

IN THE COURT OF APPEALS OF IOWA

No. 9-529 / 08-1179
Filed August 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JORDAN SCOTT JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge.

Defendant appeals his convictions for murder in the first degree and kidnapping in the second degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik and Becky Goettsch, Assistant Attorney General, Paul L. Martin, County Attorney, and Greg Rosenblatt, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

Jordan Scott Johnson appeals his convictions, following a jury trial, for murder in the first degree and kidnapping in the second degree. He claims his trial counsel was ineffective for failing to object to erroneous cross-examination by the prosecutor. We affirm Johnson's convictions and preserve his ineffective assistance claim for a possible postconviction proceeding.

I. Background Facts and Proceedings

Jordan Johnson is the son of Rita Seely. Rita was married to Philip Seely. On January 19, 2008, Rita and Philip went out to dinner. When they returned, Johnson was in the home using the computer. Eventually, Johnson asked Philip if he could borrow a grease gun from the garage.¹ When Philip went into the bathroom a few minutes later he heard two dull thuds. Philip opened the bathroom door and saw Johnson with a bloody hatchet. Johnson stated he had just killed Rita. He told Philip not to worry because he was not going to kill him.

Johnson asked Philip to go down the basement. As Philip was going down the basement stairs he heard a moan coming from the living room. Johnson returned to the living room, and Philip heard two more thuds. Johnson then followed Philip down to the basement. Johnson told Philip he wanted him to stay in the basement for two weeks while Johnson went to visit his sister. Johnson blocked Philip's departure from the basement by pulling down some recessed attic stairs and screwing the staircase in place using some long screws and an electric drill. When Johnson was satisfied that Philip could not open the basement door, Johnson left. Philip waited about thirty minutes before using a

¹ Philip testified there was a hatchet in the garage near the grease gun.

saw and pry bar to get out of the basement. He saw Rita was dead and called 911.

At about 3:00 a.m. January 20, Johnson turned himself in at the Clear Lake Police Department. He said, "I need to be arrested. I've done something very bad." Johnson told investigators he had killed Rita. He gave a written statement confessing to the crime that stated, "I was having voices in my head, voices from the past of other people, telling me things and I made the conscious decision."

Johnson was charged with first-degree murder, in violation of Iowa Code sections 707.1 and 707.2(1) (2007), and second-degree kidnapping, in violation of sections 710.1(4) and 710.3. Johnson filed a notice of defense of insanity, and a notice of defense of diminished capacity. Johnson did not dispute that he committed the crimes; the only real issue at his criminal trial was his mental status. The State and defendant presented evidence from psychiatrists.

The jury returned verdicts finding Johnson guilty of first-degree murder and second-degree kidnapping. The district court denied Johnson's motion for a new trial. Johnson was sentenced to life in prison on the murder charge and a term of imprisonment not to exceed twenty-five years on the kidnapping charge, to be served consecutively. Johnson appeals his convictions.

II. Ineffective Assistance

Dr. William Logan, a forensic psychiatrist, testified for Johnson. Johnson contends he received ineffective assistance due to defense counsel's failure to object during the prosecutor's cross-examination of Dr. Logan. Dr. Logan was questioned on cross-examination as follows:

Q. And in your opinion, this is not a case where diminished capacity applies? A. If you look at it from a very narrow standpoint and without looking at the rationality of what he did, then I would agree with that.

...
Q. And you said in the deposition on April 16th of this year that this is not a case of diminished capacity? A. That was my opinion at that time, yes.

Johnson alleges that his counsel's decision to allow these questions breached an essential duty. Johnson claims Dr. Logan was improperly permitted to give an opinion as to whether a specific legal standard had been met. See *In re Detention of Palmer*, 691 N.W.2d 413, 419 (Iowa 2005) (“[A] witness cannot opine on a legal conclusion or whether the facts of the case meet a given legal standard.”).

We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006).

Claims of ineffective assistance of counsel are generally preserved for postconviction proceedings in order for a more complete record to be developed. *State v. Baker*, 560 N.W.2d 10, 15 (Iowa 1997). Where a record is not adequate to address a defendant's claims of ineffective assistance of counsel on direct appeal, we may preserve the issues for possible postconviction proceedings. *State v. Smith*, 573 N.W.2d 14, 22 (Iowa 1997). By preserving the issue for possible postconviction proceedings, trial counsel has the opportunity to explain strategic and tactical considerations that are not apparent from the record on

appeal. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986). “Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned.” *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978).

We determine the record in this case is not sufficient for us to address Johnson’s claims of ineffective assistance of counsel. We conclude the issue should be preserved for possible postconviction proceedings. This will allow Johnson’s attorney to explain her reasons for not objecting to the challenged testimony.

We affirm Johnson’s convictions.

AFFIRMED.