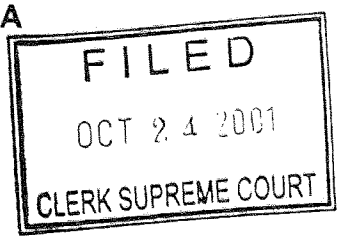
IN THE COURT OF APPEALS OF IOWA

No. 1-440 / 00-1175
Filed October 24, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

CLIFFORD ARNELL GOODEN, III,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire, Judge.

Defendant appeals from the judgment and sentence entered upon his conviction for second-degree robbery. **AFFIRMED.**

Penelope C. Souhrada, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, William E. Davis, County Attorney, and Kelly Cunningham, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

MAHAN, J.

Defendant Clifford Arnell Gooden, III, appeals from the judgment and sentence entered upon his conviction for second-degree robbery following a bench trial. He contends (1) there was not substantial evidence he committed second-degree robbery by committing an assault while aiding and abetting another who had the specific intent to commit a theft, (2) the district court erred in denying his motion for a new trial without providing a reason for the denial, and (3) trial counsel was ineffective in failing to conduct a thorough investigation. We affirm the conviction of second-degree robbery and preserve Gooden's claim of ineffective assistance of counsel for postconviction relief proceedings.

Background Facts and Proceedings. Jerrold Versluys is a resident of East Moline, Illinois and has been on disability with a number of health problems, including alcoholism. In November 1999, he completed an inpatient alcohol treatment program at Genesis West Hospital in Davenport. While in the program, he established a close friendship with Cynthia Ivory. On December 21, 1999, after receiving a disability settlement claim check, Versluys began drinking again and was in the process of relapsing. Because he did not want to completely relapse, Versluys decided to seek the help of Ivory. He decided to look for Ivory at Helen's Tap in Davenport.

Upon arriving at Helen's Tap, Versluys began to inquire about Ivory's whereabouts. A woman known as "Peaches" offered her assistance informing Versluys that Ivory was at Don's Tavern and she would take him there. Before they left, Peaches made a telephone call. Shortly after entering Versluys's

vehicle, Peaches demanded twenty dollars as payment for her help in finding Ivory. Versluys told her he would not give her any money until Ivory was found. When Versluys refused, Peaches attacked him, grabbed the steering wheel and removed his keys. Once the vehicle stopped, Gooden got into the vehicle through the passenger door and began to physically assault Versluys while Peaches was trying to retrieve his billfold and was physically assaulting Versluys through the driver's side door. Versluys was struggling with these two individuals and began honking the vehicle's horn, which attracted the attention of two residents from a nearby apartment building. Gooden and Peaches left the scene and walked in the direction of Helen's Tap. Versluys suffered various injuries as a result of the attack.

The police apprehended Gooden at Helen's Tap shortly after the incident, and the two independent witnesses and Versluys identified him as the assailant. The police also apprehended a woman believed to be Peaches, who the victim was unable to positively identify. However, one of the witnesses, Steve Lamp, was positive the woman apprehended was Peaches, and the police took her into custody. While at the police department, Gooden insisted the woman in custody was not Peaches, so the officers released the woman from custody.[1]

In a trial information filed January 25, 2000, Gooden was charged with second-degree robbery, a class "C" felony, in violation of Iowa Code sections 703.1, 711.1(1)(2), and 711.3 (1999) (Count I); assault while participating in a felony, a class "C" felony, in violation of Iowa Code sections 703.1 and 708.3

[1] Peaches was never apprehended or charged for her participation in this incident.

(Count II); and fourth-degree theft, a serious misdemeanor, in violation of Iowa Code sections 703.1, 714.1(1) and 714.2(4) (Count III).[2] On April 13, 2000, defendant filed a written waiver of jury trial. A bench trial commenced on May 16, 2000, in Scott County District Court. On June 2, 2000, the court found Gooden guilty of second-degree robbery.[3] The defendant filed a motion for a new attorney, motion for recusal, motion to strike the testimony of Versluys, motion for new trial, and motion for judgment of acquittal. The court denied these motions, and sentenced Gooden for a term of incarceration not to exceed ten years. Gooden appeals.

Sufficiency of the Evidence. Gooden contends there was insufficient evidence to convict him of second-degree robbery. We review challenges to the sufficiency of evidence for errors at law. *State v. Button,* 622 N.W.2d 480, 483 (Iowa 2001). In a jury-waived trial, the court is the fact finder. *State v. Sinclair,* 622 N.W.2d 772, 778 (Iowa Ct. App. 2000). "We review a trial court's findings in a jury-waived case as we would a jury verdict: If the verdict is supported by substantial evidence, we will affirm." *Id.* Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.*

In deciding whether there is substantial evidence, we view the record in a light most favorable to the State. *Id.* All evidence is considered, not merely the evidence supporting the verdict. *Id.* Direct and circumstantial evidence are

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[2] Prior to trial, the State dismissed the allegation of fourth-degree theft.

[3] The district court determined the assault charge merged with robbery, and acquitted Gooden of the assault charge.

equally probative. *Id.* A verdict can rest on circumstantial evidence alone. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). The inferences to be drawn from the proof in a criminal case must "raise a fair inference of guilt as to each essential element of the crime." *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992). Evidence is not substantial if it raises only suspicion, speculation or conjecture. *Id.*

Gooden asserts the evidence was so contradictory no rational trier of fact could find him guilty of second-degree robbery beyond a reasonable doubt. We disagree.

When evidence is in conflict, it is the role of the district court, as the finder of fact, to resolve this conflict in light of its own credibility assessments. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998). The district court concluded, and we agree, the testimony of the two independent witnesses, and the police officer who interviewed the victim at the scene, significantly substantiated Versluys's recitation of events surrounding the robbery. In addition, eyewitness Steve Lamp made an unequivocal, positive identification of Gooden both at the scene and in court. Nothing in the record demonstrates a basis on which to disturb this determination. Furthermore, by Gooden's own admission and the testimony of the witnesses, he was present at the scene of the crime, he entered Versluys's vehicle while Peaches was physically attacking and forcibly attempting to retrieve Versluys's billfold, a physical altercation ensued between himself and Versluys from which Versluys suffered various injuries, and he abruptly left the scene with Peaches.

Viewing all the evidence in the light most favorable to the State, we find Gooden's conviction and sentence supported by substantial evidence in the record, and affirm the district court's ruling.[4]

Motion for New Trial. Gooden contends the district court erred in denying his motion for a new trial without providing a reason for the denial. The standard of review for an award or a denial of a motion for new trial is for abuse of discretion. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). In order to show an abuse of discretion, the defendant must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Martinez,* 621 N.W.2d 689, 695 (Iowa Ct. App. 2000).

In ruling on motions for new trial, the district court has broad but not unlimited discretion. Iowa R. App. P. 14(f)(3). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4). The district court must apply the "weight of the evidence" test in its ruling on motions for new trial. *Ellis*, 578 N.W.2d at 659. A verdict is contrary to the weight of the evidence where a greater amount of credible evidence supports one side of an issue or cause than the other. *Id.* at 658.

The district court heard arguments from the attorneys for both the State

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[4] One sentence of Gooden's brief appears to assert a claim-of-right defense. We decline to address this issue because Gooden failed to argue or provide legal support for this claim. *See* Iowa R. App. P. 14(a)(3) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."); *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) (holding a random mention of an issue, without elaboration or supportive authority, is insufficient to raise the issue for our consideration). *See also Luke v. State,* 465 N.W.2d 898, 903 (Iowa Ct. App. 1990). We deem Gooden waived the issue.

and Gooden during a hearing on the motion for new trial. Gooden's written motion for new trial set forth the proper standard of review. In addition, Gooden's counsel commenced his argument on the motion as follows:

> Mr. Triemer: That brings me to the final motion, which is the Motion for New Trial. I think the Court is aware that the Motion for New Trial, the standard of review is a little different than that for a Motion for Judgment of Acquittal, in that it's a much broader weight of the evidence standard. . . .

Gooden does not claim the district court used an improper standard in ruling on the motion. Instead, he argues the district court erred in failing to provide a reason for the denial of the motion. Gooden's motion for new trial was heard along with other post-trial motions just prior to sentencing. The record shows Gooden was belligerent throughout the proceedings. As the district court began to rule on the motion, the following exchange took place:

> The Court: Motion for New Trial is --
> The Defendant: Denied, like you always do. You redneck.
> The Court: -- denied. Any other motions pending?
> Mr. Treimer: No, Your Honor.
> The Court: We'll proceed with the matter of sentencing.

No objection was made to the ruling. In addition, no request was made for the district court to expand on the ruling.

Iowa Rule of Criminal Procedure 23(2)(a) provides the grounds for granting a new trial shall be specified by the court. There is no such requirement for the denial of a motion for new trial. The important issue is whether the record in this case is sufficient for us to determine whether the district court abused its discretion. It is clear from the record the district court used the proper standard of review. We conclude, after a thorough review, the district court properly

exercised its discretion in denying Gooden's motion for new trial. While it would be a better practice to state the reasons for denying the motion, the failure to do so in this case is not fatal. We affirm the district court on this issue.

Ineffective Assistance of Counsel. Gooden claims his trial counsel was ineffective for failing to thoroughly investigate his case. We review such claims de novo. *State v. Ledezma*, 626 N.W.2d 134, 141 (Iowa 2001).

Ordinarily we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Coil,* 264 N.W.2d 293, 296 (Iowa 1978). We will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998). We conclude the record before us does not provide a sufficient basis for determining counsel's effectiveness. We therefore preserve Gooden's ineffective assistance of counsel claim for possible postconviction relief proceedings.

AFFIRMED.