IN THE COURT OF APPEALS OF IOWA

No. 1-811 / 11-0010
Filed November 23, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MAIA ENJE BEADEAU,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson, Judge.

Maia Beadeau appeals from her convictions for assault causing bodily injury and child endangerment causing bodily injury. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, John P. Sarcone, County Attorney, Jaki Livingston, Assistant County Attorney, and Peter Blink, Intern, for appellee.

Heard by Sackett, C.J., and Vogel and Eisenhauer, JJ.

EISENHAUER, J.

Maia Beadeau appeals from her convictions for assault causing bodily injury and child endangerment causing bodily injury. She contends her trial counsel was ineffective in failing to properly challenge the sufficiency of the evidence supporting the child-endangerment charge. She also contends the court abused its discretion in allowing evidence regarding Jaton Warren's abuse of her children. We affirm.

I. Background Facts and Proceedings. The events that gave rise to Beadeau's convictions took place on the night of September 19, 2007. After learning of allegations her eight-year-old daughter had been sexually abused by a twelve-year-old relative, M.B., Jaton Warren went to her mother, Beadeau, to discuss the matter. Concerned reporting the abuse would lead nowhere, the women decided to take matters into their own hands.

Beadeau and Warren went to Wal-Mart where Beadeau purchased a rubber mallet. Then, around 10 or 11 p.m., Warren went to M.B.'s house and asked his mother if M.B. could come with her to help move boxes. Warren then drove M.B. to her home. She told M.B. to go into the garage while she went into the house.

Beadeau was waiting for M.B. in the darkened garage. When M.B. entered, she hit him in the head with the rubber mallet and continued striking him with the mallet and her fist about the arms, legs, and back, while yelling at him about the sexual abuse. Warren returned and watched Beadeau before saying, "Let's go, it's time to take the boy home."

The women drove M.B. home, with Beadeau sitting in the backseat beside him. Upon seeing her son bloodied and injured, M.B.'s mother (Warren's cousin) became upset, and a struggle ensued among the three women. M.B. was eventually taken to the hospital by ambulance, where he stayed for two days. He had a deep laceration to his temple and injuries to his back, calf, ankles, buttocks, and arms. M.B. now suffers from short-term memory loss.

On November 2, 2007, Beadeau was charged with willful injury causing serious injury and child endangerment causing serious injury. She pleaded not guilty and waived her speedy trial rights. Days before trial, the State filed a motion in limine to exclude, among other things, "Any and all Department of Human Services testimony regarding the children of Jaton Warren." The court did not formally rule on the motion.

During trial, Beadeau called Teresa Dalton, a DHS child and adult abuse assessor, as her only witness. Dalton testified she was assigned to a case involving Warren and had learned of allegations of M.B.'s sexual abuse against Warren's daughter. On cross-examination, the State questioned Dalton about allegations Warren had physically abused her own children. Beadeau objected to the evidence as irrelevant and prejudicial under Iowa Rules of Evidence 5.401 and 5.403. The State claimed Beadeau opened the door to the evidence by claiming she assaulted M.B. in order to end abuse within the family; the State argued Beadeau did nothing to stop her own daughter's abuse of her grandchildren. The court permitted the questioning to continue, and Dalton testified Warren had struck one child with a belt, both children had injuries, and

one child reported being sexually abused by the other. Dalton also testified she discovered marijuana and hallucinogenic mushrooms in Warren's bathroom.

Beadeau's counsel made a motion for judgment of acquittal and direct verdict on both counts, citing insufficient evidence to show a serious injury occurred or was intended. The court denied the motions, and the jury found Beadeau guilty of the lesser-included offenses of assault causing bodily injury and child endangerment causing bodily injury.

Following trial, Beadeau obtained new counsel and moved for a new trial, which the court denied. Beadeau was sentenced to an indeterminate term of imprisonment not to exceed five years on the child endangerment charge and one year in jail on the assault charge. Both sentences were suspended, and Beadeau was placed on probation for five years with respect to the child endangerment charge and one year on the assault charge. The sentences were to run concurrently, and the maximum fines were suspended.

II. Sufficiency of the Evidence of Child Endangerment. Beadeau first challenges the sufficiency of the evidence to support her conviction of child endangerment causing bodily injury. Specifically, she contends there was insufficient evidence to show M.B. was in her custody and control. Because trial counsel failed to raise this issue when moving for judgment of acquittal or directed verdict, Beadeau pursues this claim as ineffective assistance of counsel claim. *See State v. Ondayog*, 722 N.W.2d 778, 784 (Iowa 2006) (holding ineffective assistance of counsel is an exception to the error-preservation rule). She argues her trial counsel was ineffective in failing to raise the issue and post-trial counsel was ineffective in failing to challenge trial counsel's effectiveness.

We review claims of ineffective assistance of counsel de novo. *Id*. at 783. Ordinarily, we preserve ineffectiveness claims raised on direct appeal for postconviction relief to allow full development of the facts surrounding counsel's conduct. *State v. Atley,* 564 N.W.2d 817, 833 (Iowa 1997). Only in rare cases will the trial record alone be sufficient to resolve the claim. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Kirchner,* 600 N.W.2d 330, 335 (Iowa Ct. App. 1999). We find the record is adequate to reach Beadeau's claim.

To establish an ineffective assistance of counsel claim a defendant must show (1) counsel failed to perform an essential duty and (2) prejudice resulted therefrom. *Straw*, 709 N.W.2d at 133. The test of ineffective assistance of counsel focuses on whether counsel's performance was reasonably effective. *Strickland v. Washington,* 466 U.S. 668, 697, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). The defendant must show counsel's performance fell below an objective standard of reasonableness so that counsel failed to fulfill the adversarial role that the Sixth Amendment envisions. *Id.* A strong presumption exists that counsel's performance fell within the wide range of reasonable professional assistance. *State v. Graves*, 668 N.W.2d 860, 881 (Iowa 2003). The defendant has the burden of proving both elements of his ineffective assistance claim by a preponderance of the evidence. *Ledezma v. State,* 626 N.W.2d 134, 145 (Iowa 2001).

Additionally, our courts have ruled that trial strategy, miscalculated tactics, mistake or inexperience do not constitute ineffective assistance. *Graves*, 668

N.W.2d at 881. We may dispose of the defendant's ineffective assistance claims under either prong. *Id.* at 869. In order to prove the prejudice prong, the defendant must show a reasonable probability that but for counsel's alleged errors, the result of the proceeding would have been different. *Strickland,* 466 U.S. at 695, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698.

Beadeau contends her counsel was ineffective in failing to object to the sufficiency of the evidence to support the child endangerment charge because there was insufficient evidence to show she was in custody or control of M.B. Iowa Code section 726.6 (2007) provides a "parent, guardian, or person having custody or control over a child" may commit child endangerment by engaging in any of a number of acts.[1] The jury was instructed it needed to find Beadeau or "someone she aided and abetted" had custody and control of M.B. on the night in question.

The jury was instructed as follows on aiding and abetting:

> All persons involved n the commission of a crime, whether they directly commit the crime or knowingly "aid and abet" its commission, shall be treated the same way.
>
> "Aid and abet" means to knowingly approve and agree to the commission of a crime, either by active participation in it or by knowingly advising or encouraging the act in some way before or when it is committed. Conduct following the crime may be considered only as it may tend to prove the defendant's earlier

[1] The jury instructions listed three of the alternatives listed in section 726.6:

a. The defendant or someone she aided and abetted acted with knowledge that she was creating a substantial risk to [M.B.]'s physical, mental, and or/emotional health or safety; OR
b. The defendant or someone she aided and abetted intentionally committed an act or series of acts, using unreasonable force, torture or cruelty, that resulted in physical injury to [M.B.]; OR
c. The defendant or someone she aided and abetted intentionally committed and act or series of acts, using unreasonable force, torture or cruelty, with the specific intent to cause serious injury to [M.B.].

> participation. Mere nearness to, or presence at, the scene of the crime, without more evidence, is not "aiding and abetting." Likewise, mere knowledge of the crime is not enough to prove "aiding and abetting."
>
> The guilt of a person who knowingly aids and abets the commission of a crime must be determined only on the facts which show the part she has in it, and does not depend upon the degree of another person's guilt.
>
> If you find the State has proved the defendant directly committed the crime, or knowingly "aided and abetted" another person in the commission of the crime, then the defendant is guilty of the crime charged.

With regard to custody and control, the jury was instructed: "A person having control over a child is a person who accepted, undertook, or assumed supervision of a child from the parent of the child." Beadeau argues the evidence does not establish she assumed supervision of M.B. from his mother or aided and abetted the person who did.

In viewing the evidence in the light most favorable to the State, *see State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005) (holding the court considers the evidence in the light most favorable to the State when making sufficiency-of-the-evidence determinations), Warren had custody and control of M.B at the time the crimes were committed. Warren went to M.B.'s house and asked and received permission to take M.B. to her home.

The evidence also shows Beadeau aided and abetted Warren in the commission of the crimes.[2] In order to be an aider or abettor, it is not necessary that a person actively participate in the commission of a crime; it is enough to encourage it in some manner prior to or at the time of its commission. *State v. Hustead*, 538 N.W.2d 867, 869 (Iowa Ct. App. 1995). The essential element is

[2] Warren pled guilty to child endangerment.

that the aider or abettor has knowledge of the criminal activity prior to its commission. *Id.* This knowledge may be shown by circumstantial evidence, including "presence, companionship, and conduct before and after the offense is committed." *Id.*

Here, after Warren came to Beadeau regarding M.B.'s alleged sexual abuse of her daughter, the women planned to take matters into their own hands. They went to Wal-Mart together and Beadeau purchased the rubber mallet used to assault M.B. Warren then went to M.B.'s home and lied to his mother to get him to her house. Warren told M.B. to go into the garage where she knew Beadeau was waiting. She watched Beadeau for part of the assault. The women then took M.B. home instead of getting medical assistance for his injuries. The evidence, when viewed in the light most favorable to the State, is sufficient to establish Beadeau, along with Warren, actively participated in (1) creating a substantial risk to [M.B.]'s physical, mental, and or/emotional health or safety *or* (2) intentionally committing an act or series of acts using unreasonable force, torture, or cruelty, that physically injured M.B. Because M.B. was in the custody of Warren at the time the act was committed, there is sufficient evidence to support Beadeau's child endangerment conviction. Accordingly, her trial counsel had no duty to challenge the sufficiency of that evidence. Neither trial nor post-trial counsel was ineffective.

III. Admissibility of Evidence. Beadeau also contends the district court abused its discretion in allowing the DHS worker to testify regarding Warren's alleged abuse of her children. She claims this evidence was irrelevant and unfairly prejudicial.

We review rulings on admission of evidence for an abuse of discretion. *State v. Stone,* 764 N.W.2d 545, 548 (Iowa 2009). An abuse of discretion occurs when the court exercises its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Rodriquez*, 636 N.W.2d 234, 239 (Iowa 2001). A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law. *Id.*

Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* It is relevant if a reasonable person might believe the probability of the truth of the consequential fact to be different if the person knew of the challenged evidence. *Id.*

Even where evidence is relevant, it is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice. *Id.* at 239-40. Unfair prejudice arises when the evidence would cause the jury to base its decision on something other than the proven facts and applicable law. *State v. Reynolds*, 765 N.W.2d 283, 290 (Iowa 2009). The court should consider the following factors in balancing the probative valued of the evidence against the danger of unfair prejudice:

> the need for the evidence in light of the issues and the other evidence available to the prosecution, whether there is clear proof the defendant committed the prior bad acts, the strength or weakness of the evidence on the relevant issue, and the degree to which the fact finder will be prompted to decide the case on an improper basis.

Id.

Beadeau claimed she lacked the requisite intent because her motive was to protect her granddaughter. She claims prior reports to the DHS and law enforcement had not generated any results. Beadeau called Theresa Dalton to counter M.B.'s testimony he didn't remember revealing his sexual abuse to her, presumably to show her motivation was to stop a family cycle of abuse. The State sought to show Beadeau's motivation was not concern, but that she was acting out of revenge or anger. To do this, the State cross-examined Dalton regarding an investigation of Warren as to abuse of her own children, implying Beadeau was selective in her concern about abuse in the family. We conclude the evidence was relevant to show the discrepancy in Beadeau's claim.

We likewise conclude the probative value of the evidence was not outweighed by unfair prejudice. The testimony concerned acts of Warren, not Beadeau. The evidence was not likely to cause the jury to decide the case on an improper basis.

Because the court properly admitted Dalton's testimony regarding the DHS investigation of Warren's alleged abuse, we affirm.

AFFIRMED.