

IN THE COURT OF APPEALS OF IOWA

FILED

DEC 26 1984

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

MARVIN E. LUCAS,)

Defendant-Appellant.)

Filed December 26, 1984

550

4-398
83-701

Appeal from the Iowa District Court for Dallas County - Louis A. Lavorato,
Judge.

Defendant appeals from his conviction for second-degree murder in violation
of Iowa Code section 707.3 and for two counts of attempt to commit murder in
violation of Iowa Code section 707.11. REVERSED AND REMANDED.

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

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

Heard by Snell, P.J., and Schlegel, and Hayden, JJ.

SNELL, P.J.

Defendant, Marvin Lucas, was convicted of one count of second-degree murder and two counts of attempted murder in connection with a shooting in a bar in Dexter, Iowa. There is no dispute that Lucas shot and killed Jim Ludwick and injured Martin Vote and Steve Christiansen. However, Lucas raises the defense of temporary insanity by involuntary intoxication. He claims that his drinks were drugged by the bartender.

Lucas, a native of Louisiana, was traveling through Iowa on his way to Colorado, when he randomly stopped in Dexter. The testimony indicated that up until late summer of 1981, Lucas had led a normal life. He was married, had two children, and enjoyed a stable job as a construction manager. In 1981, Lucas separated from his wife after discovering that she was involved with another man. He continued working, but testified that his job became meaningless. Lucas testified that up until that time he had drunk very little, "maybe 20 drinks in my whole life." Following the separation from his wife, Lucas began to stop at a bar after work and have a drink with some of the people from work. During that winter, Lucas began to drink more and in March or April, he was arrested in Louisiana for operating a motor vehicle while intoxicated. He testified, however, that with the exception of once trying marijuana, he never used drugs.

Lucas testified that by May he had lost total interest in his job. He tried to resign, but said that the company refused to accept his resignation. In May, Lucas decided to leave Baton Rouge. He travelled through Georgia, Illinois, and back down to Florida. He then came back up through North Carolina to Missouri and on up into Iowa. Once in Des Moines, he decided to go to Colorado to visit friends and hopefully find a job. He left Des Moines and stopped in Dexter, about 5 p.m. looking for a restaurant. He stopped at the Dexter Tap and went in to have a beer. He drank two or three beers and played pool with the bartender, Laurie McDowell. Lucas testified that after about the third game, the bar began to get

more crowded and so they stopped playing pool. Lucas returned to the bar and McDowell brought him another beer. While sitting there, a cap came off one of his teeth and fell to the floor. Lucas' testimony from that point is as follows:

I don't know whether I hit it with a glass or whether it just fell out, the glue came loose but it fell out of my mouth and, as I said, I was sitting on the bar stool and I remember trying to find it on the floor and I remember that I couldn't figure out why I couldn't find it because the floor was dark. I don't know whether it's got black carpet on it or the floor is dark or what but I couldn't find that tooth and I recall thinking that the thing couldn't have bounced very far because it's so light.

I remember getting down looking for it, and from that point on I remember two more things. It's like they were later on in the evening but that's where my memory stops.

Q. What were these other two things that you remember, Marvin? A. It's going to be kind of hard to describe. I remember it's kind of like I'm dreaming this. I was squatted down and I was looking on the floor, supposedly I guess I was looking for my tooth, just like I was squatting down looking for something, someone said something to me and I looked up and there was about three people, three or four people there; and I remember the person who said something to me had a red baseball hat on. He said something to me and I said something back to him and then that's all I remember about that. Then the other thing that I remember is I remember a struggle, I remember being held from behind and I remember being hit.

Q. What's the next thing you remember after that? A. I remember being in the hospital the next morning and the nurse talking to me. I assume it was morning because my eyes were swollen shut, but the next thing I remembered was being in the hospital and the nurse coming in talking to me.

Testimony of McDowell, Martin Vote, Steve Christianson, the two people shot by Lucas, and others in the bar indicates that later in the evening Lucas began to act irrationally. Words were exchanged between Ludwick, Vote, Christianson, and Lucas. Lucas left the bar for a short period and returned with a gun tucked in his belt. When he returned Lucas began to look for the cap for his tooth which he had found earlier. He then laid on the floor. After that he got up, approached Ludwick, and shot him in the head. He then shot Christianson and

Vote before being subdued by others in the bar. Lucas was beaten and kicked by two men in the bar. He suffered broken ribs and a broken cheek bone as a result of the beating.

Evidence showed that a few hours after the shootings, defendant's blood alcohol level was at 161 milligrams percent, and that at the time of the shooting his blood alcohol level was extrapolated to have been 230 milligrams percent. No drug screening was performed to test for other substances in the defendant's blood. The defense provided two expert witnesses that gave the opinion that the defendant's mental condition and behavior at the time of the shootings was inconsistent with mere alcohol intoxication. However, one of the witnesses testified that the defendant's ability to talk, walk, drive a car, and to point a gun could simply be related to a high tolerance level for alcohol. The witnesses believed that the defendant ingested other drugs besides alcohol. One of the witnesses stated that at the time of the shootings the defendant did not know what he was doing and was unable to evaluate right and wrong.

There was evidence that the bartender who served the defendant's drinks had pills believed to be caffeine or amphetamines in her purse on the night of the shootings. The purse was kept in a storage area that was not accessible to the public. However, these pills were thrown away at the sheriff's office during interrogation before they could be tested.

The defendant requested and was denied a jury instruction submitting the defense of temporary insanity. The court, in denying the motion, stated that temporary insanity induced by involuntary intoxication was not a complete defense, and stated that there was insufficient evidence on the record to support a jury finding of temporary insanity induced by involuntary intoxication. The jury returned guilty verdicts for one count of second-degree murder and for two counts of attempted murder. The court overruled defendant's motion for new trial and defendant appealed.

The sole issue on appeal is whether the trial court committed reversible error by failing to give a jury instruction on the defense of temporary insanity resulting from involuntary intoxication.

The M'Naghten test for defense of insanity is statutorily defined in Iowa Code section 701.4:

No person shall be convicted of any crime if at the time such crime is committed the person suffers from such a diseased or deranged condition of the mind so as to render the person incapable of knowing the nature and quality of the act he or she is committing or incapable of distinguishing between right and wrong in relation to that act. Insanity need not exist for any specific length of time before or after the commission of the alleged criminal act.

Iowa Code § 701.4 (1983).

This section establishes an absolute defense for any person who meets the insanity test set forth in the statute. State v. Collins, 305 N.W.2d 434, 437 (Iowa 1981). Iowa law clearly states that voluntary intoxication does not give rise to an insanity defense. State v. Booth, 169 N.W.2d 869, 873 (Iowa 1969); see also State v. Hall, 214 N.W.2d 205, 207-08 (Iowa 1974). Although the question of involuntary intoxication as a defense has not been directly raised since the enactment of Iowa Code section 701.4, the Iowa Supreme Court in State v. Wright, 112 Iowa 436, 84 N.W. 541 (1900), did recognize that involuntary intoxication may be a defense to criminal liability if it establishes temporary insanity. Id. at 447-48, 84 N.W. at 544-45. In Wright, the court said:

There was also evidence tending to show that immediately before the shooting the defendant had been given drugged liquor, and the possible effect of this in producing an epileptic explosion was also in the record. If the defendant was at the time temporarily insane, and his mental condition was caused by epilepsy, and if the attack may have been produced by the drug in the liquor given him, it cannot be said that he would be responsible for his act, though there may have been intoxication.

An instruction was asked by the defendant (No. 26) on the question of voluntary intoxication which we think should have been given in connection with the instructions complained of. It is as follows: "(26) You are instructed

that if you find that the defendant, at the time of the alleged shooting, was intoxicated, but that his intoxication had been produced by the artifice or fraud of the deceased or other persons, then, and in such event, it would not be a voluntary intoxication in the eye of the law; and in such event, if you so find, if the intoxication was to such an extent as to absolutely destroy the reason for the time being, so far as his knowledge of his acts is concerned—that is, place the defendant in such a mental condition that he had no knowledge of the nature or character of his acts, or whether right or wrong—then, and in such event, you are instructed that you should acquit the defendant." We think this states correctly the law relating to voluntary intoxication, and that the mention made of the subject by the court in its own charge was not broad and full enough to cover the fact here presented.

Id., 84 N.W. at 544-45.

In view of the court's statements in Wright and of the policy of section 701.4 that a person should not be held culpable if he was insane at the time he committed the criminal act, we find that a showing of temporary insanity by involuntary intoxication is a complete defense in a criminal action.

We also find that there was sufficient evidence of involuntary intoxication to warrant submission of a jury instruction on the defense of temporary insanity resulting from involuntary intoxication. The defendant's memory, or lack of, of the events of that night and his actions compared with the amount of alcohol consumed indicate the possibility that his drink was drugged. One expert witness testified that the type of actions and level of confusion exhibited by Lucas are not usually the result of straight alcohol intoxication. A second expert testified that the high blood alcohol level was inconsistent with the defendant's ability to function that night and stated that the most logical explanation for this inconsistency would be the ingestion of other drugs of a stimulant nature. This testimony compounded with the fact that drugs of that nature were found in the bartender's purse, constitutes sufficient circumstantial evidence of involuntary intoxication to warrant an instruction on that issue.

The trial court erred in not instructing the jury on the issue of temporary

insanity by involuntary intoxication. The conviction is reversed and the case is remanded for new trial.

REVERSED AND REMANDED.