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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0084**

State of Minnesota,
Respondent,

vs.

Terry Lynn Olson,
Appellant.

**Filed July 21, 2009
Affirmed
Ross, Judge**

Wright County District Court
File No. K4-05-3795

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Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Harten,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

ROSS, Judge

This appeal arises from Terry Olson's 2007 convictions of second- and third-degree murder for a 1979 homicide. Olson argues that the district court abused its discretion by excepting the chief investigator from its sequestration order and allowing the investigator to sit at the prosecutor's table during the trial, and he contends that the evidence is insufficient to support his murder convictions. Olson also raises several issues in a separately filed *pro se* brief. Because Olson was not prejudiced by the district court's refusal to sequester the investigator and because sufficient evidence supports his convictions, we affirm.

FACTS

In the early morning hours of August 11, 1979, police found the dead body of Jeffrey Hammill on County Road 12 in Wright County. Hammill had been severely beaten. He was on his back with blood-soaked hair marking the beginning of a stream that settled into a large puddle a few feet away. This extensive bleeding resulted from multiple head wounds—a gaping wound on the left rear of his head and a large contusion above his right eye. He had bled from his ears and nose and his right ear lobe was split, leaving part of his ear extended away from his head. An autopsy revealed hemorrhaging in many areas of his brain, multiple abrasions on his scalp, and a fractured skull. The pathologist and county coroner agreed that Hammill died from the traumatic head injuries. The police investigation was inconclusive and the case eventually went cold. It remained that way for a quarter century.

Twenty-six years after Hammill was killed, on November 4, 2005, a grand jury indicted Dale Todd, Ron Michaels, and Terry Olson for Hammill's murder. The indictment contained eight counts, including first-, second-, and third-degree murder. It stemmed from evidence gathered by Chief Deputy Joe Hagerty after he reopened the Hammill case in January 2003. Deputy Hagerty became interested in the case after Hammill's daughter, who was offered for adoption at birth, contacted authorities in Wright County and inquired about her biological father. Deputy Hagerty was inspired to answer the unresolved questions. He began re-interviewing people who were first interviewed in 1979. Agents Dennis Fier and Ken McDonald from the "cold case unit" of the Bureau of Criminal Affairs joined the investigation later in 2003. Deputy Hagerty and the BCA agents reviewed the police files from the 1979 investigation. The files revealed that the 1979 investigators examined the scene but found no weapons, footprints, or other evidence indicating exactly how Hammill was killed.

But the files did indicate that police had used witness interviews to piece together the events leading up to the murder. Hammill had been at a bar in Rockford and rode with Dale Todd and Terry Olson to a party at Olson's sister's house in Montrose. Hammill wanted a ride home to Buffalo, about 10 miles from Montrose, but no one wanted to leave the party. So Hammill left and began walking toward Buffalo on Highway 12. That's where police found the body. The police had interviewed Barto and Jennifer Kilgo, who in the early morning hours of August 11, 1979, had driven on Highway 12 where Hammill was found dead. The Kilgos told the police that they saw four or five men in or around a dark-colored car that appeared to be a Chevrolet Impala, but it was too dark for them to identify any of the men. They did not stop. Because Dale

Todd drove a dark-colored Impala, the police searched Todd's car. But they did not find any evidence linking Todd, Michaels, or Olson to Hammill's killing. Other leads went nowhere.

Then came a breakthrough in September 2003 when agents McDonald and Fier interviewed Dale Todd at the Hutchinson police station. They told Todd that witnesses saw his car on Highway 12 around the time Hammill was killed. They represented that they had evidence of hair and blood from a bat that had been seized from Todd's car when it was searched back in 1979. Todd told the agents that sometime after Hammill left the party, Todd also left the party with Olson and Michaels. He confessed that they drove to Highway 12, where they encountered Hammill. Todd apparently explained that Michaels and Olson got out of the car and argued with Hammill, and then Todd drove Michaels and Olson back to the party at Olson's sister's house.

The investigation continued after the 2005 indictment. After the grand jury had indicted Todd, Michaels, and Olson, Agent Fier and Deputy Hagerty interviewed Todd again. They offered Todd a deal to plead guilty to aiding an offender in exchange for his testimony against Michaels and Olson. Todd agreed.

The trial against Michaels occurred in November 2006. Todd testified at the trial about the events leading up to Hammill's killing. He initially testified that he drove his Impala out to Highway 12 with Olson and Michaels where they encountered Hammill. He said that Michaels and Olson got out of the car and argued with Hammill. He testified that Michaels and Olson opened the trunk of his car, which contained items that might have been used in the murder, such as a crowbar, a baseball bat, and hockey skates. He told the jury that when Olson and Michaels got back in the car, Michaels announced that

Hammill, “wouldn’t need a ride home.” Todd said that he did not see what had happened to Hammill and did not look back as he drove away with Michaels and Olson.

But Todd’s testimony in Michaels’s trial ended with a dramatic, conviction-averting twist. Todd suddenly changed his story and said, “I didn’t do this,” and “We didn’t do this.” When the prosecutor asked Todd why he had told the police that he had been involved in Hammill’s murder, he testified, “I didn’t want to go to jail for something I didn’t do.” On November 11, 2006, the jury acquitted Michaels of all charges.

Olson’s trial began on August 10, 2007, nearly 28 years to the day after Hammill was murdered. Todd testified. He told essentially the same story he told at Michaels’s trial, but without the turnabout finish. His prior recantation nevertheless drew much attention. Olson’s attorneys and the prosecutor asked Todd about his testimony at Michaels’s trial and questioned which version was true. Olson’s attorney asked whether Todd had said that “we didn’t do it” at Michaels’s trial. Todd acknowledged that he had. The prosecutor asked Todd if he had been truthful when he implicated Olson in Hammill’s death. Todd testified that he had.

Damning testimony also came from several inmates who spent time in jail with Olson. The inmates testified that Olson had either confessed to killing Hammill or admitted that he was involved in Hammill’s death. But other inmates testified in Olson’s defense. They said that Olson had always maintained his innocence and had never admitted to killing Hammill. Olson’s attorney informed the jury that federal inmates who testify for the state often get relief from their sentences. He argued that the inmates were

just “federal snitches” who lied, testifying against Olson only to shorten their own sentences.

The jury apparently believed Todd and the state’s inmate–witnesses; they found Olson guilty of second- and third-degree murder.

Because the murder occurred before the sentencing guidelines went into effect, the district court sentenced Olson to an indeterminate prison term of not more than 40 years—the statutory term for second-degree murder in 1979. This appeal follows.

DECISION

Olson argues that the district court committed reversible error by excepting Deputy Hagerty from its sequestration order and by allowing Hagerty to sit at the prosecutor’s table during trial. Olson also argues that his convictions must be reversed because the evidence presented at his trial was insufficient to support his convictions. Olson adds several other issues in a separate *pro se* brief. None of his arguments is convincing.

I

Olson argues that the district court “committed reversible error by excepting [Deputy Hagerty] from its sequestration order and [by] permitting him to sit at counsel table throughout trial.” In criminal cases, sequestration orders should rarely be denied. *State v. Jones*, 347 N.W.2d 796, 802 (Minn. 1984). But the question of sequestration of witnesses “rests in the sound discretion of the trial court, and where there is no showing that failure to sequester witnesses was prejudicial to the accused, the court’s refusal to require it does not in itself constitute reversible error.” *State v. Garden*, 267 Minn. 97, 112, 125 N.W.2d 591, 601 (1963). Because Olson has failed to show that he was

prejudiced by the district court excepting Deputy Hagerty from its sequestration order or by allowing Deputy Hagerty to sit with the prosecutor, reversal is not warranted.

Sequestering the Testifying Investigator

At the request of either party, or by its own motion, a district court “may order witnesses excluded so that they cannot hear the testimony of other witnesses.” Minn. R. Evid. 615. The comment to rule 615 advises “that investigating officers, agents who were involved in the transaction being litigated, or experts essential to advise counsel in the litigation can be essential to the trial process and should not be excluded.” Minn. R. Evid. 615 1989 comm. cmt. The district court specifically cited this comment when it granted Olson’s motion to sequester all witnesses except for Deputy Hagerty and in its order excepting Deputy Hagerty. And because Deputy Hagerty was the first to testify, his testimony could not have been shaped by the other witnesses. *See* Minn. R. Evid. 615 (permitting sequestration of witnesses “so that they cannot hear the testimony of other witnesses”). The district court acted consistent with the rule and its refusal to sequester Deputy Hagerty is not reversible error.

Allowing Investigator to Sit with Prosecutor

Allowing Deputy Hagerty to sit with the prosecutor during the trial also does not constitute reversible error. To show that the district court abused its discretion by allowing the deputy to sit with the prosecutor, Olson must show that he was prejudiced by the decision. *State v. Koskela*, 536 N.W.2d 625, 630–31 (Minn. 1995) (discussing the disapproval of an investigating officer sitting with the prosecutor because of “the opportunity for prejudice to the defendant”); *see also Garden*, 267 Minn. at 112, 125 N.W.2d at 601. Olson argues that he was prejudiced because Deputy Hagerty had

investigated the case and had interviewed many of the witnesses that testified at trial. He contends, therefore, that “[i]t is impossible to say that testimony from these state’s witnesses was not influenced by Hagerty’s presence at the prosecutor’s table.” But the concern about an investigator’s presence at counsel’s table is usually the potentially confusing effect that it may have on the jury. *Koskela*, 536 N.W.2d at 631. And the sort of influence that Olson theorizes would always exist in the very situation that the comment to rule 615 expressly condones. Olson’s argument that he was prejudiced because the witnesses may have been influenced by Deputy Hagerty’s presence also is not supported by the record. Nothing in the record suggests that Deputy Hagerty intimidated witnesses or redirected witness testimony by being in the courtroom.

We hold that the district court did not abuse its discretion by excepting Deputy Hagerty from its sequestration order. And we are not persuaded by Olson’s argument that the deputy’s presence at counsel table prejudiced him.¹

II

Olson contends that the evidence is insufficient to convict him of murder because someone else confessed to committing the murder; no physical evidence connected Olson to the murder; the accomplice testimony of Dale Todd was not corroborated; and the “unverified and conflicting” testimony from convicted felons does not establish proof beyond a reasonable doubt that Olson committed the murder. The insufficient-evidence argument fails. We review a claim of insufficient evidence to determine whether a jury

¹ Within his sequestration argument, Olson directs us to the Confrontation Clause and his unsuccessful objection at trial to the district court’s decision to truncate Olson’s cross-examination of Todd. He fails to perfect his argument establishing a relationship between this evidentiary decision and Deputy Hagerty’s sequestration, and the relationship is not apparent to us.

could reasonably conclude that the defendant is guilty of the charged offenses beyond a reasonable doubt based on the facts in the record and all legitimate inferences that can be drawn in favor of the convictions. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). “This court must assume that the fact-finder believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Johnson*, 756 N.W.2d 883, 893 (Minn. App. 2008).

Olson’s murder convictions were based partially on circumstantial evidence. “[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence.” *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). But circumstantial evidence still carries “the same weight as direct evidence.” *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). A jury is in the best position to balance circumstantial evidence, and its verdict is entitled to deference. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

Assuming, as we must, that the jury believed the state’s witnesses and disbelieved any evidence to the contrary, including circumstantial evidence, there is ample support for the jury’s finding that Olson committed second-degree murder. The district court properly instructed the jury that a guilty verdict of second-degree murder required evidence that proved beyond a reasonable doubt that (1) Jeffrey Hammill died; (2) Olson caused the death; (3) Olson acted with the intent to kill Hammill; and (4) the act occurred in Wright County on or about August 11, 1979. The first and fourth elements are not disputed. The other two find solid support in the record.

The evidence regarding whether Olson caused Hammill’s death and whether he acted with the intent to cause the death includes testimony from the state’s forensic

pathologist explaining Hammill's injuries, testimony from Dale Todd placing Olson at the scene of the murder, and testimony that Olson admitted guilt to several inmates who spent time with him in prison. Considered in the light most favorable to Olson's conviction, the inculpatory evidence easily qualifies the jury's decision as reasonable.

Jurors heard testimony and saw supporting physical evidence that someone intentionally killed Hammill on Highway 12 by striking his head with a blunt, heavy object. The state's forensic pathologist, Dr. Janis Amatuzio, testified that she reviewed Hammill's autopsy documents and the coroner's report that were issued in 1979. She testified that the Wright County coroner noted the cause of Hammill's death as "basilar skull fracture with extensive brain damage." She agreed with the cause of death, but she testified that she disagreed with the coroner's classification of "undetermined" regarding Hammill's "manner of death." She explained to the jury, using photographs taken at Hammill's autopsy, that the injuries on Hammill's head were likely made with a "blunt, heavy object." She also pointed out an abrasion on Hammill's wrist, which she characterized as a "defensive-type injury." She explained how the abrasion was consistent with injuries that would occur when an individual attempts to "ward off a blow" from an oncoming object. She opined that Hammill's injuries were caused by one or two blows to the head, followed by an unsupported fall backward directly onto his skull. In her opinion, Hammill's death could not have been an accident.

Jurors heard from an eyewitness stating expressly or strongly implying that Olson and another man encountered Hammill and confronted him on the highway, that they opened a trunk containing heavy blunt objects, and that they left Hammill lying dead on the road. Dale Todd testified about the events of the night of August 10. He explained

that Hammill joined Olson, Michaels, and Todd at Olson's sister's house for a party after the bars closed. He said that Hammill wanted a ride home to Buffalo, but because no one at the party was leaving, Hammill left alone and began walking toward Buffalo. After Hammill left the party, Todd drove with Olson and Michaels towards Buffalo on Highway 12. He testified that they saw Hammill walking on the road and pulled in front of him. He said that Olson and Michaels got out of the car and argued with Hammill. He remembered that he saw Olson push Hammill. He testified that Olson opened the trunk of the car and that the trunk contained a baseball bat, hockey skates, a broomball stick, and a crowbar. He told jurors that Olson and Michaels were outside the car for five or ten minutes and when they got back in the car, Michaels said that Hammill "wouldn't need a ride home." Todd explained that he turned the car around and drove them all back to the party. He testified that when he drove away from the scene, he did not see Hammill standing on the side of the road. He acknowledged that when he returned to Olson's sister's house he "might have" called 911 and told the police that "there could be a person on the road."

The state directly examined several inmates who had been incarcerated with Olson before his trial. The inmates testified that Olson had admitted either to killing Hammill or being involved in killing Hammill. Donald Myers, who was incarcerated in Sherburne County Jail at the same time as Olson, testified that Olson told him, "Yeah, I may have . . . killed that guy, but he had it coming." Frank Penny, who was also in the jail at the same time as Olson, testified that Olson told him that he was in jail for a murder that occurred in 1979, but that the police "couldn't . . . get him on it then, so they wouldn't be

able to get him on it now.” Penny also testified that Olson admitted that he “did him in,” referring to killing Hammill.

Other prisoners incarcerated with Olson testified that Olson admitted to killing Hammill. Kiron Williams testified that he heard Olson say, “We killed that bastard.” Henry Jones testified that he was watching the television show “CSI: Cold Case Files” with Olson, and Olson told him about a cold case where he “got away with a murder” and that he had “beat the f--k out of a dude.” And David Ehrlich testified that he overheard Olson tell another prisoner that “they will never ever find out that I killed that bastard.”

Olson argues that all of the prisoners’ accounts are incredible because they were testifying in exchange for lighter sentences. But the jury was aware of this credibility challenge. The jury knew the circumstances surrounding the prisoners’ testimony and that although they “had not been promised anything,” they would likely receive a reduced sentence in exchange for their testimony. The jury nonetheless believed the prisoners’ testimony and found Olson guilty. We defer to the jury’s weighing of credibility. *State v. Laine*, 715 N.W.2d 425, 431 (Minn. 2006); *Webb*, 440 N.W.2d at 430.

We are not suggesting that the record contains no exculpatory evidence. But Olson’s specific arguments regarding the sufficiency of the evidence fall to the jury’s decision to determine credibility in favor of conviction. Although Olson introduced testimony that someone else *also* confessed to the Hammill murder, the jury was free to disregard the supposed confession as incredible even if there had been no evidence of Olson’s own confession as echoed by several jail mates. Olson contends that the accomplice testimony of Dale Todd was not corroborated. But it was corroborated, specifically by the prisoners who testified that Olson admitted murdering Hammill. A

conviction does not require physical evidence tying a defendant to the crime. Because we do not second-guess a jury's credibility determinations, and because the evidence introduced at trial shows that the jury's decision was reasonable, Olson's sufficiency-of-the-evidence argument fails.

III

In a supplemental *pro se* brief, Olson raises additional issues. We have reviewed these arguments and conclude that they do not warrant discussion.

We affirm Olson's convictions because (1) the district court did not abuse its discretion by excepting the chief investigator from the sequestration order; (2) assuming, as this court must, that the jury believed the state's witnesses and disbelieved any evidence to the contrary, the jury's guilty verdict was factually supported; and (3) Olson's *pro se* arguments lack substance.

Affirmed.