

**IN THE COURT OF APPEALS OF IOWA**

No. 9-965 / 09-0241  
Filed February 10, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TIMOTHY TERRELL HINES,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Linn County, Nancy A. Baumgartner, Judge.

Defendant Timothy Terrell Hines appeals his conviction and sentence for second-degree murder. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Harold Denton, County Attorney, and Jason Besler, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Doyle and Danilson, JJ.

**DOYLE, J.**

Defendant Timothy Terrell Hines appeals his conviction and sentence for second-degree murder. He contends the district court abused its discretion in failing to allow him to present certain evidence he claimed was relevant and essential to his defense of self-defense. Additionally, he argues that his counsel was ineffective in failing to object to the jury instructions marshalling the elements of second-degree murder, the crime for which he was convicted, because the instruction did not refer to justification. Upon our review, we affirm his conviction and preserve his ineffective-assistance-of-counsel claim for possible postconviction relief proceedings.

***I. Background Facts and Proceedings.***

At about 10:00 in the evening on June 22, 2007, Defendant Hines and his fiancée Mya Williams stopped at a convenience store in Cedar Rapids, Iowa. Mya went into the store, and Hines remained in the car. Hines carried a small utility knife on his belt.

While in the store, Mya encountered Nathan Williams (no relation to Mya), who was attempting to sell a telephone headset accessory to customers inside the store. Jerry Robinson, a friend of Nathan's, was also in the store. Mya and Nathan argued and exchanged words. Mya then left the store followed by Nathan. After exiting the store, Mya yelled to Hines that Nathan had "put his hands on [her]." There are differing versions of the events that followed. Hines testified as follows: Nathan had his hands on Mya when they exited the store, and that he heard her say "Let me go." Hines then got out of his car and asked Nathan "What's going on? Why are you grabbing her?" Nathan told him to mind

his “F’ing business” and started walking towards him. Hines saw Robinson coming towards him from the direction of the store. Hines told Mya, “Let’s get in the car and let’s leave,” but Nathan swung and hit him in the side of his face. Hines then dropped down to his knees and tried to protect himself. Nathan punched him about two times, and he jumped up to try to get to his car, but only made it to one knee and one foot, and then Nathan grabbed him. He heard Robinson tell Nathan, “Man, shoot, pop his ass.” Hines then saw Nathan raise his shirt and he could see a silver gun stuck in his waistband. When Nathan reached down for the gun, Hines backed up, grabbed his knife off his side, and swung two times to make Nathan let go of him, stabbing Nathan twice. Hines and Mya then left the scene.

Hines’s testimony conflicted with the testimony of several eye-witnesses who observed the fight. Most witnesses initially thought Hines had punched Nathan in the side of his chest, and they testified that the fight happened very quickly. None of the witnesses saw any weapons. One witness testified that Nathan did not do anything of a physical nature toward Hines, and that Nathan did not reach for anything. Another witness testified she saw Nathan hand a brown bag to Jerry Robinson. She testified Robinson then took off around the corner and left the scene. The witness testified the bag was big enough to contain a gun or a knife, but she did not see any weapons. No other witnesses observed Robinson at or involved in the fight between Hines and Nathan.

Robinson testified at trial that after Nathan was stabbed, Nathan handed him a bottle of wine in a brown paper bag and told him to take off. He testified that he had been drinking and that Nathan, aware of that fact, did not want him to

get into trouble. However, Robinson acknowledged that he had not mentioned Nathan giving him wine in a brown paper bag after being stabbed in his prior statements.

A security camera video recorded video inside the store the night of the stabbing. The video shows that it was Robinson who made a purchase inside the store, and he carried his purchase out of the store in a white plastic bag. The video does not show Nathan buying anything or having anything in his hands while in the store or when he left.

After he was stabbed, Nathan re-entered the store. He told the clerk he had been stabbed and asked that the clerk call the police. He went back outside and then came back into the convenience store and collapsed. Nathan was taken to the hospital, where he died of blood loss resulting from a stab wound that penetrated the root of his aorta. No weapon was found upon Nathan's person.

The State charged Hines with the premeditation alternative of first-degree murder. Hines raised a defense of justification, or self-defense. If completely successful, this defense would have resulted in an acquittal at trial.

Prior to trial, Hines's trial counsel filed a motion in limine and trial memorandum indicating he might briefly question Detective John Matias regarding his discussions with and subsequent June 23, 2007 report concerning the victim's fiancée, Sharon Bradshaw,

for the limited purpose of asking about Miss Bradshaw's comments to [Detective Matias regarding the victim] and . . . the day[s] event of going with [the victim] to a gun shop to look at firearms on the date of the incident.

The court ruled that Detective Matias could not testify on the basis of hearsay and there was no showing that Bradshaw was not available.

During trial, Hines's trial counsel was able to locate Bradshaw and serve her with a subpoena. Hines's counsel argued that she would testify that she and Nathan, just hours before the stabbing incident, had been to a gun shop and test fired a weapon and intended to buy a weapon. Hines's counsel argued that the testimony was relevant to Hines's justification defense, but acknowledged there had not been a lawful purchase of a gun from the gun shop. The court ruled that Bradshaw's testimony was not relevant because no gun was purchased at the shop and the evidence would be more prejudicial than probative.

Prior to submitting the matter to the jury, the district court instructed the jury on the elements of first-degree murder and the lesser-included offenses of second-degree murder, voluntary manslaughter, and involuntary manslaughter. The court also fully instructed the jury concerning the defense of justification. However, the marshalling instructions did not include an element stating that "the State must prove the defendant was not acting with justification." Additional instructions informed the jury that (1) they were to consider all of the instructions together and that no one instruction included all of the applicable law, (2) that the burden was on the State to prove Hines's guilt beyond a reasonable doubt, and (3) that this burden existed whenever the jury was instructed the State must prove something. The instructions were based on the uniform Iowa Criminal Jury Instructions.

The jury acquitted Hines of first-degree murder and found him guilty of the lesser-included offense of second-degree murder. Hines was sentenced to a term of imprisonment not to exceed fifty years.

He now appeals.

## ***II. Discussion.***

On appeal, Hines argues that the district court abused its discretion in failing to allow him to present certain evidence he claimed was relevant and essential to his defense of self-defense, specifically, Bradshaw's testimony. Additionally, he argues his trial counsel was ineffective for failing to object to the jury instruction on murder because it purportedly did not refer to justification.

### ***A. Evidentiary Ruling.***

Challenges to evidentiary rulings are reviewed for correction of errors at law. Iowa R. App. P. 6.907. A court has wide discretion in making such rulings, and its decisions in this regard are reversed only for a demonstrated abuse of discretion. *State v. Sallis*, 574 N.W.2d 15, 16 (Iowa 1998). Abuse is found where a district court exercised its discretion on grounds or for reasons clearly untenable, or to an extent clearly unreasonable. *State v. Bayles*, 551 N.W.2d 600, 604 (Iowa 1996). "Even though an abuse of discretion may have occurred, reversal is not required if the court's erroneous admission of evidence was harmless." *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005) (citing *State v. Sullivan*, 679 N.W.2d 19, 29 (Iowa 2004); Iowa R. Evid. 5.103(a)).

Relevant evidence is evidence having any tendency to make a fact of consequence "more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. However, even when evidence is relevant, it

“may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Iowa R. Evid. 5.403. Thus, Iowa courts undertake a two-step analysis. *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). First, the court determines if the contested evidence is relevant. *Id.* Second, if the evidence is relevant, the trial court exercises its discretion to “determine whether its probative value was outweighed by its prejudicial effect.” *State v. Brewer*, 247 N.W.2d 205, 214 (Iowa 1976).

The court ruled that Bradshaw’s testimony was not relevant because Nathan did not purchase a gun, and the evidence would be more prejudicial than probative. We agree. There was no evidence that Nathan purchased a gun that day, and the fact that Nathan looked at handguns earlier in the day had no rational tendency to make it more probable that he was armed later that day. We therefore conclude the district court did not abuse its discretion in rejecting Bradshaw’s testimony and affirm on this issue.

***B. Ineffective Assistance of Counsel.***

Additionally, Hines argues that his counsel was ineffective in failing to object to the jury instructions marshalling the elements of second-degree murder, the crime for which he was convicted, because the instruction did not refer to justification.<sup>1</sup> Hines’s ineffective-assistance-of-counsel claims are constitutional

---

<sup>1</sup> Justification is an affirmative defense rather than an element of the crime. See *State v. Delay*, 320 N.W.2d 831, 834 (Iowa 1982). Nonetheless, we note that it would have been appropriate and perhaps preferable to explicitly refer to the submissible justification defense within the marshalling instruction. In addition to the other elements to be proven by the State, such an instruction could have stated, the State must prove the defendant was not acting with justification. Alternatively, such an instruction could have mentioned, for example, that if the jury finds the State has proved all the elements of second-degree murder, it still must consider defendant’s justification defense as set forth in later instructions. It is not an uncommon practice to include the submissible

in nature and reviewed de novo. See *State v. Lane*, 726 N.W.2d 371, 392 (Iowa 2007). We presume “counsel acted competently and the representation fell within the wide range of reasonable professional assistance.” *Hannan v. State*, 732 N.W.2d 45, 53 (Iowa 2007). In order to prevail, Hines must show: (1) counsel failed to perform an essential duty, and (2) prejudice resulted. See *Lane*, 726 N.W.2d at 393. Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). Those proceedings allow an adequate record of the claim to be developed “and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant’s claims.” *Biddle*, 652 N.W.2d at 203. Because we find the record is insufficient to address Hines’s ineffective-assistance claims on direct appeal, we accordingly preserve his claims for possible postconviction relief proceedings.

### **III. Conclusion.**

Because we conclude the district court did not abuse its discretion in rejecting Bradshaw’s testimony as irrelevant and more prejudicial than probative, we affirm Hines’s conviction for second-degree murder. We preserve Hines’s

---

justification defense as an element of proof within the marshalling instruction. See, e.g., *State v. Heemstra*, 721 N.W.2d 549, 553 (Iowa 2006) (including “[t]he defendant was not justified” in the first-degree murder marshalling instruction); *State v. Lee*, 494 N.W.2d 706, 707 (Iowa 1993) (including “[t]hat the defendant did not act with justification [self-defense]” in the second-degree murder marshalling instruction). This is the practice with other defenses. The comment to Iowa Criminal Jury Instruction 200.9 (insanity defense) states: “Caveat: If the insanity defense is submitted, then the marshalling instruction should be modified accordingly.” Comments to Iowa Criminal Jury Instructions 200.35 (compulsion) and 200.39 (ignorance or mistake of fact) contain similar caveats.



ineffective-assistance-of-counsel-claim for possible postconviction relief proceedings.

**AFFIRMED.**