FILED
FEB 5 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-appellee,) Filed February 5, 1980
vs.)
TRACY L. PHILIPSON,) 371
Defendant-appellant.) 63485

Appeal from Polk District Court - Harry Perkins, Judge.

Defendant appeals from conviction on two counts of robbery in the first degree, in violation of sections 711.1, 711.2, Supplement to The Code 1977. Affirmed.

Thomas J. Miller, Attorney General of Iowa, Julie Pottorff, Assistant Attorney General, Dan Johnston, Polk County Attorney, and Robert Blink, Assistant Polk County Attorney, for Plaintiff-appellee.

Robert M. Benton, of Rex Darrah Law Office, Des Moines, Iowa for Defendant-appellant.

Heard by Oxberger, C.J., Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

The defendant appeals from conviction on two counts of robbery in the first degree, in violation of sections 711.1, 711.2, Supplement to The Code, 1977. The sole issue raised by her on this appeal is whether her right to a fair trial was denied because the trial court refused to instruct the jury with respect to the defense of diminished responsibility.

The defendant, after giving timely notice of her intent to rely on the defense of diminished responsibility, asked for an instruction similar to Uniform Jury Instruction 209. The substance of such an instruction is that where the State is required to prove a specific intent by defendant, as an element of the offense, defendant's lack of mental capacity to form such intent will defeat such showing. Preliminary to the giving of such an instruction it must have support in the evidence. State v. Jacoby, 260 N.W.2d 828, 836 (Iowa 1977).

Our review of the record shows no evidentiary support for the requested instruction. In the present case, this necessarily had to be evidence that defendant was incapable of forming the intent to commit theft.[1] Such evidence is not supplied by testimony that defendant was dependant upon and subjected to the will of a co-perpetrator of the offense. No nexus between the claimed subjugation and the ability to form the requisite intent was shown. The trial court's judgment is affirmed.

AFFIRMED.

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[1]This was the only element of specific intent presented in the present charge. It is a basic element of robbery under § 711.1. The method of showing degree of robbery under § 711.2 (use of a weapon) did not require a showing of specific intent.