IN THE COURT OF APPEALS OF IOWA

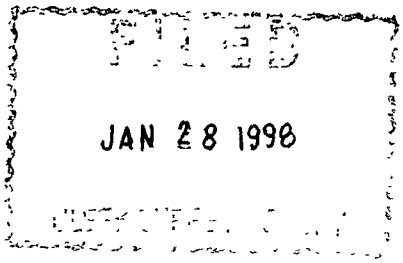
No. 7-698 / 97-500

000469

STATE OF IOWA,
Appellee,

vs.

JASON S. SCHEFFERT,
Appellant.



Appeal from the Iowa District Court for Marshall County, Carl E. Peterson, Judge.

On appeal from a judgment and sentence for the crime of murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2 (1995), the defendant, Jason Scheffert, contends the district court erred by overruling his motion for judgment of acquittal on the grounds that the State failed to prove the element of premeditation. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, James J. De Taeye, County Attorney, and Linda Myers, Assistant County Attorney.

Heard by Cady, C.J., and Sackett and Vogel, JJ.

VOGEL, J.

On appeal from a judgment and sentence for the crime of murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2 (1995), the defendant, Jason Scheffert, contends the district court erred by overruling his motion for judgment of acquittal on the grounds that the State failed to prove the element of premeditation.

Background facts. Twenty-three-year old Scheffert was charged with the murder of eighteen-year-old David Nimmo, whom he shot to death on October 13, 1996, in a cemetery near Marshalltown. Scheffert and Nimmo were target shooting with Scheffert's new rifle. Apparently they were good friends with no trace of enmity between them. However, Scheffert shot Nimmo repeatedly in the back—an autopsy revealed up to seventeen entrance wounds—at increasingly closer distances, with the final shot fired at point blank range into the base of Nimmo's skull.

Scope of review. We review a denial of a motion for judgment of acquittal based on the alleged insufficiency of the evidence on a "substantial evidence" standard. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981). We consider the evidence in the light most favorable to the State. *State v. LaPointe*, 418 N.W.2d 49, 51 (Iowa 1988). Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981).

Premeditation. Scheffert argues the State failed to prove beyond a reasonable doubt that the killing was premeditated, an essential element of "premeditated" first-degree murder. He contends that his dreams of harming people were never directed at anyone in particular and that they do not constitute evidence that he acted on a plan to kill his friend or had a motive to do so. He maintains that any contrary conclusions are mere speculation. He argues that the needlessly excessive number of shots fired is inconsistent with a finding that he had a rational plan to murder Nimmo, but suggests either a maddened frenzy, or a cold, dissociate state of mind. He also emphasizes that his drinking, drugs, sleep deprivation, and nightmares, his confession to the police, and the absence of any attempts to hide or destroy evidence tend to negate a finding of premeditation.

The essential elements of premeditated first-degree murder are premeditation and deliberation. Iowa Code sections 707.1 and 707.2(1) (1995) define first-degree murder:

> 707.1. A person who kills another person with malice aforethought either express or implied commits murder.
>
> 707.2. A person commits murder in the first degree when the person commits murder under any of the following circumstances:
> 1. The person willfully, deliberately, and with premeditation kills another person.

Our supreme court in *State v. Fryer*, 226 N.W.2d 36, 41 (Iowa 1975) defined deliberation and premeditation:

> To deliberate is to weigh in one's mind or to consider. To premeditate is to think or ponder upon a matter before action. Premeditation and deliberation may not be presumed. It may not be inferred from intent. However premeditation and deliberation need not exist for any particular length of time. In finding premeditation and deliberation the trier of facts may consider the fact a defendant has selected a deadly weapon, such as the gun involved here, with an opportunity to deliberate where he thereafter uses it in a deadly manner.

Id. (citations omitted).

The State is required to prove these elements beyond a reasonable doubt. *State v. Williams*, 285 N.W.2d 248, 268 (Iowa 1979), *cert. denied,* 446 U.S. 921, 100 S. Ct. 1859, 64 L. Ed. 2d 277 (1980). Premeditation may be demonstrated by circumstantial evidence in any one of three ways: (1) by evidence defendant planned the activity which was directed toward killing the victim; (2) by evidence of motive which might be inferred from prior relationships between defendant and the victim; and (3) by evidence regarding the nature of the killing. *State v. Khouri*, 503 N.W.2d 393, 395 (Iowa 1993).

Planning and Scheffert's admissions. Scheffert bought a gun just two days before the killing. Scheffert then invited Nimmo to go along with him to the cemetery where he shot Nimmo. The morning following the shooting, Scheffert went to the Marshalltown police department and reported the incident. After waiving his rights, he spoke first with a deputy, and later with a DCI agent about the previous night. He initially indicated remembering only a vision of standing over Nimmo's body and not knowing whether it was real or a dream. Later he gave a somewhat more detailed

account of the shooting. He also stated that he had been "wanting to kill someone for a long time," grappled with these feelings, and wondered what it would feel like. Scheffert stated to Agent Quinn that "it didn't feel like I thought it would." The defendant indicated that he knew what he was doing was wrong, though he admitted to smoking marijuana and drinking large amounts of alcohol over the weekend.

Nature of killing. Our appellate courts have held that multiple wounds are evidence of premeditation. *See Khouri*, 503 N.W.2d at 394; *Blair*, 347 N.W.2d at 421; *State v. Hamilton*, 309 N.W.2d 471, 480 (Iowa 1981), *rev'd on other grounds*; *State v. Origer*, 418 N.W.2d 368, 370 (Iowa App. 1987). In this case, Scheffert shot Nimmo seventeen times from behind, using his rifle that had the capacity to make only fifteen shots. This indicates Scheffert would have had to reload his gun during the killing. Scheffert, therefore, was accorded time before, during, and after the act of reloading the gun to premeditate and deliberate bringing about Nimmo's death. "The use of a deadly weapon accompanied by an opportunity to deliberate is evidence of malice, deliberation, premeditation and intent to kill." *State v. Blair*, 347 N.W.2d 416, 421 (Iowa 1984). Furthermore, the State's evidence established Scheffert moved closer to Nimmo as he was shooting him.

Schefferts' purchase of a gun, desire to kill, use of a deadly weapon, accompanied by the opportunity to deliberate, is substantial evidence of premeditation and intent to kill.

The foregoing reasons confirm that substantial evidence was presented for the jury to find, beyond a reasonable doubt, the element of premeditation. We accordingly affirm the district's courts denial of Scheffert's motion for judgment of acquittal and uphold Scheffert's convictions.

AFFIRMED.