IN THE COURT OF APPEALS OF IOWA

No. 0-159 / 89-992

FILED
AUG 30 1990
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

JERRY WAYNE KOBROCK

Appellant.

737

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge.

The defendant appeals his convictions, following a jury trial, for two counts of attempted murder. He challenges evidentiary rulings and asserts that his trial attorney rendered ineffective assistance of counsel. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for appellant.

Thomas J. Miller, County Attorney; Richard J. Bennett, Assistant Attorney General; James A. Smith, County Attorney; and Nan Horvat, Assistant County Attorney; for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

The defendant, Jerry Kobrock, appeals his convictions, following a jury trial, for two counts of attempted murder. He challenges evidentiary rulings and asserts that his trial attorney rendered ineffective assistance of counsel. We affirm the trial court and preserve the ineffective assistance claim for postconviction relief.

On January 16, 1989, Kobrock appeared at the home of his ex-wife and their daughter. He allegedly shot and wounded both of them from the yard of their home. In his defense he claimed that he had gone to their home to see his daughter, that he carried a gun because he feared his ex-wife's new boyfriend, and that the gun accidentally discharged when he tripped in the yard.

The gun used in the incident was not found. However, investigating officer Richardson concluded, from shells and a magazine found in the house and yard, that a bolt-action shotgun had been used.

Kobrock was charged with two counts of attempt to commit murder. At his jury trial on those charges, investigating officer Richardson testified about his conclusion that a bolt-action shotgun had been used. Richardson also testified that due to the mechanics and operation of a bolt-action shotgun, an accidental discharge of the sort claimed by Kobrock was impossible. Richardson illustrated his testimony by producing a sample bolt-action shotgun and showing its operation to the jury.

The jury found Kobrock guilty of two counts of attempt to commit murder. He has appealed the resulting convictions.

Kobrock challenges the admission of officer Richardson's testimony about the operation of a bolt-action shotgun. He argues the testimony was irrelevant because there was no evidence that the gun he had been carrying was a bolt-action shotgun. He also argues the display of a sample bolt-action shotgun was highly prejudicial. In addition, he argues there was not an adequate showing that Richardson was qualified by experience or training to testify about the operation of a bolt-action shotgun or to testify that such a gun had been used in this case.

Finally, Kobrock contends his trial attorney rendered ineffective assistance by failing to call certain witnesses and by failing to discuss his defense with him before trial. He asks that his claim of ineffective assistance be preserved for a future postconviction proceeding.

Kobrock contends the trial court erred in allowing the use of a substitute gun as demonstrative evidence and the admission of testimony concerning the workings of the gun. The admissibility of the evidence is a matter for the exercise of the trial court's discretion. State v. Chadwick, 328 N.W.2d 913, 917 (Iowa 1983). Abuse of discretion is shown only when it is demonstrated that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. State v. Trudo, 253 N.W.2d 101, 106 (Iowa 1977).

The gun in this case was used only as demonstrative evidence. In State v. Henderson, 268 N.W.2d 173 (Iowa 1978), the court allowed the use of a replacement gun as demonstrative evidence when the homicide gun could not be found. The trial court has considerable discretion in determining the admissibility of demonstrative evidence. Id. at 179. Great latitude is shown in admitting demonstrative evidence and it is usually received if it affords a basis for a reasonable inference on a point in issue. Id. The original homicide weapon could not be found in this case and the trial court was within its discretion in allowing a substitute gun to be admitted as demonstrative evidence.

The admission of the expert testimony concerning the workings of the gun is also challenged. The general rule in this jurisdiction is one of liberality in the admission of opinion evidence. State v. Halstead, 362 N.W.2d 504, 506 (Iowa 1985). The decision as to admissibility of such testimony rests in the trial court's discretion, and we will reverse only on a clear showing of abuse of discretion. Id. The workings of a gun do not require the greatest of our scientific minds to interpret. However, such workings are sufficiently varied and complex that some interpretation is necessary to aid the jury. The expert in this case was sufficiently qualified to discuss the workings of the shotgun. The trial court was within its discretion in allowing the testimony.

Defendant finally contends that his attorney rendered ineffective assistance of counsel, but asks that this issue be preserved for postconviction relief proceedings. Where the record on direct appeal is not adequate to permit us to resolve the issue, we preserve the defendant's claim for postconviction proceedings so the facts may be so developed. State v. Koenighain, 356 N.W.2d 237, 238 (Iowa App. 1984). This also gives the allegedly ineffective attorney the opportunity to explain his or her conduct. State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). We conclude there is an inadequate record for us to adjudicate the defense claim without counsel's explanation for his conduct. We therefore preserve defendant's ineffective assistance of counsel claim for a later proceeding.

AFFIRMED.