IN THE COURT OF APPEALS OF IOWA

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No. 0-28 / 89-417

STATE OF IOWA,

Appellee,

vs.

PERRY SCOTT BAKER,

Appellant.

FILED
MAR 27 1990
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan and Alan L. Pearson, Judges.

The defendant appeals from his convictions, following a jury trial, for first-degree murder and first-degree robbery. **AFFIRMED.**

Dirk J. Hamel and E. David Wright of Norman, Gilloon & Wright, Dubuque, for appellant.

Thomas J. Miller, Attorney General; Richard J. Bennett, Assistant Attorney General; Fred McCaw, County Attorney; and Ralph Potter, Assistant County Attorney; for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

PER CURIAM

The defendant, Perry Scott Baker, appeals from his convictions, following a jury trial, for first-degree murder and first-degree robbery. He challenges the sufficiency of the evidence to support each conviction. He also contends the district court should have suppressed his inculpatory statements to investigating officers. Finally, Baker challenges an evidentiary ruling and asserts a failure to preserve this issue was the result of ineffective assistance of trial counsel. We affirm.

Baker asserts substantial evidence does not exist to support the jury's verdict of first degree robbery. We disagree.

Our standard of review to a challenge of the sufficiency of evidence is clear. The verdict is binding on the reviewing court if there is substantial evidence to support it, and substantial evidence exists if it could convince a rational trier of fact a defendant is guilty beyond a reasonable doubt. State v. Mulder, 313 N.W.2d 885, 888 (Iowa 1981).

Baker told the police he murdered the victim in order to rob her of money he had seen earlier in her purse. The jury could have reasonably found Baker's immediate use of the money was consistent with the crime of murder with the intent of robbing the victim and wasn't merely an afterthought. The weight of the evidence and credibility

of witnesses are primarily to be determined by the factfinder. State v. Allen, 348 N.W.2d 243, 237 (Iowa 1984). The record reveals there was substantial evidence sufficient to convince a rational trier of fact Baker was guilty of robbery.

Baker contends the evidence was also insufficient to support the first degree murder conviction. Because we find the evidence sufficient to uphold the first degree robbery conviction, there is sufficient evidence to support a felony-murder conviction premised on participation in a robbery.

Defendant asks this court to find the State has failed to meet its burden of proof concerning the voluntariness of Baker's waiver of his Miranda rights and subsequent statements to the police.

Although a reviewing court applies a de novo standard of review when considering a constitutional claim, the district court's findings are due great weight. See State v. Hatter, 342 N.W.2d 851, 854 (Iowa 1983); State v. Williams, 182 N.W.2d 396, 401 (Iowa 1970). Our de novo review leads us to conclude the State has shown by a preponderance of the evidence defendant's waiver of his constitutional rights and the statements he made were properly obtained.

Baker raises as error two issues dealing with exclusion of evidence of the victim's alleged past experience as a

prostitute and alleged participation in sexual bondage. He argues this evidence was relevant to show the victim could have died accidentally from the use of the shoelace. He further argues trial counsel was ineffective for failure to preserve the claim constitutional rights were denied by exclusion of this evidence.

A trial court's decision on the admissibility of evidence is within its discretion, subject to reversal only when that discretion has been abused. State v. Chadwick, 328 N.W.2d 913, 917 (Iowa 1973). We find no abuse of discretion in excluding the evidence.

AFFIRMED.