FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

366

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed April 24, 1984
vs.	)	4-82 / 669487
JEFFREY C. WALLS,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Wapello County - Robert Bates, Judge.

Defendant appeals from his conviction for second-degree murder challenging the sufficiency of the evidence. AFFIRMED.

Thomas J. Miller, Attorney General, and Marcia Mason, Assistant Attorney General, for the plaintiff-appellee.

Charles Harrington, Appellate Defender, and Fern S. Shupeck, Assistant Appellate Defendant, for the defendant-appellant.

Heard by Donielson, P.J., Snell, and Sackett, JJ.

The defendant, Jeffrey Walls, appeals from his conviction for second-degree murder. He contends on appeal that the evidence was insufficient to prove malice aforethought, an element of second-degree murder. He concedes that his conduct, beating to death the infant daughter of the woman with whom he lived, raised an "implication of malice." He contends, however, that the trial court, as finder of fact, erroneously treated this inference as an irrebuttable presumption and failed to consider evidence which allegedly negated the inference.

The only issue properly presented on appeal is whether there was sufficient evidence as could convince a rational trier of fact that Walls acted with malice aforethought.

In reviewing the sufficiency of the evidence in a criminal case, this court views the evidence in a light most favorable to the state. State v. Aldape, 307 N.W. 2d 32, 39 (Iowa 1981). All of the evidence is considered and all legitimate inferences which may be deducted therefrom are accepted. Id. The second-degree murder conviction will withstand Wall's challenge if there is any substantial evidence in the record tending to support the charge. Id. "Substantial evidence" means such evidence as could convince any rational trier of fact that the defendant is guilty beyond a reasonable doubt. State v. Robinson, 288 N.W. 2d 337, 339 (Iowa 1980).

Malice aforethought is "that condition of mind which prompts one to do a wrongful act intentionally, without legal justification or excuse." State v. Love, 302 N.W. 2d 115, 119 (Iowa 1981). It need not exist for any specific period of time; it is sufficient if it exists any time before the killing. Id. As noted above, Walls concedes that the trial court in this case could infer malice from his act of striking the victim, a 13-month-old child, repeatedly about the head, which resulted in her death. See State v. Chatterson, 259 N.W. 2d 766, 769-70 (Iowa 1977).

The autopsy and medical evidence showed that Walls struck the infant on the head at least eight times in his attempt to get the infant to stop crying. These blows were delivered over a period of time and were interrupted by other attempts to handle the situation. When the victim was brought to the emergency room, she was unconscious and could not breathe on her own. There were bruises on her forehead, both temples, both ears, chin, chest, lower abdomen, back and legs. Her brain was swollen and her skull fractured. The brain swelling caused irreversible brain damage which ultimately brought about her death.

The defendant introduced evidence in an attempt to rebut the inference of malice raised under these circumstances.

After reviewing the evidence presented, viewing that evidence in the light most favorable to the state, we find that the evidence is sufficient to convince a rational trier of fact that Wells acted with malice aforethought. Defendant's conviction for second-degree murder is therefore affirmed.

AFFIRMED.