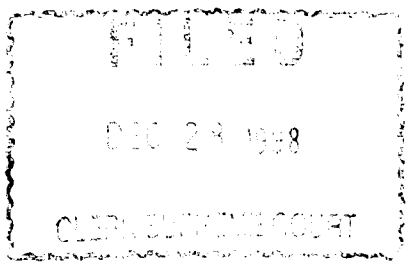
IN THE COURT OF APPEALS OF IOWA

No. 8-581 / 98-0066
Filed December 28, 1998



STATE OF IOWA,
Appellee,

vs.

AARON RYERSON,
Appellant.

Appeal from the Iowa District Court for Winnebago County, Gilbert K. Bovard, Judge.

Aaron Ryerson appeals the judgment and sentence entered upon his conviction of terrorism in violation of Iowa Code section 708.6 (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, and Robert Reding, County Attorney, for appellee.

Considered Sackett, P.J., and Huitink, Streit, Vogel, and Mahan, JJ.

STREIT, J.

Aaron Ryerson appeals his conviction of terrorism for the events surrounding his expulsion from his mother's home by the county sheriff. Ryerson claims his trial counsel was ineffective in preserving error, investigating, and conducting discovery. He also alleges his counsel had a conflict of interest which rendered him ineffective. We find Ryerson's counsel was not ineffective in preserving error, investigating, or in conducting discovery. We preserve the conflict of interest issue for postconviction proceedings. We affirm.

I. Background & Facts.

On July 16, 1997, Ryerson's mother requested the sheriff remove her son from the home she shared with him. She told the sheriff she intended to get a court order to keep Ryerson away from her home and she warned him Ryerson was dangerous.

The sheriff went to the home to speak to Ryerson. Ryerson did not answer when the peace officer knocked on the door. The sheriff could see Ryerson through the window. Ryerson told the sheriff to get "the fuck out of here," that the sheriff had drawn "first blood," and "somebody is going to get killed here today."

Iowa state troopers arrived and took up positions around the back of the house. Ryerson shot a gun inside the house. Approximately thirty to forty minutes later, he shot his gun through the kitchen window into the back yard. Ryerson later emerged from the house. He had shot himself in the foot with the first shot.

Ryerson was charged with terrorism. At trial, after the close of the State's case and again after the close of defendant's case, defendant's counsel moved for a directed verdict and judgment of acquittal based on the lack of sufficient evidence to prove each element of the crime. The motion was denied. A jury found Ryerson guilty and he was sentenced to a term of imprisonment not to exceed ten years. Ryerson appeals.

II. Standard of Review.

We review claims of ineffective assistance of counsel de novo. *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). To prevail on an ineffective assistance of counsel claim the defendant must show by a preponderance of the evidence that: (1) counsel failed to perform an essential duty; and (2) prejudice resulted. *State v. Pearson*, 547 N.W.2d 236, 240 (Iowa App. 1996). In evaluating counsel's performance, we presume counsel acted competently. *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987).

Generally, ineffective assistance of counsel claims are preserved for postconviction to allow trial counsel an opportunity to defend the charge. *Pearson*, 547 N.W.2d at 241. However, such claims may be decided on direct appeal if the defendant fails to show one of the two prongs. *See State v. Welch*, 507 N.W.2d 580, 584 (Iowa 1993); *State v. Walker*, 538 N.W.2d 316, 322 (Iowa App. 1995). If it is more efficient to dispose of an ineffective assistance claim by looking first to the

question of prejudice, we will do so. *State v. Hildebrant*, 405 N.W.2d 839, 841 (Iowa 1987); *Gering v. State*, 382 N.W.2d 151, 154 (Iowa 1986).

III. Claim of Ineffective Assistance Based on Motion for Directed Verdict.

Ryerson's counsel moved for directed verdict and judgment of acquittal based on sufficiency of the evidence, arguing every element of the offense charged had not been proved. Ryerson contends his counsel was ineffective for not drawing attention to the specific element of the crime not proven.

Ryerson's contention based on this ground fails because he can not prove counsel failed an essential duty or caused him prejudice. Ryerson claims his challenge to the evidence supporting his specific intent to commit terrorism was not preserved by counsel's motion for directed verdict. This is not correct. Ryerson's counsel brought the motion for directed verdict and acquittal based on the insufficiency of the evidence to prove each element of the crime. One element was the specific intent to provoke anger or fear. When reviewing challenges to sufficiency of the evidence, appellate courts examine all the evidence in the record, looking for substantial evidence, including any inferences arising from the evidence, to support the verdict. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). The evidence must raise, at least, a fair inference of guilt as to *each essential element* of the offense. *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992)(emphasis added). For this reason, Ryerson's counsel's motion for directed verdict was sufficient to preserve a review of the evidence in regard to each element of the offense charged.

Further, even if his claim had not been properly preserved, Ryerson cannot prove prejudice. Substantial evidence proved Ryerson had specific intent to provoke fear or anger in the officers at the scene of the crime. Ryerson appeared livid at the scene. He told the officers to get "the fuck out of here," that they had drawn "first blood," and "somebody is going to get killed here today." Although Ryerson argues the second shot he fired was an aborted suicide attempt, the evidence on record indicates Ryerson's intent was to shoot at the officers through his kitchen window. The bullet hole in the window was not consistent with Ryerson's story that he shot toward his head. The trajectory of the bullet hole was consistent with an intentional shot out of the kitchen window and into the back yard from Ryerson's shoulder level. Ryerson also had 75 rounds of ammunition in his pocket, consistent with contemplation of a shoot-out with police.

Because Ryerson can prove neither failure of an essential duty or prejudice, his ineffective assistance of counsel claim, on this ground, fails.

IV. Claim of Ineffective Assistance of Counsel Based on Alleged Failure to Investigate and Conduct Discovery.

Ryerson contends his counsel was ineffective for failing to timely discover evidence which would have helped his case. After sentencing, counsel discovered Ryerson's mother had a past problematic employment relationship with Sheriff Lillquist. Ryerson argues Lillquist was prejudiced against his family and if counsel

had discovered this information prior to trial, it could have been used to attack the credibility of Sheriff Lillquist.

While we generally preserve ineffective assistance of counsel claims for postconviction proceedings, it is not necessary we do so here where the lack of prejudice to Ryerson's case is evident by looking at the record. *See State v. Hildebrant*, 405 N.W.2d 839, 841 (Iowa 1987); *Gering v. State*, 382 N.W.2d 151, 154 (Iowa 1986). Ryerson has not shown how the failure to introduce testimony concerning an employment dispute between his mother and Lillquist prejudiced his case. The record showed a lack of prejudice. Lillquist's testimony was substantially the same as seven other officers present at the scene. We reject Ryerson's contention trial counsel was ineffective based on this ground.

Ryerson also contends his trial counsel was ineffective for not filing a notice of witness in a timely manner. He contends James Amelsberg, a mental health counselor, would have testified to the nature of Ryerson's mental state on the day of the crime. This testimony, Ryerson argues, would have rebutted the officers' testimony Ryerson had an intention to harm them. Ryerson's counsel filed the notice of witness on the opening day of trial. The court held Amelsberg's testimony interjected the new issue of diminished responsibility into the trial and did not allow the witness to be called at trial.

In a professional statement to the court at trial, Ryerson's counsel explained that the need for Amelsberg's testimony was apparent only after the officers

depositions. He met with Amelsberg shortly thereafter and viewed him only as a rebuttal witness to the officers' testimony. The fact defense counsel's motion was overruled does not mean he was ineffective. *Witsel v. State*, 439 N.W.2d 871, 873 (Iowa App. 1989). Further, counsel's explanation for why Amelsberg was not identified as a witness until late in the proceeding was reasonable and the delay was not the failure of an essential duty.

Ryerson's ineffective assistance of counsel claims on these grounds are without merit.

V. Claim of Ineffective Assistance of Counsel Based on Conflict of Interest.

Ryerson argues his trial counsel had a conflict of interest because he participated in the events on the night in question and was a witness to the incident. There is also evidence Ryerson's defense counsel told the officers at the scene that Ryerson "was dangerous." The State attempted to introduce this testimony at trial, but the testimony was excluded by the court in response to defense counsel's motion in limine.

Because there is not adequate evidence on the record to determine the extent of defense counsel's conflict of interest or the potential prejudice to Ryerson, we preserve this issue for postconviction proceedings. *State v. Hoeck*, 547 N.W.2d 852,862 (Iowa App. 1996).

Having considered all issues properly before us on appeal, we affirm Ryerson's conviction and sentence.

AFFIRMED.