

IN THE COURT OF APPEALS OF IOWA

No. 2-163 / 10-1734
Filed March 28, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER MICHAEL PHIPPS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant appeals his conviction for first-degree murder challenging the sufficiency and weight of the evidence, and the jury instruction on diminished responsibility. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, John P. Sarcone, County Attorney, and Susan Cox, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Defendant, Christopher Michael Phipps, appeals from his conviction for murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2¹ (2009). He alleges the evidence was insufficient to prove he was capable of forming the specific intent required. He also claims he was denied the effective assistance of counsel when counsel failed to file a motion for a new trial based on the weight of the evidence, and failed to challenge the jury instruction on diminished responsibility. For the reasons stated below, we affirm.

I. BACKGROUND AND PROCEEDINGS.

From the evidence produced at trial, the jury could have found the following facts. Phipps and his girlfriend, Melissa Dean, had a volatile relationship. On September 17, 2009, Dean planned to leave Phipps, and was dropped off by friends at the trailer she shared with Phipps at approximately 5:30 p.m. Dean intended to collect some of her belongings, and then travel to Ohio. This was the last time anyone saw Dean alive.

The next morning at approximately 5:10 a.m., Phipps called 911 from a payphone in a store parking lot. Phipps informed the dispatcher he accidentally killed his girlfriend by beating her up. Police arrived and found Dean's body in the back of Phipps's pickup truck covered by a sheet, an area rug, and used tires. An autopsy revealed Dean died as a result of manual strangulation, and also suffered multiple blunt force traumas to the face, head, chest, and ribs. A

¹ The State initially charged Phipps with both premeditated murder under section 707.2(1) and felony murder under section 707.2(2). Later, the State amended the trial information dropping the felony murder charge, and the case proceeded to trial on premeditated murder under section 707.2(1) only.

search of the trailer revealed blood splatter in the living room on the walls, ceiling, and furniture. From the blood splatter evidence, the State's identification technician was able to conclude Dean was struck both while standing and also while on the floor. Dean also had a non-fatal stab wound to the neck.

The State charged Phipps with first-degree murder on October 29, 2009. Phipps gave notice of his intent to rely on the defenses of diminished responsibility, intoxication, and self-defense. The case came on for trial on August 9, 2010, and the jury found Phipps guilty as charged. Phipps was sentenced to life in prison on September 30, 2010. He now appeals.

II. SCOPE OF REVIEW.

We review sufficiency-of-the-evidence challenges for correction of errors at law. *State v. Turner*, 630 N.W.2d 601, 610 (Iowa 2001). Ineffective-assistance-of-counsel claims are reviewed de novo. *Everett v. State*, 789 N.W.2d 151, 155 (Iowa 2010).

III. SUFFICIENCY OF THE EVIDENCE.

Phipps claims he produced at trial substantial and credible evidence regarding his inability to "willfully, deliberately, and with premeditation" kill Dean. He maintains no rational jury, when faced with the evidence, could have found beyond a reasonable doubt he was capable of forming the specific intent required for murder in the first degree.

We will uphold a jury verdict if it is supported by substantial evidence. *State v. Isaac*, 756 N.W.2d 817, 819 (Iowa 2008). Evidence is substantial if, when viewed in the light most favorable to the State, it would convince a rational trier of fact of the defendant's guilt beyond a reasonable doubt. *State v.*

Jorgensen, 758 N.W.2d 830, 834 (Iowa 2008). We consider all evidence, but we leave credibility assessments to the jury, as they are free to accept, reject, and weigh the evidence as they see fit. *State v. Maring*, 619 N.W.2d 393, 395 (Iowa 2000).

We find there was sufficient evidence from which the jury could conclude Phipps committed the murder with the requisite specific intent. Michael Taylor, M.D., psychiatrist for the State, testified based on his interview with Phipps and his review of various reports and depositions, Phipps was fully capable of forming the specific intent to kill Dean. Dr. Taylor testified the amount of alcohol and drugs consumed by Phipps the day of the murder would have been of insufficient quantity to have had a “significant impact on his mental state” or “interfered with his ability to form specific intent.” He also found no evidence that the symptoms of Phipps’s major depressive disorder were “impacting his behavior on this particular night.” Finally, Dr. Taylor found, based on what Phipps told him occurred, nothing was influencing Phipps’s behavior except Phipps’s claimed fear of Dean.

Phipps maintains Dr. Taylor’s testimony was not credible and was “so impossible, absurd, and self-contradictory” that we should deem it a nullity. See *State v. Mitchell*, 568 N.W.2d 493, 503 (Iowa 1997). He attacks Dr. Taylor’s opinions based on the fact Dr. Taylor did not personally review Phipps’s medical records; did not take notice of Phipps’s claimed auditory hallucinations; and did not give adequate weight to the amount of alcohol and drugs ingested by Phipps that day.

First, with respect to the medical records review, Dr. Taylor testified he relied on the records synopsis prepared by Phipps's mental health expert, William Logan, M.D. Dr. Taylor stated he has been involved in a number of cases with Dr. Logan, and has found Dr. Logan to be an "accurate reporter of what the medical records contain." Dr. Taylor simply did not see a need to waste time and money doing a second records review when he knew he could rely on Dr. Logan.

Next, Phipps claims Dr. Taylor did not adequately address the impact of the auditory hallucinations on Phipps's ability to form the requisite specific intent. Dr. Taylor testified he knew Phipps had received psychiatric treatment for a number of years, and suffered from a major depressive disorder, but there was no evidence the symptoms of Phipps's disorder were in any way impacting Phipps's behavior on this particular night. Dr. Logan testified Phipps told him very clearly at least twice that "the hallucinations didn't have anything to do with his attack or hitting Miss Dean." Dr. Logan then concluded the hallucinations "didn't have anything to do with what he did to Melissa Dean." Based on the fact both Phipps and Dr. Logan concluded the hallucinations did not have an impact on Phipps's behavior that night, we find nothing impossible, absurd, or self-contradictory with Dr. Taylor not addressing the hallucinations in his opinion.

Finally, Phipps faults Dr. Taylor's opinion for minimizing the effect of the alcohol and drugs Phipps ingested that day. Dr. Taylor, in his interview with Phipps, asked Phipps to estimate the amount of alcohol and street drugs he consumed in the two weeks prior to the incident. Dr. Taylor testified Phipps reported he and Dean smoked marijuana together approximately three times a

week, used methamphetamine only a few times because it made him nervous, and consumed alcohol approximately every other day. When asked to recall the details of the day, Phipps failed to tell Dr. Taylor he smoked marijuana the morning of the incident. Phipps told Dr. Taylor he smoked only a small amount of methamphetamine, and reported purchasing a pint of Black Velvet liquor. Phipps was able to detail the occurrences of the day including the altercation he had with Dean in great detail to Dr. Taylor. All this led Dr. Taylor to conclude to a reasonable degree of medical certainty that neither alcohol nor drugs interfered with his ability to form specific intent. We find nothing absurd, impossible, or self-contradictory in his conclusion.

As we do not find any of these complaints against Dr. Taylor's opinions made his testimony absurd, impossible, or self-contradictory, we do not conclude Dr. Taylor's testimony forced the jury to render a verdict on a mere guess. *Id.* The jury was free to accept or reject Dr. Taylor's testimony, along with the testimony of Dr. Logan who testified he believed Phipps was not capable of forming the specific intent required.² *Maring*, 619 N.W.2d at 395. The jury clearly carried out their function in sorting out the conflicting psychiatric

² Phipps does not dispute that the jury was charged with sorting through the conflicting psychiatric testimony to decide whether he had the requisite specific intent. Dr. Logan, in opining that Phipps was not capable of forming the specific intent, cautioned that his conclusion, "is predicated on the fact that one would have to assume that [Phipps's] version of events about how that death occurred are true." Those facts include that Dean sliced her own neck, then tried to attack Phipps with a steak knife. Phipps defended himself by "smacking her back" with a phone book; "punched her in the face a couple of times"; and "gave her two body shots to the body and that doubled her over." He laid her down on the floor and then applied pressure to her neck using a dish rag to stem the flow of blood from her neck wound. He claimed she did not struggle, but simply closed her eyes. He thought she had simply passed out, so he then put a pillow under her head, covered her up, and laid down beside her, falling asleep. When he awoke, "she was really cold."

testimony. *State v Jacobs*, 607 N.W.2d 679, 685 (Iowa 2000). We conclude there was sufficient evidence to support the finding Phipps had the specific intent required to sustain his conviction of murder in the first degree.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL.

Next, Phipps claims his trial counsel was ineffective for failing to challenge the weight of the evidence with a motion for a new trial, and by failing to challenge the jury instruction on diminished responsibility. In order to prove his ineffective-assistance-of-counsel claim, Phipps must prove counsel (1) failed to perform an essential duty and (2) prejudice resulted. *State v. Vance*, 790 N.W.2d 775, 785 (Iowa 2010). If either element is lacking, the claim will fail. *Anfinson v. State*, 758 N.W.2d 496, 499 (Iowa 2008). We presume counsel rendered competent representation and Phipps bears the burden to prove otherwise. *Millam v. State*, 745 N.W.2d 719, 721 (Iowa 2008). To establish prejudice, Phipps must demonstrate “there is a reasonable probability that, but for the counsel’s unprofessional errors, the result of the proceeding would have been different.” *Anfinson*, 758 N.W.2d at 499.

A. Weight of the Evidence. Phipps claims the weight of the evidence shows he did not have the specific intent required to support his conviction. Therefore, he believes the district court would have granted him a new trial if his attorney had filed the necessary post-trial motion. A motion for a new trial based on the weight of the evidence will be granted if the district court determines the verdict is contrary to the weight of the evidence, and a miscarriage of justice has occurred. *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008). “The weight-of-the-evidence analysis is broader than the sufficiency-of-the-evidence analysis in

that ‘it involves questions of credibility and refers to a determination that more credible evidence supports one side than the other.’” *Id.* (citing *State v. Nitcher*, 720 N.W.2d 547, 559 (Iowa 2006)). A district court should overturn a jury’s verdict only in extraordinary cases where the evidence preponderates heavily against the verdict. *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006).

We do not find this to be one of those extraordinary cases where the jury verdict should be overturned. From our review of the evidence, we find a greater weight of the evidence supports the jury’s verdict, and as a result, there is no reasonable probability the district court would have granted a motion for a new trial if Phipps’s attorney had filed it. As Phipps cannot establish he was prejudiced by any breach of his trial counsel’s duty, his ineffective-assistance claim must fail on this ground.

B. Jury Instruction. Finally, Phipps alleges his attorney failed to perform an essential duty when the attorney failed to challenge the diminished responsibility jury instruction that was applicable to the charge of murder in the first degree. Phipps claims the jury instruction failed to specifically state “the defendant does not have to prove ‘diminished responsibility’; rather, the burden is on the State to prove the defendant was able to, and did, form the specific intent required.” This sentence was included in the diminished responsibility instruction applicable to the lesser offenses, but was not part of the instruction applicable to the charge of murder in the first degree. Phipps asserts if his attorney would have challenged the instruction, the result of his trial would have been different as he claims the instruction given likely confused the jury on the issue of who had the burden of proof regarding diminished responsibility.

The jury instruction on diminished responsibility applicable to first-degree murder stated:

“Diminished Responsibility” means a mental condition which does not allow the defendant to form a premeditated, deliberate, specific intent to kill.

“Diminished Responsibility” does not entirely relieve a person from the responsibility for his actions and is not the same as an insanity defense.

You should determine from the evidence if the defendant was capable of premeditating, deliberating, and forming a specific intent to kill.

If you have a reasonable doubt the defendant was capable of acting deliberately, with premeditation, and the specific intent to kill, then the defendant cannot be guilty of First Degree Murder. You should then consider the lesser included charges.

When determining whether the jury was properly instructed, we consider the instructions as a whole, not in a piecemeal fashion, or in isolation. *State v. Chambers*, 529 N.W.2d 617, 620 (Iowa Ct. App. 1994). In this case we find no error in the omission of the burden of proof sentence from the diminished responsibility instruction above.

The jury was instructed no fewer than three times before the first diminished responsibility instruction that the State has the burden of proof on all matters, and must establish the defendant’s guilt beyond a reasonable doubt. While the instruction above did not specifically reiterate the burden of proof, this does not mean the jury would have been confused by its omission. The diminished responsibility instruction above correctly asked the jury to determine whether the defendant was capable of forming the specific intent required by the first-degree murder charge. In addition, in the first-degree murder marshalling instruction, the jury was informed that the State had the burden to prove the defendant acted willfully, deliberately, premeditatedly and with the specific intent

to kill. Nowhere in the instructions did it indicate the defendant had the burden to prove diminished responsibility.

As we find there was no error in the diminished responsibility instruction above, we find Phipps's counsel did not fail to perform an essential duty when the attorney did not challenge the instruction at trial. See *State v. Green*, 592 N.W.2d 24, 29 (Iowa 1999) (“[C]ounsel is not incompetent in failing to pursue a meritless issue.”). Phipps's ineffective-assistance-of-counsel claim fails.

We affirm Phipps's conviction.

AFFIRMED.