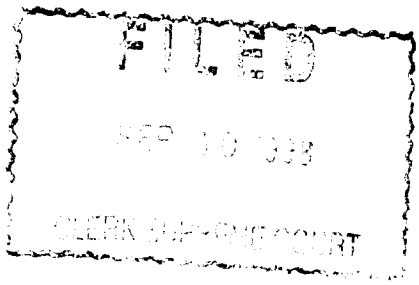
IN THE COURT OF APPEALS OF IOWA

No. 8-327 / 97-0635
Filed September 30, 1998



STATE OF IOWA,
Appellee,

vs.

ROMEO CASINO HARDIN,
Appellant.

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge.

Defendant appeals from the judgment and sentence entered upon his conviction of first-degree murder, in violation of Iowa Code section 707.2 (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, William E. Davis, County Attorney, and Michael Walton, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Huitink and Mahan, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Romeo Casino Hardin was charged by trial information with first-degree murder, wilful injury, and terrorism with intent in connection with the shooting death of Augustus Nance. During his jury trial, several witnesses for the State testified about incriminating pretrial statements made by Hardin. Specifically, there were eight such statements made to five different people, each on separate occasions. The statements were:

(1) "Tell Rick that Rick couldn't get him out of trouble this time."
(2) "Tell Rick that the nine was behind Brian's dad's house up under a white couch."
(3) "Get rid of his pants, shirts, shoes and the gun."
(4) That he had "taken care of business."
(5) "Tell Rick to get the nine from at Billy's house, behind the house up under the white couch."
(6) "Get the shoes and get rid of them because they didn't have the right shoes and also to get rid of the hooded sweatshirt."
(7) "They have me on one murder charge. I'm not afraid to do it again."
(8) "I shot somebody."

Hardin was subsequently convicted on all three counts. The court sentenced him to life imprisonment on the murder charge, and indeterminate ten-year terms on the other counts.

Hardin contends the trial court erred by failing to instruct the jury that corroboration of a confession is required to convict. He argues his various admissions, taken in the aggregate amount to a confession, warranting the

corroboration instruction. In the alternative, Hardin also asserts he was denied his Sixth Amendment right to counsel by his trial counsel's failure to preserve the jury instruction issue for appeal. We affirm Hardin's conviction.

II. Standard of Review.

We review for errors at law. Iowa R. App. P. 4. A trial court's decision on jury instructions will not be disturbed absent an abuse of discretion. *State v. Lawler*, 571 N.W.2d 486, 491 (Iowa 1997). We will not find an abuse of discretion unless such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable *Id.*

III. Preservation of Error.

There is a dispute as to whether Hardin's trial counsel adequately preserved the corroboration issue for appeal. The State argues Hardin's counsel conceded his client's statements were admissions, and that the corroboration instruction is raised for the first time on appeal. We disagree. At trial, Hardin's counsel stated he believed Hardin was entitled to an instruction on corroboration of the testimony. *See* Iowa R. Crim. P. 20(4). He specifically requested "a corroboration instruction re-worded to say that the defendant cannot be convicted by his admissions alone. There must be other evidence the defendant committed the crime." The district court denied the request. We hold the issue is properly preserved. Because the issue was properly preserved for direct appeal, we do not address Hardin's ineffective assistance of counsel claim.

IV. Corroboration Instruction.

We have recognized a distinction between a confession and an admission. *State v. Capper*, 539 N.W.2d 361, 364 (Iowa 1995). "[A] confession comprises the whole criminal charge; whereas an admission relates only to a particular fact or circumstance covered thereby." *State v. Davis*, 212 Iowa 131, 134, 235 N.W. 759, 761 (1931). To constitute a confession the admissions or declarations must amount to an acknowledgment of the guilt of the offense charged. *Capper*, 539 N.W.2d at 364.

The record undoubtedly indicates Hardin made a number of statements which were properly characterized as admissions. It is also equally clear these admissions, at least in part, provided evidence of his guilt for the charged offenses. The question presented on appeal, however, is whether the string of admissions may be viewed in the aggregate as amounting to a confession. We think the answer is no.

"A confession is an acknowledgment in express terms by a party in a criminal case of his guilt of the crime charged." *State v. Schomaker*, 303 N.W.2d 129, 130 (Iowa 1981). The eight admissions at issue here, even when taken together, do not rise to the level of an express admission of Hardin's guilt of any of the three charged offenses.

We note the admissions were made on several different occasions, to several different people. Additionally we note that in the course of making the statement to "get rid of his pants, shirts, shoes and the gun," Hardin specifically stated he was not

responsible for the killing of Augustus Nance. Hardin's statements were nothing more than admissions, each separately linking him to the charged offenses. We find no error in the district court's refusal to instruct on this issue.

AFFIRMED.