IN THE COURT OF APPEALS OF IOWA

No. 1-597 / 90-1508

FILED
JAN 29 1992
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

731

DENNIS JAMES FREDERICKSEN,

Appellant.

Appeal from the Iowa District Court for Clinton County, C. H. Pelton, Judge.

Defendant appeals from his conviction, after jury trial, for first-degree murder. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Thomas S. Tauber, Assistant Attorney General; Lawrence Schultz, County Attorney; and Bruce Ingham, Assistant County Attorney, for appellee.

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

HABHAB, J.

Dennis Fredericksen was convicted after a jury trial of first-degree murder for the death of his wife. Fredericksen allegedly shot his wife with a rifle as she attempted to flee from the couple's residence. He allegedly shot her a second time at close range in the head as she lay on the ground outside the home.

Fredericksen plead an insanity defense at trial. He is a Vietnam veteran. He claims to have flashbacks to specific combat scenes. He alleges the flashbacks increased prior to the killing. He says he had a flashback as he chased his wife out of the house, loaded gun in hand. He claims to have been in a flashback when his wife was killed and does not remember doing the specific act of shooting her.

During the State's cross-examination of Fredericksen, he indicated that he had not hit or threatened his former wife in a previous marriage. In the State's rebuttal, Fredericksen's former wife testified physical abuse had occurred in their marriage. The abuse had occurred at least eighteen years prior to the shooting.

Fredericksen contends allowing this testimony was error, in violation of the rule against character evidence. Iowa R. Evid. 404(a). He also contends it was improper impeachment and rebuttal. Fredericksen further alleges there was insufficient evidence to convict him of first-degree murder.

Our review is for errors of law. Iowa R. App. P. 4.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

The evidence against Fredericksen is substantial. He had previously threatened to kill his wife if she left him. His doctor had earlier warned him to get rid of his gun due to his violent outbursts and problems. On this occasion, when his wife stated she was leaving him, he went into the closet for his rifle. There was no bullet in the firing chamber, so he chambered a round. As his wife fled,

he ran after her. After his wife was shot the first time, she was shot in the head at point-blank range as she lay on the ground.

Much of the evidence, including that supplied by Fredericksen's own witnesses, tended to show that Fredericksen was a jealous, possessive husband who knew exactly what he was doing. Even without the objected-to testimony, the jury could have found he killed his wife with conscious deliberation and intent.

Further, there is evidence which is inconsistent with Fredericksen's claim. Fredericksen's own witness, a psychiatrist, Dr. Varner, testified that Fredericksen's memory of seeing Dee lying hurt on the sidewalk was "problematic." Dr. Varner testified that it would be "very atypical" for a person to recall what had actually happened around him during the time the person was experiencing a flashback. Dr. Varner was not familiar with any patient who had such an experience. Dr. Fredrickson, another psychiatrist, testified that in his professional opinion Fredericksen knew what he was doing, understood the nature of his criminal act, was able to tell right from wrong, and was not unable to know the nature and quality of his acts.

In addition, Fredericksen's behavior in calling 911, in giving himself up to police officers, and in confessing the murder to the dispatcher and then to the officers, all show that Fredericksen consciously knew that he had committed a wrongful act. Fredericksen performed some of these actions

before he went outside to meet the officers, and thus before he could have known what had happened outside, if his story about the flashback were true.

Finally, Fredericksen's lack of memory about the crime is not necessarily evidence that he was experiencing a flashback. The supreme court and our court have considered cases where a defendant experiences a lapse of memory concerning his attack on his victim and has been unable to recall feeling angry. See, e.g., State v. Lass, 228 N.W.2d 758, 762 (Iowa 1975); State v. Plowman, 386 N.W.2d 546, 547 (Iowa App. 1986); State v. Gaddy, 310 N.W.2d 530, 530 (Iowa App. 1981).

We determine there is substantial evidence to support Fredericksen's conviction for the first-degree murder of his wife. In light of the overwhelming evidence of his guilt, we determine Fredericksen was not prejudiced by error, if it was error, in allowing the rebuttal testimony of Fredericksen's former wife.

We affirm.

AFFIRMED.