IN THE COURT OF APPEALS OF IOWA

No. 0-692 / 89-1657

FILED
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CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

RICHARD DAVID DOYLE,

Appellant.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Defendant appeals his conviction following a jury trial for second-degree murder. He challenges an instruction defining the "serious provocation " which can reduce a homicide to voluntary manslaughter under Iowa Code section 707.4. **AFFIRMED.**

Linda Del Gallo, Acting State Appellate Defender, and B. John Burns, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Julie Ann Halligan, Assistant Attorney General; James Smith, County Attorney; Nan Horvat and Odell McGhee, Assistant County Attorneys, for appellee.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

HABHAB, J.

Richard Doyle was charged with first-degree murder. A jury found him guilty of the lesser offense of second-degree murder. Doyle has appealed from the resulting conviction.

Doyle challenges an instruction defining the "serious provocation" which can reduce a homicide to voluntary manslaughter under Iowa Code section 707.4. He complains because the instruction defined "serious provocation" as "conduct which would cause a reasonable person to have a sudden, violent and irresistible passion." (Emphasis added.) He challenges the use of the phrase "reasonable person." He argues that instead of using this objective standard, the instruction should have allowed the jury to consider Doyle's unique individual circumstances, especially his limited mental ability, in determining whether Doyle had acted as a result of "serious provocation" within the meaning of section 707.4.

Apparently Doyle was at the victim's home on the evening of the murder. He testified he was in an intoxicated state. Doyle told police the victim, Seay, confronted him about damage Seay contended Doyle had inflicted upon his car. The two became embroiled in an argument. Seay threw an ashtray at Doyle and Doyle pushed Seay onto the floor. Doyle then went into the kitchen, found a knife, and stabbed Seay. Doyle's trial testimony changed only in that he contended when he offered to pay

Seay money for the damage to the car, Seay insisted the debt be repaid with sexual favors. The record shows Doyle has an IQ of 61 and has often been taken advantage of (sexually) by other men. He currently suffers from AIDS.

Doyle contends the reasonable man standard as provided in Iowa Code section 707.4 does not apply to him because he does not react as a reasonable man. Because of his low IQ and the mental problems he faces, the defendant submits the crime should be viewed, not from a reasonable man standard, but rather from the perspective of the individual defendant. The trial court found this modified standard, which considers individual circumstances of the defendant, could not be used to determine whether provocation is sufficient to reduce murder to manslaughter. We agree and accordingly affirm.

Iowa Code section 707.4 (1989) provides:

> A person commits voluntary manslaughter when that person causes the death of another person, under circumstances which would otherwise be murder, if the person causing the death acts solely as the result of sudden, violent, and irresistible passion resulting from a serious provocation sufficient to excite such passion in a person and there is not an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain control and suppress the impulse to kill . . .

The defendant differentiates the interval between the provocation and the killing and the actual provocation. He specifically contends that the reasonable man standard should only be imposed upon the interval between provocation and the act. However, in State v. Inger, 292

N.W.2d 119 (Iowa 1980), the supreme court expressly stated the contrary:

> Section 707.4 requires that both a subjective standard and objective standards be met before a defendant can be convicted of voluntary manslaughter. The subjective requirement of section 707.4 is that the defendant must act solely as a result of sudden, violent, and irresistible passion. The sudden, violent and irresistible passion must result from serious provocation sufficient to excite such passion in a reasonable person. This is an objective requirement. It is also necessary, as a final objective requirement, that there is not an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain his or her control and suppress the impulse to kill.

Id. at 122.

Our supreme court has more recently commented on this same subject, stating:

> Provocation under section 707.4 is that which is "sufficient to excite such passion in a person." While this test does not specifically refer to a "reasonable" person, it is clear that it establishes an objective standard for determining whether provocation exists.

State v. Taylor, 452 N.W.2d 605, 606 (Iowa 1990). As defendant has recognized, by implying the reasonable person standard into section 707.4, the supreme court has followed the majority of jurisdictions.

While we are mindful of the defendant's reasoning and the logic behind it, we also recognize that our supreme court has clearly spoken on this issue. It has found it proper to use the reasonable person standard when Iowa Code section 707.4 is involved. We affirm the trial court's decision refusing to modify the instruction.

AFFIRMED.