IN THE COURT OF APPEALS OF IOWA

No. 0-081 / 09-0372
Filed May 12, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LAWRENCE DOUGLAS HARRIS, SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge.

A defendant appeals his conviction and sentences for two counts of first-degree murder, contending (1) there was insufficient evidence to support the jury's finding of guilt and (2) the verdict was against the weight of the evidence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Patrick Jennings, County Attorney, and Mark Campbell and Terry Ganzel, Assistant County Attorneys, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

Lawrence Harris was charged with two counts of first-degree murder in connection with the strangulation of his step-daughters. A jury found him guilty as charged. On appeal, Harris contends (1) there was insufficient evidence to support the jury's finding of guilt and (2) the verdict was against the weight of the evidence.

I. Challenge to the Sufficiency of the Evidence

Harris maintains that he should not have been found guilty because the evidence established he was either insane at the time of the killings or operating with diminished responsibility. The State counters that Harris did not preserve error, noting that he "failed to specifically challenge the sufficiency of the evidence to prove the required *mens rea* for first-degree murder or to assert that the insanity defense had been proven as a matter of law." We agree with the State.

We begin with the insanity defense. The jury was instructed that the State would have to prove malice aforethought. Insanity, if proven, would negate that element. *Anfinson v. State*, 758 N.W.2d 496, 503 (Iowa 2008). Harris had the burden to prove insanity. *See* Iowa Code § 701.4 (2007). In his motion for judgment of acquittal, he needed to assert that insanity had been established as a matter of law (or, possibly, that malice aforethought did not exist as a matter of law) if he wished to preserve the issue for subsequent appellate review.

He did not do so, either at the close of the State's case or at the close of all the evidence. While he raised the issue in his post-trial motion for arrest of judgment, "[a] motion in arrest of judgment may not be used to challenge the

sufficiency of evidence." *State v. Dallen*, 452 N.W.2d 398, 399 (Iowa 1990). For that reason, we decline to address Ryan's first challenge to the sufficiency of the evidence.

We turn to the diminished responsibility defense. "In Iowa, proof of diminished mental capacity, or diminished responsibility, is admissible on the issue of the defendant's ability to form a *specific* intent, where such intent is an element of the crime charged." *Veverka v. Cash*, 318 N.W.2d 447, 449 (Iowa 1982), *see also State v. Gramenz*, 256 Iowa 134, 140, 126 N.W.2d 285, 289 (1964). First-degree murder is a specific intent crime. *See State v. Jespersen*, 360 N.W.2d 804, 807 (Iowa 1985). The burden "is on the State to prove defendant was able to and did form the specific intent required." *State v. Stewart*, 445 N.W.2d 418, 422 (Iowa Ct. App. 1989).

Harris did not challenge the State's evidence on the specific intent element. This was fatal to his present argument that the doctrine of diminished responsibility negated specific intent. *See State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004); *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996).[1] Accordingly, we decline to address Ryan's challenge to this element of the State's case.

Ryan did not alternately raise his challenge to the sufficiency of the evidence under an ineffective-assistance-of-counsel rubric, which is a vehicle we have used to address unpreserved matters. *See Truesdell*, 679 N.W.2d at 615–16. Accordingly, we will not reach the merits.

[1] At oral arguments, appellate counsel appeared to acquiesce in the State's argument that error was not preserved.

II. Challenge Based on Weight of the Evidence

Harris also contends the district court should not have overruled his new trial motion based on his argument that the verdict was against the weight of the evidence. Specifically, he maintains "[t]he defense presented compelling evidence of [his] insanity and diminished responsibility."

"The 'weight of the evidence' refers to 'a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other.'" *State v. Ellis*, 578 N.W.2d 655, 658 (Iowa 1998) (quoting *Tibbs v. Florida*, 457 U.S. 31, 37–38, 102 S. Ct. 2211, 2216, 72 L. Ed. 2d 652, 658 (1982)). A district court is to invoke the power to grant a new trial under this standard "only in exceptional cases in which the evidence preponderates heavily against the verdict." *Id.* at 659 (quoting 3 Charles A. Wright, *Federal Practice and Procedure* § 553, at 245–48 (2d ed. 1982)).

> [W]hen the evidence is nearly balanced, or is such that different minds would naturally and fairly come to different conclusions thereon, [the district court judge] has no right to disturb the findings of the jury, although his own judgment might incline him the other way. In other words, the finding of the jury is to be upheld by him as against any mere doubts of its correctness.

State v. Reeves, 670 N.W.2d 199, 203 (Iowa 2003) (quoting *State v. Oasheim*, 353 N.W.2d 291, 294 (N.D.1984)). Our review "is limited to a review of the exercise of discretion by the trial court, not of the underlying question of whether the verdict is against the weight of the evidence." *Id.*

Witnesses for the State testified that Harris called 911 and reported a fire in his house. Police officers, firefighters, and paramedics arrived at the scene shortly thereafter. Harris was outside the house with his son and was relatively

calm. He told the responders that his two step-daughters were upstairs and they were dead. Rescuers retrieved the girls' bodies. One of the girls was completely naked and had a belt wrapped tightly around her neck. The other girl was partially undressed and had a long, gaping wound on her arm. It was determined that the girls did not die from smoke inhalation, but from asphyxiation consistent with strangulation. It was additionally determined that the fire was not an accident.

Harris was taken to the police station for an interview. A detective noticed blood caked on the beds of his fingernails. Later testing confirmed that the blood came from one of his step-daughters. This girl's blood was also found on Harris's chest and on a knife found in the bedroom closet. The other girl's blood was found on Harris's shoe.

A witness recounted Harris's interest in serial killers and his statement that he was intelligent enough to fool psychiatrists into believing that he was insane. Expert Tracy Gunter, who was called by the State to opine on Harris's mental state at the time of the killings, conceded that Harris had a history of mental illness, but concluded that he had "the ability to know the nature and extent of his behavior." She cited his appropriate interactions throughout the day of the killings and his statement that he began experiencing changes in his mental state only after the incidents. Dr. Gunter also stated that Harris had the ability to form intent. She acknowledged Harris's statements that he subscribed to Satanism, as well as his statements that the killings occurred when a spell he was trying to cast reversed itself. She noted, however, that Harris made efforts to conceal his behavior, which indicated "knowledge of wrongfulness."

The defense presented expert testimony that conflicted with the opinions of Dr. Gunter. Dr. Angela Hegarty testified that Harris "was suffering from the severe effects of a severe mental illness that interfered substantially with his capacity to know and appreciate the nature and consequences of his actions and that they were wrong." Dr. John Meyers testified that results of tests he performed indicated that Harris was not lying. Dr. Harold Bursztajn testified that Harris "did not know the difference between right and wrong and could not appreciate the wrongfulness of the conduct which resulted in these two girls being so monstrously and horribly killed." Both Dr. Hegarty and Dr. Bursztajn asked Harris to reenact the spell he claimed to have been performing when the fire started. Dr. Hegarty noticed "the emergence of dissociative symptoms, and some paranoia, some psychotic symptoms." Similarly, Dr. Bursztajn testified,

> Mr. Harris, when it came to step five of the spell, became awestruck. He froze. He became terrified. He lost touch with the reality around him. His pupils first dilated then constricted. He began to sweat. He began to tremble.

In sum, the record contains conflicting evidence on Harris's mental state at the time of the killings. The district court implicitly found the testimony of the defense witnesses less credible than that of the State's witnesses. Although the court's ruling was summary in nature, we cannot conclude this implicit credibility finding and the court's resulting denial of Harris's new trial motion amounted to an abuse of discretion.

We affirm Harris's judgment and sentences for two counts of first-degree murder.

AFFIRMED.