IN THE COURT OF APPEALS OF IOWA

No. 7-401 / 96-0758

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STATE OF IOWA,
Appellee,

vs.

RANDY DEAN JONES,
Appellee.

FILED
OCT 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Randy Dean Jones appeals his conviction and sentence, following a jury trial, for first-degree murder. **AFFIRMED.**

Curtis J. Krull of Roehrick, Hulting, Blumberg, Kirlin & Krull, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, John P. Sarcone, County Attorney, and George Karnas, Assistant County Attorney, for appellee.

Heard by Cady, C.J., and Huitink and Streit, JJ.

CADY, C.J.

Randy Dean Jones appeals the judgment and sentence for his conviction of first-degree murder. He argues insufficient evidence was presented to support the jury's guilty verdict and the district court erred in overruling his motion for mistrial. We affirm.

The relevant facts of this case began when Jones, on his way home from a night of drinking at local bars, encountered Christopher Little. After Jones and Little violently argued in Jones' yard, Jones fired a shot from a handgun in order to scare him off of his property. Little left Jones' yard, but Jones pursued him for at least a block before he discharged the handgun into Little's right temple from close range. The next morning, neighbors spotted Little's body in a vacant lot and called police.

Jones claimed he killed Little in self defense after Little threatened to return to his home and kill him. Testimony revealed Little was unarmed. Initially, Jones told police he knew nothing about Little's death. At trial, however, Jones admitted shooting Little after Little lunged at him. Additionally, two witnesses actually observed the murder. One witness testified to seeing Jones put the gun to Little's head and pull the trigger. Another witness observed Jones raise the pistol and fire at Little. Jones later told a witness he had killed Little. Moreover, two of Jones' cellmates testified he boasted to them about killing Little by putting the gun to the back of Little's head before firing.

Prior to trial, the trial court granted Jones' motion in limine requesting all law enforcement officers be prevented from referring to the homicide as an "execution."

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The court determined the term "execution-style" murder was an unnecessary and prejudicial characterization of the event.

Jones testified at trial. On cross-examination, the county attorney asked Jones, "and you caught up to [Little] over by Third and Corning, and you executed him, didn't you?" After Jones denied the accusation, the trial court sustained Jones' motion to strike and instructed the jury to disregard the question and answer. Jones then moved for a mistrial based on the State's violation of the motion in limine. The trial court denied the motion.

The jury found Jones guilty of first-degree murder. The court sentenced him to life imprisonment. On appeal Jones claims insufficient evidence existed to support the jury's guilty verdict. He also claims the trial court erred in overruling his motion for a mistrial due to the prosecutor's comments during cross examination.

I. Sufficiency of Evidence

Our standard of review for claims of insufficient evidence is well established. We review such claims for errors at law. Iowa R. App. P. 4. A verdict of guilty is binding on appeal unless no substantial evidence in the record exists to support it, or it is clearly against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981); *State v. Forsyth*, 547 N.W.2d 833, 834 (Iowa App. 1996). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Schrier*, 300 N.W.2d at 306; *see also State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994); *State v. Geier*, 484 N.W.2d 167, 170-71 (Iowa 1992).

In determining the sufficiency of the evidence, we view the record in a light most favorable to the State. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980); *see also State v. McGrew*, 515 N.W.2d 36, 37 (Iowa 1994); *State v. Zahner*, 545 N.W.2d 337, 339 (Iowa App. 1996). All evidence is considered, not merely the evidence supporting the verdict. *Robinson*, 288 N.W.2d at 340; *see also State v. Walker*, 538 N.W.2d 316, 319 (Iowa App. 1995). We give the State the benefit of all legitimate inferences and presumptions which can fairly and reasonably be deduced from the evidence. *State v. Conyers*, 506 N.W.2d 442, 444 (Iowa 1993). Direct and circumstantial evidence is equally probative. Iowa R. App. P. 14(f)(16). Although a jury verdict can rest on circumstantial evidence, the evidence must raise a fair inference of guilt as to each element of the crimes. *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992). Additionally, discrepancies in testimony do not, in and of themselves, preclude proof beyond a reasonable doubt. *See generally State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992) (jury could adopt evidence it found credible); *Forsyth*, 547 N.W.2d at 836 (jury's function to determine credibility and resolve conflicts in evidence).

Jones contends the inability of the witnesses to corroborate the circumstances of the shooting resulted in a lack of substantial evidence of his guilt. We find, however, substantial evidence from which the jurors could conclude Jones was guilty. It was the jury's function to determine the credibility of the evidence. *State v. Blair*, 347 N.W.2d 416, 420 (Iowa 1984); *Forsyth*, 547 N.W.2d at 836. A jury's assessment of credibility may only be ignored on appeal when the testimony is so impossible,

absurd, and self-contradictory that it may be deemed a nullity. *See State v. Smith*, 508 N.W.2d 101, 103 (Iowa App. 1993).

While testimony of some witnesses differed, the jury could have rationally decided to believe testimony from the two eyewitnesses about the circumstances of the shooting and that Jones fired the shot that killed Little. In addition to Jones' testimony admitting he shot Little, the jury could have also rationally believed Jones' statements to a witness and his cellmates about the manner he shot Little. Although Jones claims he shot Little in self defense, the jury rationally could have chosen to believe the testimony and circumstantial evidence showing Jones did not shoot Little in self defense. Moreover, testimony revealed Jones disposed of the weapon, attempted to obtain a police scanner after the killing, and lied to police about having any information about the crime. Although witness testimony lacked consistency in numerous aspects, the testimony falls short of being so impossible, absurd, and self-contradictory to be deemed a nullity.

II. Mistrial

We review a district court's denial of a request for a mistrial for errors of law. Iowa R. App. P. 4; *see State v. Voelkers*, 547 N.W.2d 625, 631 (Iowa App. 1996). Trial courts have considerable discretion in passing on mistrial motions, and reversal is proper only upon a showing that discretion was abused. *State v. Ware*, 205 N.W.2d 700, 702 (Iowa 1973); *State v. Lawrence*, 559 N.W.2d 292, 294 (Iowa App. 1996). When the trial court responds quickly to objectionable evidence, the defendant bears a heavy burden of demonstrating a clear abuse of discretion on the part of the

trial court. *State v. Keys*, 535 N.W.2d 783, 786 (Iowa App.1995); *Mahoney*, 515 N.W.2d at 51.

We have long recognized the general sufficiency of cautionary instructions except in extreme cases. *State v. Breitbach*, 488 N.W.2d 444, 448 (Iowa 1992); *State v. Belieu*, 288 N.W.2d 895, 901(Iowa 1980). In *Belieu*, we recognized three considerations of significance in determining if the prejudicial impact of inadmissible evidence can be mitigated adequately by a cautionary instruction: (1) the degree to which the defendant is able to protect himself against the prejudicial impact; (2) the extensiveness of the challenged testimony and the promptness with which the court deals with it; and (3) the strength of the state's evidence on the matter, which reduces its prejudicial value. *Belieu*, 288 N.W.2d at 901.

Jones claims the State violated the trial court's ruling on a motion in limine restricting the State's witnesses from referring to the killing as an "execution-style" murder when the county attorney asked Jones if he executed Little during cross examination. He asserts the trial court should have declared a mistrial after the violation occurred, or alternatively, the trial court should have issued an additional cautionary instruction to the jury.

After the county attorney asked Jones if he executed Little, the court promptly sustained Jones' motion to strike and instructed the jury to disregard the question and answer. Additionally, the trial court separately instructed the jury the county attorney's questions were not evidence. *See State v. Martens*, 521 N.W.2d 768, 773 (Iowa App. 1994). Moreover, Jones had an opportunity to deny he executed Little.

See State v. Love, 302 N.W.2d 115, 121 (Iowa 1981) (any error in State's questioning of defense witness was rendered harmless by witness's negative answer). Jones has not met his burden to show the court's response to the testimony was insufficient. Applying the *Belieu* factors, we conclude Jones was adequately protected from any prejudicial effect of the testimony and the district court did not abuse its broad discretion by refusing to grant a mistrial.

We also find the trial court did not abuse its discretion in declining to further instruct the jury about the State's question. The trial court reasonably concluded "to further admonish the jury would only serve to highlight the situation." Further, we find no merit in Jones' claim the trial court should have expressly cited the *Belieu* factors. The record indicates the district court considered the prejudice issues involved with the State's question and we find no abuse of discretion occurred.

AFFIRMED.