FILED
MAR 24 1981
IOWA SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed March 24, 1981
vs.	)	
JOHN HENRY CLINTON,	)	0-437 64377
Defendant-Appellant.	)	

Appeal from Black Hawk District Court - Frank D. Elwood, Judge.

Defendant appeals conviction for terrorism in violation of section 708.6, The Code 1979, contending that there was sufficient evidence of his diminished responsibility to render him incapable of the requisite specific intent. AFFIRMED.

Alvin R. Davidson, Assistant Public Defender, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

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

DONIELSON, J.

Defendant John Clinton appeals his conviction for terrorism in violation of section 708.6, The Code 1979, contending that there was sufficient evidence of his diminished responsibility to render him incapable of the specific intent necessary to commit the crime. We affirm the conviction.

Our review of this matter is limited to correction of errors at law. Iowa R. App. P. 4.

I.

The terrorism charges against the defendant stemmed from an assault on Melanie Miller in her home on the evening of January 18, 1979. Miller testified that the defendant had assaulted her and had threatened to rape or kill her. Prior to trial, defendant notified the court that he intended to rely on the defense of diminished responsibility by reason of mental illness and intoxication. Following trial to the court without a jury, defendant was convicted and sentenced to a term not to exceed five years.

II.

The sole issue raised by this appeal is whether the defendant presented sufficient evidence of diminished responsibility to create a reasonable doubt as to his ability to form the intent necessary for a conviction under section 708.6, The Code 1979. Having carefully considered all the evidence, we agree with the trial court that the State has met its burden of proving intent beyond a reasonable doubt and that the defendant's evidence of diminished capacity is insufficient to create a reasonable doubt in his favor.

As an element of the crime of terrorism, section 708.6, The Code 1979, requires that a threat to commit a forcible felony be made with the intent to injure or provoke fear in another. Id. (emphasis added). Where specific intent is an element of the crime charged, evidence of diminished responsibility is material and, if sufficient to prevent the defendant from forming the requisite intent, may entitle him to an acquittal. See State v. Templeton , 258 N.W.2d 380, 382-83 (Iowa 1977). Thus, where a defendant interposes a defense of diminished responsibility and that defense is supported by substantial evidence, such evidence is to be considered by the trier of fact in determining whether the State has sustained its burden to prove intent beyond a reasonable doubt. See id.; State v. Gramenz, 256 Iowa 134, 144, 126 N.W.2d 285, 291 (1964). This is not to say that the State must prove as an additional element that the defendant was not

prevented from forming specific intent by reason of diminished responsibility; it merely means that the burden of proving specific intent remains with the State even where the defendant interposes a diminished responsibility defense. See Templeton, 258 N.W.2d at 382-83.

In determining that the State had sustained its burden of proving specific intent beyond a reasonable doubt, the trial court considered defendant's evidence of diminished responsibility by reason of mental illness and intoxication and concluded that the evidence was insufficient to create a reasonable doubt as to defendant's ability to form the requisite intent. We reach the same conclusion.

In reviewing questions of sufficiency of the evidence, all the evidence is to be viewed in the light most favorable to the State, disregarding contradictions or inconsistencies and assisted by all reasonable inferences. State v. Robinson, 288 N.W.2d 337, 338 (1980); State v. Hillsman, 281 N.W.2d 114, 116 (Iowa 1979). Using this standard, defendant's evidence of mental illness at the time of the assault is weak. Essentially, the evidence consists of testimony by a psychiatrist who treated defendant on February 2, 1979, fifteen days after the assault on Melanie Miller, and diagnosed him on that date as suffering from serious manic depression. The psychiatrist also testified that information he had received from the defendant's family and landlord indicated that the illness had begun sometime around the beginning of January (the assault occurred on January 18), but that he was unable and unwilling to speculate as to the extent of the defendant's illness or its effect on him on the date of the assault. This evidence is insufficient to establish with any reasonable certainty that the defendant's illness, if operative on January 18, affected in any degree his ability to form the requisite intent. This conclusion is strengthened by the fact that although the psychiatrist testified the defendant exhibited blatant visible symptoms of manic depression on February 2, none of those symptoms were observed by either Melanie Miller or the arresting officers on the night of the assault. We reach a similar finding with respect to defendant's evidence of diminished responsibility by reason of intoxication. Although the defendant had been drinking that day and two witnesses who saw him earlier in the day characterized him as intoxicated, neither the victim, her brother-in-law, nor the arresting officers, all of whom had the opportunity to observe the defendant at the time of the assault or very shortly thereafter, thought that the defendant was intoxicated or intoxicated to the degree that it affected his ability to

function. We therefore uphold the trial court's ruling with regard to the insufficiency of defendant's diminished responsibility evidence and affirm the conviction.

AFFIRMED.