjecture. If, after a careful and impartial consideration of all the evidence, you have a full and abiding conviction of the guilt of the Defendant, then you are satisfied beyond a reasonable doubt; otherwise you are not satisfied beyond a reasonable doubt.

The federal Eighth Circuit Court of Appeals model jury instruction offered by Borushaski states:

> The burden is on the State to prove the defendant guilty beyond a reasonable doubt. A reasonable doubt is one that fairly and naturally arises from the evidence or lack of evidence produced by the State. A reasonable doubt is a doubt based upon reasonable and common sense and not the mere possibility of innocence, the kind that would make a reasonable person hesitate to act in an important matter. Proof beyond a reasonable doubt therefore must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in an important matter. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

The trial court concluded its jury instruction mirrored the model in material respects.

A trial court is not required to choose particular words to articulate the presumption of innocence, as long as it informs the jury not to disregard the presumption. *State v. Lindsey*, 302 N.W.2d 98, 103 (Iowa 1981). The trial court's instruction does so. Accordingly, the court did not err in submitting its own instruction in lieu of the model.

VI. Ineffective Assistance of Counsel

In support of her ineffective assistance of counsel claim, Borushaski asserts her attorneys did not effectively argue their motion in limine. The only error she identifies is her counsel's failure to have the letters excluded. In light of our conclusion that the trial court did not err in admitting the letters, we reject this ground of her ineffective assistance claim. Because Borushaski did not specify any other grounds, we find no need to preserve for postconviction proceedings any portion of her ineffective assistance claim. *See* Iowa R. App. 14(a)(3); *State v. Dunbar*, 515 N.W.2d 12, 15 (Iowa 1994) (noting allegations against attorney too general to preserve for postconviction relief).

We affirm Borushaski's conviction of first degree murder.

AFFIRMED.