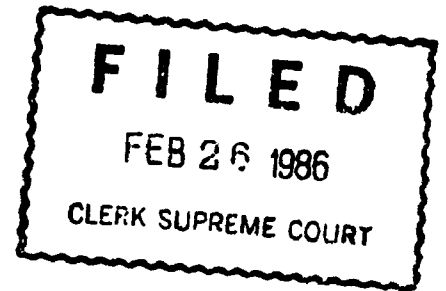


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

JAMES ELVIN DORSEY,)

Defendant-Appellant.)

Filed February 26, 1986

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5-637
85-231

Appeal from the Iowa District Court for Polk County (No. 26425) - Gene L. Needles, Judge.

Defendant appeals from his conviction of first-degree murder in violation of Iowa Code sections 707.1 and 707.2(1) (1985). **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Christie J. Scase, Assistant Attorney General; and Ronald L. Wheeler, Assistant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Snell, JJ.

Defendant, James E. Dorsey, appeals from his conviction of first-degree murder in violation of Iowa Code section 707.1 and 707.2(1) (1985). He asserts that there was insufficient evidence in the record from which a jury could conclude that he killed with premeditation or deliberation. He also asserts that his due process right to a fair trial was violated by the use of metal detectors located outside the courtroom on trial spectators which was viewed by jurors.

Testimony at trial reveals that defendant became intoxicated at a party on the morning of September 3, 1984. Defendant and two others, Todd Hoffer and Bill Lane, left the party and borrowed a 20-gauge shotgun from David Bailey. The trio entered the home of Juanita Weaver, the victim, with the gun and shots were fired. They returned to the party and made comments about a woman being dead.

One witness, Dale Lundstrom, who was in Weaver's home on the morning of the murder, testified that someone yelled "Where is the son of a bitch" and "Yes, you do know." This witness further testified that defendant entered the room Lundstrom was in with a shotgun and demanded that the witness stay in the room. This witness claimed that he then heard a gun fired up to three times.

The son of the victim, Kenny Weaver, testified that prior to the killing he and defendant stole a revolver from Wesley Solomen, the defendant's uncle. Another witness testified that on August 31, defendant threatened to "blow your [Kenny Weaver's] brains out if the gun was not returned." The State's theory was that defendant tried to coerce another person previously to return the revolver through intimidation with a shotgun. Defendant chose the same mode of operation, but in this instance, could not find Kenny Weaver and vented his frustration on Weaver's mother.

The victim was found with a massive shotgun wound in the face and arm. A pathologist testified that the victim's wounds could have been caused by one shot at close range. The pathologist would not rule out the hypothesis that the victim's injuries resulted when she grabbed the shotgun causing an accidental discharge. A criminologist testified that based on the shot cups and waddings found at the scene, at least two shots were fired. Police officers further testified that several shot patterns were found at the scene.

The defendant received death threats before trial, so at the outset of trial, the court informed defendant that a metal detector would be used on spectators coming into the courtroom. The court assured defense counsel that the detectors would not be used in front of the jury. After trial, defendant filed a motion for new trial and/or motion in arrest of judgment alleging, in part, that the use of metal detectors was observed by members of the jury. At the hearing on the motion, the jury foreman testified that jury members observed metal detectors being used on several occasions. The jury foreman added that some jurors expressed concern for their safety. However, the foreman further stated that the use of metal detectors was not discussed during deliberations. The trial court denied defendant's motion.

I.

The law in Iowa is well-settled on challenges regarding sufficiency of the evidence and these principles were succinctly stated as follows:

We view the evidence in the light most favorable to the State; all inferences that are fairly and reasonably deducted from the evidence are accepted; and all the evidence, not just that supporting the verdict is considered. Furthermore, the verdict will be upheld if supported by "substantial" evidence, i.e., evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. State v. Epps, 322 N.W.2d 288, 289 (Iowa 1982); State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

State v. Freie, 335 N.W.2d 169, 171 (Iowa 1983); see also State v. Blair, 347 N.W.2d 416, 419 (Iowa 1984).

To convict an individual of first-degree murder under Iowa Code § 707.2(1) (1985), deliberation and premeditation must be shown beyond a reasonable doubt. These two elements, deliberation and premeditation, cannot be inferred from intent, but:

[M]ay be shown by circumstantial evidence through one or more of the following categories of evidence: "(1) evidence of planning activity of the defendant which was directed toward the killing; (2) evidence of motive which might be inferred from entire relationships between defendant and victim; and (3) evidence regarding the nature of killing."

State v. Wilkens, 346 N.W.2d 16, 20 (Iowa 1984) (citing State v. Freie, 335 N.W.2d at 172); see also State v. Harrington, 284 N.W.2d 244, 247-48 (Iowa 1979).

The defendant contends the record does not indicate any planning activity or motive existed and the State, instead of taking exception to defendant's position, focuses upon the third element of the nature of the killing. In regards to this element, it was determined that: "[T]he use of a deadly weapon, if accompanied by an opportunity to deliberate, even for only a short time, is evidence from which a trier of fact may find malice, deliberation, premeditation and specific intent." State v. Jespersen, 360 N.W.2d 804, 807 (Iowa 1985); see also State v. Blair, 347 N.W.2d at 421; State v. Wilkens, 346 N.W.2d at 16; State v. Mulder, 313 N.W.2d 885, 888 (Iowa 1981); State v. Harrington, 284 N.W.2d at 247.

Even if defendant did not intend to kill the victim when he entered her apartment, sufficient time existed for the defendant to become angry at the victim because she would not inform him of her son's whereabouts. Testimony indicated three shots could have been fired and that only one shot may have killed her. Further the shotgun needed to be reloaded after each discharge.

A reasonable jury could well have determined that defendant, already angry at the victim because she was not being cooperative, confronted her in the bathroom and fired three shots at her, one of which found its mark. Although the time for premeditation and deliberation may have been shorter than that in Freie, we find enough time existed for defendant to deliberate and premeditate, albeit a relatively short time, to murder the victim.

II.

The final issue raised is whether a juror's observance of use of metal detectors on trial spectators violates a defendant's due process right to a fair trial. Due to reported death threats made against defendant before trial, the trial court informed counsel that a hand-held metal detector would be used to screen spectators before they entered the court. This was agreed to before the jury was selected. When the trial concluded, a juror informed defense counsel that the jurors had seen the metal detectors in use. In ruling on the defendant's post-trial motions, the judge found no prejudice resulted from these incidents. The defendant contends the judge basically made an ironclad promise that no jurors would see the metal detector. In reviewing these facts, we cannot find the requisite prejudice.

While this precise issue has not been considered in Iowa, the courts have ruled on the prejudicial effect other security measures utilized in the view of jury members has had on the trial proceedings. See State v. Ellis, 350 N.W.2d 178 (Iowa 1984) (jurors saw defendant manacled outside courtroom); State v. Kile, 313 N.W.2d 558 (Iowa 1981) (defendant seen in chains by jurors); State v. King, 256 N.W.2d 1 (Iowa 1977) (juror saw judge with a revolver in courtroom); State v. Williams, 217 N.W.2d 573 (Iowa 1974) (armed deputy in courtroom).

The general rules regarding security measures are as follows: "Courts are entitled to take reasonably necessary precautions for the maintenance of

order during the progress of the trial and for the detention and custody of the accused." State v. Williams, 217 N.W.2d at 574 (quoting 21 Am. Jur. 2d, Criminal Law § 240 (1981)).

It has further been recognized that:

A trial judge . . . has a problem of balancing fair trial demands with security and safety. No trial is perfect. A judge looking back over a trial is in a better position than we are to say whether a reasonable accommodation of the two interests has been achieved; the judge is thus given considerable discretion in ruling on motions involving issues of this kind.

State v. Ellis, 350 N.W.2d at 183 (quoting State v. Kile, 313 N.W.2d at 562).

Given the precautions along with the realization that no trial judge can absolutely guarantee an error-free proceeding, we do not find any prejudice resulted to defendant. Other courts have held that special security measures witnessed by jurors do not result in prejudice to a defendant. See United States v. Kelly, 551 F.2d 760, 767 (8th Cir. 1977), cert. denied, 433 U.S. 912, 97 S. Ct. 2981, 53 L. Ed. 2d 1097 (1977); United States v. Jackson, 549 F.2d 517 (8th Cir. 1977), cert. denied, 430 U.S. 985, 97 S. Ct. 1682, 52 L. Ed. 2d 379 (1977); State v. Cooper, 660 S.W.2d 184, 186 (Mo. Ct. App. 1984); State v. Davis, 547 S.W.2d 482, 489 (Mo. Ct. App. 1976).

Metal detectors are not per se prejudicial because they are observable almost daily in movies, television, and air travelers personally encounter their use at airports. General security precautions are unfortunately a part of everyday living in a modern society. They do not pinpoint the defendant as a dangerous person as some security precautions do, but rather indicate a more generalized concern.

We cannot find as defendant suggests that a reasonable likelihood existed that the trial was not fair. See State v. King, 256 N.W.2d at 13; Pollard v. District Court of Woodbury County, 200 N.W.2d 519, 521 (Iowa 1972).

AFFIRMED.