

IN THE COURT OF APPEALS OF IOWA

No. 9-580 / 08-0887
Filed October 7, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KAINE ALEXANDER DYE,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

Kaine Dye appeals from his conviction for first-degree murder.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Jon Jacobmeier, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Potterfield, J. and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

POTTERFIELD, J.**I. Background Facts and Proceedings**

Kaine Dye and William Moser lived next to each other in an apartment building in Council Bluffs. Jodi Craghead lived in an apartment above Moser's apartment in the same building. Around noon on January 26, 2007, Craghead and Dye bought twenty dollars worth of methamphetamine, which they consumed in Dye's apartment.¹ Craghead then returned to her own apartment.

Around 6:00 p.m. that night, Craghead heard a loud noise. Shortly afterward, Dye came up to Craghead's apartment and asked to borrow her cell phone. Craghead loaned Dye her phone, which he took down to his apartment. Approximately thirty minutes later, Craghead went to Dye's apartment to retrieve her phone. Dye invited Craghead into his apartment. In the middle of Dye's living room Craghead noticed blood on the floor next to a large green garbage can. Craghead asked Dye several times if he had done something bad, and Dye finally responded by saying that he had done a bad thing. Craghead asked Dye if the bad thing was in the garbage can, and Dye responded "yes." Craghead then opened the garbage can and saw legs and feet. Thinking it may be a practical joke, she touched the feet and determined there was a human body in the garbage can.

Craghead testified that Dye told her he had to kill Moser because Moser caught him stealing money from his wallet and was going to call the police. Craghead told Dye he had a mess to clean up and that God would forgive him.

¹ Craghead testified at trial that the methamphetamine had been mixed with non-drugs and was of such low quality that it did not get her high.

Dye responded that he was going to load the garbage can containing Moser's body into Moser's yellow pickup truck and take it to Moser's daughter to ask for her forgiveness. Craghead left shortly thereafter and called the police.

Dye then went to the apartment of Swann Thomas, who lived nearby. He asked her to help him load the garbage can into Moser's truck. She helped Dye load the garbage can, which she testified she thought contained only clothes.

Dye then asked Thomas to ride around town with him, and she agreed. At one point during their drive, the lid to the garbage can blew open. Dye pulled into a parking lot and secured the lid of the garbage can shut with an object similar to a broom handle. Thomas testified that during the drive, Dye was quoting biblical scriptures and babbling about the devil and Tupac Shakur, claiming Tupac was his brother.² After driving around town, Thomas asked Dye to take her home. Two maintenance men who were in the building when Dye returned driving Moser's truck testified that Dye dropped Thomas off then left the area quickly and that they suspected he left when he saw there was a light on in his apartment.

After hearing Craghead's information, officers went first to Moser's apartment. They discovered that his door had been forced open and his deadbolt was missing. There was also blood on Moser's door. Officers next went to Dye's apartment, where they found a large amount of blood spattered throughout the apartment. A rag soaked with blood sat on the coffee table next to a bottle of cleaning solution. A pile of clothes and a towel covered a pool of blood near a closet in the living room. Another towel covered a pool of blood in the kitchen. A bat covered in blood was leaning up against the wall in the

² Tupac Shakur is a rap artist who was killed in 1996.

hallway. The blood on the bat was smeared, as though someone had tried to clean it. There was also blood on the walls and doors of Dye's apartment.

Around 9:00 p.m., Harrison County deputy sheriff Jeff Killpack received a dispatch about a reckless driver in a yellow truck. Killpack pulled in behind a truck traveling between fifty-five and sixty miles per hour with a garbage can in the back. The truck later was identified as Moser's. Killpack activated his lights, but the driver did not stop. The truck's speed suddenly increased to around one hundred miles per hour. The driver then turned onto a gravel road that led to a farm field and drove across the field, which was covered with six to eight inches of snow. Killpack was unable to keep up with the truck on the rough terrain and lost sight of it. Deputies searched the area, but could not locate the truck or the driver.

The same night, Dye arrived at the rural home of his mother and stepfather. Dye was driving a yellow truck and asked his stepfather to help him. The truck's car alarm had been activated, so Dye's stepfather asked Dye to leave, believing he had stolen the truck. Dye pulled the garbage can out of the truck, but Dye's stepfather insisted that he leave. Dye became angry that his stepfather would not help him, reloaded the garbage can, and left the house. Officers later found a shoe, two unmatched gloves, an eyeglass case, and a long, green, aluminum handle near the location where Dye had parked Moser's truck at his mother and stepfather's house.

Around 7:30 a.m. the next morning, January 27, 2007, Dye knocked on the door of Robert Brownback, who lived roughly three miles from Dye's mother. Dye asked to use Brownback's phone. Brownback let Dye use his phone and

offered to give him a ride to a convenience store in Missouri Valley. On the way to the car, Dye told Brownback that he was afraid because the police were after him and he did not want to go to jail. During the car ride, Dye made several phone calls, including calls to his mother and on-again, off-again girlfriend, during which he lied about where he was. He told Brownback that he did not want to go to jail for the rest of his life and that he had been up all night praying to Saint Christopher. Brownback testified he had a normal conversation with Dye in the car, though Dye seemed to be thinking carefully about his responses to Brownback's questions.

Brownback dropped Dye off at a convenience store, where Dye's mother later picked him up. She convinced Dye to turn himself in and took him to Council Bluffs. Council Bluffs police detective Ray Robinson interviewed Dye, but Dye was uncooperative and insisted he had not been home in days and did not know what happened to Moser. During the interview Dye also expressed disgust with Moser, claiming he was a pedophile. After the interview concluded, Dye commented to police detective Craig Schuetze, "I'm up a shit creek, ain't I?"

Later that day, officers found Moser's truck in the corner of a field next to a timberline located a good distance from the road. Near the truck, officers found a large green garbage can containing, among other things, Moser's blood-stained clothing, a deadbolt, and a blood-stained rope. Moser's nude body was found roughly twenty yards past the truck on the ground in the timbered area. Officers also found Dye's wallet in the center console of Moser's truck. In March or April of 2007, two hunters found Moser's wallet and two loose fifty dollar bills on the ground in the area.

An autopsy performed on Moser's body revealed death was caused by blunt force trauma to the head and strangulation. Moser sustained a good deal of bruising and trauma to his head and torso. There were strangulation marks around Moser's neck. There was a shoe impression on the side of Moser's face that was consistent with the shoes Dye was wearing at the time he turned himself in. There was also a large laceration on the top portion of Moser's head that was consistent with being struck by a baseball bat.

On February 12, 2007, the State filed a trial information charging Dye with first-degree murder. Dye filed notices of defense stating his intent to rely on the defenses of intoxication, insanity, and/or diminished responsibility. Initially, the court found Dye not competent to stand trial, and he was transported to the Iowa Medical and Classification Center for treatment and restoration of competency.

Trial was delayed until March of 2008. After a seven-day jury trial, the jury found Dye guilty of first-degree murder. Dye appeals, challenging the sufficiency of the evidence. Specifically, he argues the district court erred in denying his motions for judgment of acquittal and finding sufficient evidence to support the jury's findings that he had not proved his defense of insanity and that the State had proved that he possessed the mental ability to act willfully, deliberately, premeditatedly, and with specific intent.

II. Standard of Review

We review challenges to the sufficiency of the evidence for errors at law. *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005). We uphold the jury's verdict if substantial evidence supports it. *Id.* Evidence is substantial when it could convince a rational trier of fact that the defendant is guilty beyond a reasonable

doubt. *Id.* We consider all evidence in the record, including any legitimate inferences that may reasonably be drawn from the evidence. *Id.* When the State bears the burden of proof, we view the evidence in the light most favorable to the State. *Id.*

III. Sufficiency of the Evidence

In order to support a conviction of first-degree murder, the State had to prove beyond a reasonable doubt that: (1) Dye struck or strangled Moser; (2) Moser died as a result; (3) Dye acted with malice aforethought; and (4) Dye acted willfully, deliberately, premeditatedly, and with a specific intent to kill Moser. See Iowa Code §§ 707.1, 707.2(1) (2007). Dye argues the evidence of his mental condition is sufficient to support his defense of insanity and that the State's evidence is insufficient to support a finding that Dye had the mental capacity to act willfully, deliberately, premeditatedly, and with a specific intent to kill Moser.

The insanity defense is codified at Iowa Code section 701.4 and provides,

A person shall not be convicted of a crime if at the time the crime is committed the person suffers from such a diseased or deranged condition of the mind as to render the person incapable of knowing the nature and quality of the act the person is committing or incapable of distinguishing between right and wrong in relation to that act. Insanity need not exist for any specific length of time before or after the commission of the alleged criminal act.

The law presumes Dye is sane until he proves otherwise by a preponderance of the evidence. See Iowa Code section 701.4; *State v. Arthur*, 160 N.W.2d 470, 473 (Iowa 1968). The words "right" and "wrong" in section 701.4 refer to legal right and wrong, not moral right and wrong. *State v. Hamann*, 285 N.W.2d 180, 183 (Iowa 1979). Dye bears the burden of proving by a

preponderance of the evidence that he met the legal definition for insanity at the time of the murder.

Dye's diminished responsibility defense permits proof that Dye did not have the capacity to form a specific intent or to act willfully, deliberately, and premeditatedly. *State v. Gramenz*, 256 Iowa 134, 139, 126 N.W.2d 285, 288 (1964). Unlike the insanity defense, the defendant does not bear the burden of proving the defense of diminished responsibility. *State v. Stewart*, 445 N.W.2d 418, 422 (Iowa Ct. App. 1989). Instead, the jury considers evidence of diminished responsibility in deciding whether the State met its burden of proving specific intent. *Id.* "Intent is rarely capable of direct proof and must usually be shown by circumstantial evidence." *State v. Delay*, 320 N.W.2d 831, 835 (Iowa 1982).

A review of all of the evidence presented by the State and by Dye on the issue of Dye's sanity at the time of the crime supports the jury's finding that Dye failed to prove by a preponderance of the evidence that either: (1) he was incapable of knowing the nature and quality of the act he was committing; or (2) he was incapable of distinguishing right from wrong. There is substantial evidence to show that Dye understood the nature and quality of his acts and that they were legally wrong.

Further, the State met its burden of proving Dye acted willfully, deliberately, premeditatedly, and with a specific intent to kill Moser. "[T]he use of a deadly weapon . . . when accompanied by an opportunity to deliberate . . . supports an inference of deliberation and premeditation." *State v. Reeves*, 636 N.W.2d 22, 25 (Iowa 2001). A weapon is "deadly" if it is used in a manner likely

to cause death. *State v. Mart*, 237 Iowa 181, 187, 20 N.W.2d 63, 66 (1946). Dye used a baseball bat in a deadly manner and had the opportunity to deliberate when he decided to kill Moser because Moser caught him stealing from his wallet and was going to turn him in to police.

Other evidence revealed Dye's mental state immediately following the murder of Moser. Dye's statements to Craghead about the murder suggest that he understood the nature and quality of his actions and knew they were wrong. Dye told Craghead that he did "a bad thing" the night of the murder and that the bad thing was in the green garbage can. He also told Craghead he planned to take Moser's body to Moser's daughter to ask for forgiveness, indicating he knew his actions were wrongful. Dye's statements to Craghead about motive reveal his recognition that he had killed Moser after he was caught stealing, not because he was seeking atonement for Elvis's sins, as he later claimed. See *State v. Venzke*, 576 N.W.2d 382, 385 (Iowa Ct. App. 1997) (finding evidence that defendant correctly stated he had killed the mother of his children rather than announcing he had killed the anti-Christ was "particularly telling" and belied his defense that at the time of the murder he was suffering from an insane delusion and believed his wife was the anti-Christ).

Although Dye's conversation with Swann may have been genuinely delusional, this conversation did not involve the murder and occurred after his logical and rational statements to Craghead. The evidence suggests that, while Dye may have suffered from a mental illness, there were, at a minimum, periods of time during which Dye's mental illnesses did not impair his ability to think

rationally. We are concerned with Dye's sanity only at the time the murder was committed. See Iowa Code § 701.4.

Dye's actions support the jury's finding that he did not meet the legal definition of insane and was of sufficient mental capacity to form the required intent. Dye attempted to hide evidence of the murder, demonstrating he knew his actions were illegal and would get him in trouble. There was cleaning solution and a bloody rag on his coffee table, suggesting he had attempted to clean up the murder scene. Blood on the baseball bat was smeared as if someone had tried to clean it. Towels and clothing covered several pools of blood, in a likely attempt to hide them. Dye transported Moser's body in a garbage can so that it was hidden and made sure the lid was secured so that nobody would see inside. Dye hot-wired Moser's truck, understanding the garbage can would not fit in his small car. Dye's efforts to elude the police suggest he knew his actions would result in legal trouble. He left Moser's truck far from the road in a field near a timberline and left Moser's body farther in the timber. During Dye's interview with Robinson the morning after the crime, when Robinson stated Moser's body had been found in his truck, Dye appeared surprised and said, "His body was found where?" This suggests Dye was aware that he had not left Moser's body in his truck.

Dye expressed a rational recognition that the police were looking for him and that he was facing prosecution and punishment. After killing Moser, Dye went to his mother's house and asked his stepfather for help, presumably in hiding the body that he removed from Moser's truck. Further, Dye told Brownback that he was afraid because the police were after him and he did not

want to go to jail for the rest of his life, indicating he understood the nature and quality of his acts. After his interview, Dye asked Schuetze, "I'm up a shit creek, ain't I?" All of these statements indicate Dye understood the nature and quality of his actions and that they were legally wrong.

Dye presented compelling testimony regarding his history of mental illness, including testimony from friends, family, and medical providers. Dr. Bruce Gutnik evaluated Dye in March of 2007 to determine his competency to stand trial and again in February of 2008 to determine Dye's sanity or insanity at the time of Moser's death. In his report dated March 7, 2007, Gutnik diagnosed Dye with psychotic disorder not otherwise specified. Gutnik stated that in his opinion, Dye was not competent to stand trial at that time.

The following year, Gutnik wrote a report dated February 27, 2008, regarding his evaluation of Dye's state of mind at the time of the murder. Gutnik stated that based on his conversations with Dye alone, he was not able to determine whether Dye was sane or insane at the time of Moser's death. However, Gutnik obtained additional information from Charles Fagan, Dye's previous defense attorney in the present case. Fagan informed Gutnik that when he was representing Dye, Dye told Fagan that God wanted him to undo the harm caused by Elvis's pedophilia by joining a crusade to kill pedophiles. Based on this additional information provided by Fagan, Gutnik concluded that Dye was not sane at the time of Moser's death. Gutnik testified at trial that Dye "had an impaired ability to make decisions," had "diminished responsibility certainly at the time of the alleged crime," and "certainly was not sane at the time of the alleged crime."

However, “[a] jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive.” *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). “The fact finder is not obliged to accept expert testimony, even if it is uncontradicted, although testimony should not be arbitrarily and capriciously rejected.” *Waddell v. Peet’s Feeds, Inc.*, 266 N.W.2d 29, 32 (Iowa 1978). The State spent a great deal of time discrediting Gutnik on cross-examination. The jury’s rejection of Gutnik’s testimony was neither arbitrary nor capricious. In weighing all of the evidence, the jury was free to give as much or as little weight as it saw fit to Gutnik’s opinion.

Dr. Craig Seamands, a psychiatrist who treated Dye in May of 2006 and later performed a forensic psychiatric evaluation in April of 2007, also testified at trial. Seamands diagnosed Dye with psychosis not otherwise specified. Seamands noted that Dye was “attempting to manipulate the situation by refusing to adequately answer questions and probably exaggerating his symptoms,” but believed that Dye had underlying symptoms. Seamands also found it was not possible to assess Dye’s mental state at the time of Moser’s death because Dye refused “to discuss any aspects of that time frame.”

The State presented significant evidence that supported its suggestion that Dye was intentionally exaggerating his mental condition in order to gain favorable legal benefits. A review of phone calls made from jail revealed that Dye spoke with his girlfriend and informed her he was going to make up reports of hearing voices “just so people would leave me alone and I could beat charges.” The record also contains several statements from Dye indicating he

knew he would receive more favorable treatment in prison if he was on suicide watch. During his interview with Robinson, when Robinson suggested Dye may be exaggerating his mental illness, Dye insisted he was “crazy,” explaining, “I’ve said off the wall shit.” This statement suggests that Dye understood he was making unusual statements. While both sides admitted it was probable that Dye did indeed suffer from mental illnesses, the existence of a mental illness alone does not prove the defense of insanity nor does it negate other evidence of premeditation, deliberation, and specific intent. The jury could have believed that Dye suffered from a mental illness and still found he was not legally insane, nor was he incapable of forming specific intent or acting deliberately, willfully, and premeditatedly.

Dye’s defense evidence was not sufficient to prove his insanity defense. The State’s evidence demonstrated to the jury that Dye possessed the mental ability at the time of the murder to know the difference between right and wrong, to appreciate the nature and quality of his acts, and to act with premeditation, deliberation, willfulness, and specific intent.

AFFIRMED.