IN THE COURT OF APPEALS OF IOWA

No. 8-424 / 97-1994

STATE OF IOWA,

Plaintiff-Appellee,

vs.

RICK FAY BIRD,

Defendant-Appellant.

FILED
OCT 29 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Union County, Paul R. Huscher, Judge.

Defendant appeals the judgment and sentence imposed upon his conviction of first-degree murder in violation of Iowa Code sections 707.1, 707.1(1), and 707.2(2) (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Timothy R. Kenyon, County Attorney, and Clinton Spurrier, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

PER CURIAM

This is an appeal by defendant challenging his conviction and sentence for first-degree murder in violation of Iowa Code sections 707.1, 707.1(1), and 707.2(2) (1997). We affirm.

Defendant Rick Fay Bird was charged with the first-degree murder of Linda Trenkle. Defendant admitted he killed Trenkle on February 19, 1997, by hitting her in the head with a drywall hammer at least eight times. However, defendant raised the defenses of intoxication and diminished capacity.

Defendant waived a jury trial and evidence was presented to the district court judge who found him guilty as charged. The court considered the effects of alcohol on defendant's intent, noting defendant had been drinking heavily prior to the killing and his blood alcohol level at 7:45 p.m. on the day of the killing was .221. Nevertheless, the court noted defendant stated in police interviews that he had an intent to injure Trenkle. Moreover, the court concluded it would be hard-pressed to ascribe defendant's action of picking up a drywall hammer, walking across a room, and violently striking at least eight blows to the victim's head to anything other than an intent to kill. The court sentenced defendant to life imprisonment.

Defendant claims the district court erred in finding substantial evidence he had sufficient mental ability to form the mental intent required by murder in the first degree. Under section 707.2(1), the specific intent crime of first-degree murder occurs when a person willfully, deliberately, and with premeditation kills another person. Defendant maintains expert testimony and evidence of his intoxication

raised a reasonable doubt as to his ability to act willfully, deliberately, and with premeditation.

A district court's finding of guilt will be upheld if a rational trier of fact could have found the defendant guilty of the offense charged. *State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997). In determining if there was substantial evidence, the court reviews all of the evidence, not just the evidence supporting a finding of guilt. *Id.*

Voluntary intoxication does not provide an escape from responsibility for the offense. *State v. Booth*, 169 N.W.2d 869, 873 (Iowa 1969). However, evidence of the intoxication may be admissible on issues of a defendant's motive or intent. *State v. Templeton*, 258 N.W.2d 380, 382 (1977). When specific intent is an element of the crime charged, evidence of voluntary intoxication is material and, if sufficient to prevent the defendant from forming the requisite intent, may entitle him to an acquittal. *Id.*

While there may have been some brain impairment at the time of the murder, the evidence does not demonstrate defendant was incapable of forming the requisite mental intent. The record shows defendant was aware of his act and had the cognitive ability to recognize the consequences of his act. We find there was sufficient evidence in the record to support defendant's conviction.

We affirm defendant's conviction. Costs of this appeal are assessed to defendant.

AFFIRMED.