IN THE COURT OF APPEALS OF IOWA

No. 2-497 / 11-1052
Filed July 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TASHA LYNN ARMSTRONG,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Steven P. Van Marel, District Associate Judge.

Defendant appeals her conviction arguing her counsel was ineffective. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Stephen Holmes, County Attorney, and Mary Howell-Sirna, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

EISENHAUER, C.J.

Tasha Armstrong appeals her conviction for committing assaults on a nurse and doctor in a hospital emergency room. She claims her trial counsel was ineffective in failing to object to the jury instructions. We affirm.

I. Background Facts and Proceedings.

On February 16, 2011, Armstrong went to an Ames hospital's emergency room because she was upset and felt suicidal. Nurse Carlson placed Armstrong in a behavioral health room containing fewer items Armstrong could use to hurt herself or others. Armstrong was crying but cooperative. A court order placed a forty-eight hour involuntary hold on Armstrong. Because there was not a secure psychiatric bed for Armstrong in the Ames hospital, psychiatric nurse Mulcahy called other facilities to locate a bed.

After locating a bed in Mason City, Mulcahy told Armstrong of her transfer to Mason City. Armstrong's request to call her mom was denied. Armstrong started yelling and screamed profanities at Mulcahy. Armstrong threw a food tray and a biohazard box at Mulcahy, but did not hit her. Armstrong repeatedly yelled she wanted to go to jail, not to Mason City.

Dr. Mattson, an emergency room physician, came to the room to help. Dr. Mattson asked Armstrong to stop her inappropriate behavior, but she continued to scream, swear, and insist she didn't want to go to Mason City. After again stating she wanted to go to jail, Armstrong hit Dr. Mattson's forearm. Next, Armstrong scratched nurse Mulcahy. Dr. Mattson and nurse Mulcahy took Armstrong down to the floor and nurses Carlson and Fischels, along with CNA

Stuck came to the room to help control Armstrong. Armstrong continued crying, screaming, and kicking.

Within ten minutes, police officer Howard arrived. Nurse Carlson testified: "When the officer arrives and addresses that he's there, she immediately stopped screaming, and is cooperative at that time." Officer Howard asked Armstrong why she was upset and she replied: "[T]he nurse pissed her off and was rude." Armstrong added if she had a gun she would shoot and kill the nurse.

Armstrong was sent to jail instead of to Mason City. Dr. Mattson did not initially report Armstrong's assault because he suffered no injury, but he did not believe Armstrong was psychotic. Nurse Mulcahy believed Armstrong was not psychotic and "knew exactly what she was doing."

Nurse Carlson and nurse Fischels both described Armstrong's behavior as a "tantrum" for not getting what she wanted. CNA Stuck testified Armstrong "was happy it seemed to see the police officer, and it felt like she was getting what she wanted."

Armstrong was charged with assault on a health care provider causing bodily injury (nurse Mulcahy) and assault on a health care provider (Dr. Mattson). *See* Iowa Code §§ 708.1 (defining assault), 708.3A(3) (discussing assaults against health care providers) (2011).

At trial, Armstrong remembered "the nurse" telling her she was going to Mason City and she could not call her mother. She remembered being upset, but had no recollection of her statements or actions. On cross-examination, Armstrong admitted she did not like to be told "no" and has had prior tantrums involving yelling, calling people names, and throwing things after being told "no."

The jury returned a verdict of guilty on both counts, and this appeal followed.

II. Scope of Review.

"Ineffective-assistance-of-counsel claims have their basis in the Sixth Amendment to the United States Constitution." *State v. Vance*, 790 N.W.2d 775, 785 (Iowa 2010). We review ineffective-assistance-of-counsel claims de novo. *Nguyen v. State*, 707 N.W.2d 317, 323 (Iowa 2005).

III. Jury Instructions.

Armstrong argues trial counsel was ineffective in failing to object to the jury instructions. The jury was instructed:

> INSTRUCTION NO. 9
> The law of the State of Iowa provides that [it] is unlawful to assault a health care provider.
>
> INSTRUCTION NO. 10
> The State must prove all of the following elements of the crime of Assault on a Health Care Provider Causing Bodily Injury, Danielle Mulcahy:
> 1. On or about February 16, 2011, the defendant did an act which was intended to:
> a. cause pain or injury to; or
> b. intended to result in physical contact which was insulting or offensive to Danielle Mulcahy; or
> c. intended to place Danielle Mulcahy in fear of an immediate physical contact which would have been painful, injurious, insulting or offensive to Danielle Mulcahy.
> 2. The defendant had the apparent ability to do the act.
> 3. The defendant knew that Danielle Mulcahy was a health care provider. A person who commits an assault against a health care provider in a hospital is presumed to know that the person against whom the assault is committed is a health care provider.
> 4. Defendant's act caused bodily injury to Danielle Mulcahy.

Jury Instruction 11 mirrored Instruction 10, but the crime was Assault on a Health Care Provider, Travis Mattson, and element four was omitted (caused bodily injury).

Armstrong acknowledges Instruction 9 is a correct statement of the law, but contends counsel was ineffective in failing to object to Instructions 10 and 11. Specifically, although the term "health care provider" is used, Armstrong points out the instructions fail to define "health care provider."[1] Armstrong argues whether the victim is a health care provider is a fact question for the jury. Further, Armstrong contends omission of this factual determination is exacerbated by "the multiple inclusion of the statutory presumption" of Iowa Code section 708.3A(5)(d) (stating a "person who commits an assault . . . against a health care provider in a hospital . . . is presumed to know that the person against whom the assault is committed is a health care provider").

In general, ineffective-assistance claims "are best resolved by postconviction proceedings to enable a complete record to be developed and afford trial counsel an opportunity to respond to the claim." *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). Sometimes, the appellate record is adequate to resolve the issue on direct appeal. *Id*. We believe the record is adequate to resolve the issue.

[1] A health care provider includes a person who is licensed under chapters 148 (medicine) and 152 (nursing) and "who is providing or attempting to provide health services as defined in section 135.61 in a hospital." Iowa Code § 708.3A(5)(d). The term, "health services," is defined as "clinically related diagnostic, curative, or rehabilitative services, and includes alcoholism, drug abuse, and mental health services." *Id*. § 135.61(12).

To establish her ineffective-assistance-of-counsel claim, Armstrong must prove by a preponderance of the evidence her trial attorney failed to perform an essential duty and this failure resulted in prejudice. *See State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). "If the claim lacks prejudice, it can be decided on that ground alone without deciding whether the attorney performed deficiently." *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001).

We begin by addressing the prejudice element. Armstrong must demonstrate "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 694 (1984). The governing question is "whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt." *Id*. at 695.

In resolving this issue, we look at the strength of the State's case. Where the evidence of guilt is overwhelming, we will find no prejudice. *See Strickland*, 466 U.S. at 696 ("[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support."). "The most important factor under the test for prejudice is the strength of the State's case." *State v. Carey*, 709 N.W.2d 547, 559 (Iowa 2006).

As the State points out, the evidence of Armstrong's guilt was overwhelming. Six witnesses (five hospital employees and the responding officer), described Armstrong's tantrum, and Armstrong admitted on cross-examination she has a history of tantrums when she is told "no." Importantly, it is *undisputed* the victims were an emergency room doctor and psychiatric nurse on duty in the hospital's emergency room. In fact, Armstrong identifies Mulcahy as

"the nurse" in her testimony. Because the doctor and nurse who were assaulted unquestionably meet the statute's definition of health care providers, there is not a reasonable probability the result of the trial would have been different had Armstrong's attorney succeeded in having the definition of health care provider included in the instructions. *See* Iowa Code § 708.3A(5)(d). We conclude Armstrong cannot establish *Strickland* prejudice and her ineffective-assistance-of-counsel claim necessarily fails. Accordingly, we affirm her conviction.

AFFIRMED.