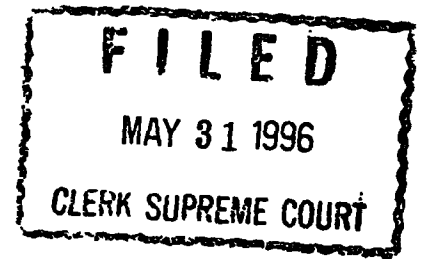


IN THE COURT OF APPEALS OF IOWA

No. 6-230 / 95-0359



STATE OF IOWA,

Appellee,

vs.

RAYMOND LEE THOMAS, JR.,

Appellant.

Appeal from the Iowa District Court for Des Moines County, John C. Miller,
Judge.

Raymond Lee Thomas, Jr. appeals his conviction, following a jury trial, for first-
degree murder **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State
Appellate Defender, for appellant

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney
General, Patrick C. Jackson, County Attorney, and John Jellineck, Assistant County
Attorney, for appellee

Heard by Habhab, P.J., and Cady and Huitink, JJ. Vogel, J., takes no part.

HUITINK, J.

Raymond Lee Thomas, Jr. appeals his conviction, following a jury trial, of first-degree murder in violation of Iowa Code section 707.2(1)(1993). We affirm.

Raymond Thomas was charged with first-degree murder following allegations he fatally shot Christina Martin on a Des Moines County gravel road after the two had spent an evening drinking with friends. Thomas admitted he shot Martin five times in the head but relied on an intoxication defense at trial. Specifically, Thomas claimed that because he was extremely intoxicated at the time of the shooting, he could not formulate the specific intent necessary for a first-degree murder conviction. He presented evidence he was an alcoholic and that he was intoxicated at the time of the shooting. Vernon Varner, a psychiatrist, testified that based on his extensive evaluation of Thomas, his background, and his behavior on the night of the shooting, he could conclude to a reasonable degree of medical certainty Thomas was unable to premeditate and form specific intent to kill.

The State introduced the testimony of psychiatrist Michael Taylor to rebut Varner's testimony. Defense counsel objected to Dr. Taylor's testimony alleging Taylor had failed to prepare a report of his evaluation and give a copy to the defense as ordered by the court. As a result, counsel claimed he was unable to adequately cross-examine Dr. Taylor. The court ordered a break in the proceedings to allow defense counsel to depose Dr. Taylor. Counsel then briefly questioned Dr. Taylor before Taylor

offered his opinion Thomas was capable of forming the intent to kill Christina Martin. Defense counsel asked Dr. Taylor only one question during his subsequent cross-examination.

Thomas was found guilty of first-degree murder and sentenced to life in prison. He now appeals.

Thomas first challenges the sufficiency of the evidence supporting his conviction. Specifically, he claims evidence he was intoxicated at the time of the shooting negates a finding he specifically intended to kill Christina Martin. Our review of this issue is for correction of errors of law. Iowa R. App. P. 4. Where a defendant challenges the sufficiency of the evidence supporting a jury verdict, we will uphold the verdict if there is substantial evidence to support it. *State v. Conyers*, 506 N.W 2d 442, 444 (Iowa 1993). Evidence is substantial or sufficient if it could convince a rational fact finder the defendant is guilty of the crime charged beyond a reasonable doubt *State v. Constable*, 505 N.W 2d 473-479 (Iowa 1993). When considering challenges to the sufficiency of the evidence we examine the evidence in the light most favorable to the State *State v. Robinson*, 288 N.W 2d 337, 340 (Iowa 1980). We consider all of the evidence presented at trial not just the evidence supporting the verdict *Id.*

To support a conviction of first-degree murder, the State must prove the defendant's specific intent to kill *State v. Wilkins*, 346 N.W.2d 16, 20 (Iowa 1984). While voluntary intoxication is not a defense to a crime, it may negate criminal intent.

if such intent is an element of the crime charged. *State v. Caldwell*, 385 N.W.2d 553, 557. The defendant does not have the burden to prove intoxication negated the specific intent to kill. *State v. Templeton*, 258 N.W.2d 380, 383 (Iowa 1977). Although the State retains the burden to prove specific intent, the State need not prove an additional element the defendant was able to form specific intent despite his or her intoxication. *State v. Walker*, 538 N.W.2d 316, 320 (Iowa App. 1995). Instead, the defendant's alleged intoxication is simply evidence for the jury to consider in determining whether the defendant possessed the requisite intent. *Id.*

We find substantial evidence supports the jury's conclusion Thomas specifically intended to kill Christina Martin. At trial, Dr. Michael Taylor testified that based on his review of police reports and transcripts of police interviews with Thomas, Thomas's mother, and a witness to the shooting, he determined Thomas was able to premeditate, deliberate, and form the specific intent to kill Martin. Dr. Taylor stated that according to these records Thomas was able to recall many details about the evening of the shooting such as where he went, who he saw, and who he had spoken to prior to the murder. Dr. Taylor offered his opinion that Thomas suffered from no psychiatric disorder which would interfere with his ability to form the requisite intent to kill and testified there was no indication alcohol impaired Thomas's ability to function so much he would not be able to premeditate and deliberate.

The evidence also showed that although Thomas had consumed a considerable amount of alcohol on the night of the shooting, he was able to walk, speak clearly, and operate a car just prior to the murder. This evidence, along with evidence Thomas shot Martin once, walked away from her, saw her move, and then went back and shot her in the head four more times clearly supports the jury's conclusion Thomas specifically intended to kill. *See Wilkens*, 346 N.W.2d at 20 (when a person intentionally uses a deadly weapon in killing a victim, the jury may infer that he or she had formed the specific intent to kill). We find substantial evidence supports Thomas's first-degree murder conviction.

Thomas next claims he was denied effective assistance of counsel. Specifically, he contends trial counsel was ineffective in failing to depose Dr. Taylor and because of this failure counsel was unable to undergo an effective cross-examination. Because Thomas's claim implicates his constitutional right to effective assistance of counsel, our review is de novo. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980)

Our ultimate concern in claims of ineffective assistance is with the "fundamental fairness of the proceeding whose result is being challenged." *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 696, 104 S.Ct. 2052, 2069, 80 L.Ed.2d 674, 699 (1984)). The burden is on the defendant to prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Risdal*, 404 N.W.2d at 131-32. We may deny

a defendant's ineffective assistance of counsel claim if we find he or she has failed to prove prejudice without deciding whether counsel breached any essential duty. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984). To establish prejudice a defendant must show to a reasonable probability that but for counsel's alleged errors, the resulting conviction and sentence would have been different. *State v. Bumpus*, 459 N.W.2d 619, 627 (Iowa 1990). In evaluating counsel's performance, we presume counsel acted competently. *See Risdal*, 404 N.W.2d at 131.

Thomas's ineffective assistance of counsel claim comes to us on direct appeal. Generally, we will not decide ineffective assistance claims on direct appeal as we prefer to reserve them for postconviction proceedings where counsel has an opportunity to respond. *State v. Taylor*, 310 N.W.2d 174, 179 (Iowa 1981). We depart from this preference if the record is adequate to evaluate appellant's claims. *State v. Schoelerman*, 315 N.W.2d 67, 71 (Iowa 1982). Here, we find the record sufficient to resolve Thomas's claim on direct appeal.

We find Thomas was not prejudiced by counsel's failure to depose Dr. Taylor. Absent Dr. Taylor's testimony, the State would still have been able to show Thomas shot Martin once in the face before returning and shooting her four more times in the head. The evidence also showed Thomas possessed a .38 revolver which he used to shoot Martin, in turn allowing the jury to reasonably conclude Thomas possessed the specific intent to kill. Finally, witness testimony that Thomas was able to speak clearly,

operate a car, and make his way around the Burlington area just prior to the shooting may have allowed the jury to conclude on its own that Thomas's ability to premeditate and deliberate was not negated by his alcohol consumption on the night of the murder. Thomas has not shown to a reasonable probability that but for counsel's allegedly unprofessional errors the trial outcome would have been different. We reject Thomas's ineffective assistance of counsel claim.

We find sufficient evidence supports Thomas's conviction for first-degree murder. We further find Taylor was not denied effective assistance of counsel. We affirm.

AFFIRMED.