FILED
FEB 23 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	367
vs.	)	
BRYAN KIRBY BARRETT,	)	8-599 87-1325
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Cedar County, on change of venue from Muscatine, (No. 29646), John A. Nahra, Judge.

Defendant appeals his conviction by a jury after his retrial on two counts of first-degree murder. **AFFIRMED BY OPERATION OF LAW.**

Lylea Dodson Critelli of Nick Critelli Associates, P.C., Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General; Ann E. Brenden, Assistant Attorney General; and James W. Ramey, Special Prosecutor, for plaintiff-appellee.

Considered en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1987).

AFFIRMED.

For affirmance: Donielson, Hayden, and Habhab, JJ.

For reversal: Oxberger, C.J., and Schlegel and Sackett, JJ.