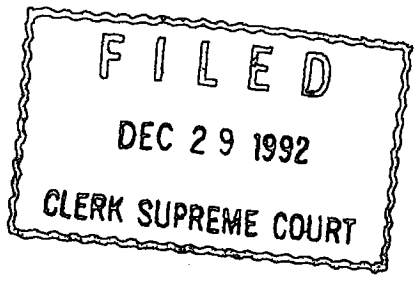
IN THE COURT OF APPEALS OF IOWA

No. 2-470 / 91-1226



STATE OF IOWA,

Appellee,

vs.

JOSEPH NAVIN, JR.,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge.

The defendant appeals his convictions for possession of marijuana with intent to deliver and possession of cocaine. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Elizabeth E. Quinlan, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Robert P. Ewald, Assistant Attorney General; Thomas S. Mullin, County Attorney; and Brian E. Buckmeier, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

HABHAB, J.

In accordance with Supreme Court Rules 9 and 10, we file this as a memorandum opinion.

The State filed a trial information charging the defendant, Joseph Navin, Jr., and his codefendants, Ralph Brown and Mark Foster, with possession of marijuana with intent to deliver and conspiracy to possess marijuana with intent to deliver. The State also charged the defendant with possession of cocaine. The district court consolidated the three charges against the defendant for purposes of trial. The defendant filed a motion to sever seeking separate trials. The district court overruled the motions.

The defendant and Brown were then tried by a jury. Foster was not tried with the defendant and Brown. At the close of the State's evidence, the defendant and Brown made motions for acquittal on all counts. The district court sustained the motion as to the conspiracy charge. The district court overruled the motions on all other counts. The jury found the defendant guilty of possession of marijuana with intent to deliver and possession of cocaine. The defendant appeals alleging the district court abused its discretion when it denied his motion to sever his trial from codefendant Brown's trial. We disagree and affirm the trial court.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the

court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

Generally, defendants who are indicted together should be tried together. Iowa R. Crim. P. 6(1), 10(2)(e); State v. Sauls, 356 N.W.2d 516, 517 (Iowa 1984); State v. Belieu, 288 N.W.2d 895, 897 (Iowa 1980). However, Iowa Rule of Criminal Procedure 6(4)(b) provides:

> When an indictment or information jointly charges two or more defendants, those defendants may be tried jointly if in the discretion of the court a joint trial will not result in prejudice to one or more of the parties. Otherwise, defendants shall be tried separately. When jointly tried, defendants shall be adjudged separately on each count.

Iowa R. Crim. P. 6(4)(b).

Prejudice in the severance context requires the defendant show more than the attempt by one defendant to exculpate himself or herself by incriminating the other defendant. State v. Clark, 464 N.W.2d 861, 864 (Iowa 1991). Severance is mandated only when the defenses "conflict to the point of being irreconcilable and mutually exclusive." State v. Brown, 397 N.W.2d 689, 696 (Iowa 1986)(citing Snodgrass v. Snodgrass, 346 N.W.2d 472, 475 (Iowa 1984)). The defendant argues that because of the desire of Brown to exculpate himself by inculpating him, this constitutes sufficient grounds to require separate trials. In this respect:

> It is well established . . . that the mere presence of conflict, antagonism or hostility among defendants or the desire of one to exculpate himself by inculpating another are insufficient grounds to require separate trials. [citations omitted]

Snodgrass, 346 N.W.2d at 475-76.

We find the district court was clearly within its discretion in overruling the defendant's motion to sever. After considering all issues presented, we affirm the district court.

Costs of this appeal are taxed to the appellant.

AFFIRMED.