

IN THE COURT OF APPEALS OF IOWA

No. 8-008 / 06-1563
Filed March 14, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN WILLIAM BINGHAM,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

The defendant appeals following his conviction for first-degree murder.

AFFIRMED.

Susan Stockdale, Colo, for appellant.

Mark C. Smith, State Appellate Defender, and David Adams, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, John P. Sarcone, County Attorney, and Nan Horvat, Assistant County
Attorney, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

John Bingham appeals from his conviction for first-degree murder. He claims his confession was illegally obtained and should have been suppressed. He also claims the trial court abused its discretion in failing to grant his motion for new trial. We affirm.

Background Facts and Proceedings.

On the evening of August 17, 2004, Detective Judy Stanley of the Des Moines police department responded to a call directing her to go to the residence of Barbara Gaston. Upon gaining entry to the locked residence, Stanley and other officers discovered Gaston's body. Stanley learned from Gaston's neighbor that John Bingham, Gaston's nephew, also lived at the residence.

After Bingham was later arrested following a high-speed chase, he was interviewed by police at the station. During that interview, Bingham initially denied any involvement in Gaston's death. However, he eventually admitted that he and Gaston had argued that day over his employment situation. He further admitted that he grabbed her by the neck, heard something crack, and dropped her to the floor. He then tried to make it look like an accident and left the house, proceeding to drink at three different bars before being arrested.

Following trial, the jury found Bingham guilty of first-degree murder. The court later sentenced him to life imprisonment without possibility of parole. Bingham appeals from this judgment and sentence.

Admissibility of Bingham's Confession.

Prior to trial, Bingham moved to suppress the statements made to police during the interview. The district court concluded Bingham had not voluntarily

waived his Fifth Amendment right to counsel, and suppressed Bingham's confession and any evidence resultantly obtained. The State sought and was granted discretionary review of this ruling. This court held that because (1) Bingham's invocation of his right to counsel was properly honored by police while it remained extant, (2) Bingham initiated conversation concerning the homicide investigation after he requested counsel, and (3) Bingham voluntarily waived his Fifth Amendment right to counsel, the confession and evidence obtained from the subsequent interrogation should not be suppressed. *State v. Bingham*, 715 N.W.2d 267, 274 (Iowa Ct. App. 2006). We therefore reversed the district court's ruling on the motion to suppress and remanded for further proceedings. *Id.*

At trial, the State introduced the evidence Bingham had sought to suppress. Now on appeal from his conviction, Bingham again urges that the confession was obtained unconstitutionally and should have been suppressed. We conclude that because this precise issue has already been decided by this court, it constitutes the law of the case and cannot be relitigated in this appeal. In *State v. Grosvenor*, 402 N.W.2d 402, 405 (Iowa 1987), it was stated:

The doctrine of the law of the case represents the practice of courts to refuse to reconsider what has once been decided. It is a rule which provides that the legal principles announced and the views expressed by a reviewing court in an opinion, right or wrong, are binding throughout further progress of the case upon the litigants, the trial court and this court in later appeals.

The principle is not applicable, however, if the facts before the court upon the second trial are materially different from those appearing upon the first.

(Citations omitted).

Bingham argues that *State v. Harris*, 741 N.W.2d 1 (Iowa 2007), decided by our supreme court after our earlier opinion in this case, constitutes new law

that would allow us to reconsider the issue. We find the facts and legal posture of the present case to be entirely distinguishable from that in *Harris*, and that it does not entitle Bingham to a second bite of the apple. Accordingly, because we find that the facts before us in this appeal are identical to the first appeal, we therefore decline to address the issue a second time.

Weight of the Evidence.

After the jury rendered its verdict, Bingham moved for a new trial, asserting the verdict was contrary to the weight of the evidence. The court denied the motion, and now on appeal Bingham challenges the weight of the evidence in regard to the elements of malice and malice aforethought. In particular, he argues he acted out of frustration and without the intent to kill her. Thus, he is guilty of no more than manslaughter.

We review the district court's denial of a motion for new trial for abuse of discretion. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). When deciding such a motion, the district court is entitled to weigh the evidence and consider the credibility of the witnesses. *Id.* at 658. If the court determines the verdict is contrary to the weight of the evidence and a miscarriage of justice may have occurred, it is within the court's discretion to grant a new trial. *Id.* The weight-of-the-evidence analysis is much broader than a 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." *State v. Nitchee*, 720 N.W.2d 547, 559 (Iowa 2006). Only in the extraordinary case, where the evidence preponderates heavily against the verdict, should a district court lessen

the jury's role as the primary trier of fact and invoke its power to grant a new trial. *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006).

In order to prove first-degree murder, the State must establish the defendant acted with deliberation and premeditation, in addition to malice aforethought. *State v. Reeves*, 636 N.W.2d 22, 25 (Iowa 2001). Malice aforethought is a fixed purpose or design to do some physical harm to another which exists prior to the act being committed. See *State v. Artzer*, 609 N.W.2d 526, 529 (Iowa 2000). It does not need to exist for any specific time before the act occurs, and it can be inferred from the use of a weapon. *Id.* at 530. Premeditation is defined as "to think or ponder upon the matter before acting." *State v. Buenaventura*, 660 N.W.2d 38, 48 (Iowa 2003). Neither malice aforethought nor premeditation is required to "exist for any particular length of time." *Id.* at 49.

The acts to which Bingham confessed reflect a degree of premeditation and deliberateness. When he returned home late in the evening Bingham found the door locked. Rather than retreating, he kicked the door down and barged in. He then knocked the phone out of Gaston's hand as she was attempting to alert police to his intrusion. Afterwards, he grabbed her by the neck and pushed her to the ground as she was attempting to flee from him. Moreover, the actual injuries and manner of death indicate the presence of malice. Gaston was manually strangled and suffered a broken hyoid bone. The medical examiner testified that compression of the neck for between thirty seconds and one minute is required to cause death by strangulation. Our review of the record convinces us the evidence does not preponderate heavily against the verdict and that the

trial court did not abuse its discretion in failing to grant Bingham's motion for new trial.

AFFIRMED.