

IN THE COURT OF APPEALS OF IOWA

No. 9-639 / 08-1836
Filed October 7, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SANFORD NAKIA LOGGINS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris, Judge.

The defendant appeals from his convictions for public intoxication and interference with official acts, inflicting bodily injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Jeremy L. Westendorf, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield, J., and Miller, S.J.*

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

MILLER, S.J.

Sanford Nakia Loggins appeals from his convictions for public intoxication and interference with official acts inflicting bodily injury. He contends his counsel was ineffective in several respects. We find Loggins's claims of ineffective assistance to be without merit, and affirm his convictions.

I. Background Facts and Proceedings. In the early morning hours of June 28, 2008, Officer Cory Allspach responded to a call for assistance in locating a suspect who had fled on foot from the scene of a disturbance. While searching the area for the suspect, Officer Allspach observed Loggins, who was walking along Newell Street in Waterloo. The officer noticed Loggins was "swaying and staggering about, as someone who was intoxicated would be." Because Officer Allspach believed Loggins generally fit the description of the suspect, he decided to make contact.

Upon stopping his vehicle and speaking with Loggins, Officer Allspach smelled the strong odor of an alcoholic beverage emanating from him. He also noticed Loggins's speech was slurred and his balance was poor. The officer suspected Loggins was intoxicated, but because he had determined he was not the suspect he had been searching for, he decided to allow Loggins to continue on his way.

After informing Loggins he was free to leave, an altercation occurred. Loggins yelled at Officer Allspach for approximately thirty to forty-five seconds. The officer warned Loggins to quiet down and go on his way or he would be arrested. When Loggins failed to comply, Officer Allspach said, "All right. You're

under arrest.” He then grabbed Loggins’s left arm and started to bring it behind Loggins’s back. Loggins spun around and both men fell to the ground. In the process, Officer Allspach pinched his finger and knuckle, broke a fingernail, broke the skin on the back of his hand, and received abrasions to his elbow.

Loggins was charged with public intoxication, third offense, and interference with official acts inflicting bodily injury. Following a jury trial, Loggins was convicted on both counts. Loggins initially denied his prior convictions for public intoxication, but later admitted them. He was then sentenced to 290 days on each count, to be served concurrently.

II. Analysis. On appeal, Loggins contends his counsel was ineffective in failing to (1) make a specific motion for judgment of acquittal on the ground there was insufficient evidence to show he “inflicted” injury to the officer, (2) object to the district court’s questioning of the State’s witness, (3) object to the court’s submission of a jury instruction neither party had requested, (4) preserve error on the court’s refusal to admit an exhibit, (5) object to the court’s answer to a jury question as to the meaning of the word ‘inflict’, and (6) object to the court’s failure to conduct an adequate colloquy.

We review ineffective-assistance-of-counsel claims de novo. *State v. Martin*, 704 N.W.2d 665, 668 (Iowa 2005). To prevail on an ineffective assistance of counsel claim, Loggins must show by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007).

While we often preserve ineffective-assistance-of-counsel claims for postconviction proceedings, we consider such claims on direct appeal if the record is sufficient. *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). We find the record sufficient to address Loggins's claims.

To prove that counsel breached an essential duty, a defendant must overcome a presumption that counsel was competent and show that counsel's performance was not within the range of normal competency. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). To prove that prejudice resulted, a defendant must show there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001).

Loggins first contends his counsel was ineffective in failing to specifically challenge in his motion for judgment of acquittal the evidence to prove he inflicted an injury on Officer Allspach. Loggins argues the evidence shows Officer Allspach was injured due to his own actions in forcing him to the ground, not due to anything Loggins did. We conclude counsel did not breach an essential duty in failing to challenge this evidence. As recorded in the trial transcript, Officer Allspach testified the following events occurred after he announced he was arresting Loggins:

I grabbed his left arm and started to bring it around behind his back. I had my handcuffs in one hand. And as soon as I did that, he spun around to the right with his right shoulder, like this (indicating), and started to pull away. I threw my right arm up over his shoulder and put my right leg in front of his legs, and we both went down to the ground. And when he did that, his leg twisted around mine, and we ended up—he fell on my forearm, and I slammed my elbow down in the pavement. And my handcuff was up in this other hand here

(indicating), which pinched on my finger and knuckle here and broke my fingernail and broke the skin on the back of my hand.

From this testimony, a reasonable jury could find the fall occurred as a result of Loggins action in pulling away from the officer as he attempted to place him under arrest.

Loggins next contends his counsel was ineffective in failing to object to the district court's questioning of Officer Allspach. After counsel was finished questioning the officer, the district court engaged in the following exchange with him:

THE COURT: Officer, how tall are you?

THE WITNESS: Approximately 6 foot.

THE COURT: And how much do you weigh?

THE WITNESS: Approximately 230 pounds.

THE COURT: Are you right or left handed?

THE WITNESS: Right handed.

Loggins alleges the State seized on the court's "hints" on the issue of size and used this as guidance on how to proceed. When Loggins later took the stand, the prosecutor asked:

Q. How tall are you? A. Five-nine.

Q. And how much do you weigh? A. One seventy-five, 180.

Q. You look like you're pretty well built. Is that a fair statement? A. Might be a compliment.

Loggins does not state how he was prejudiced by this questioning and we can find no prejudice. The relative size of Officer Allspach and Loggins was apparent to the jury, who had the opportunity to observe both men testify. Furthermore, the questions—if favorable to either side—are favorable to Loggins as they show the officer is much larger.

Loggins's next claim involves a jury instruction that was not requested by either party, but was given by the court. Loggins does not dispute the instruction was a correct statement of the law. However, he argues his counsel was ineffective in failing to object to its submission because he claims it aided the State in its presentation of the case. We reject this claim.

The district court must submit an instruction to the jury if it (1) relates to a material issue, (2) states the applicable legal principles, and (3) is supported by requisite evidence. *State v. Thomas*, 262 N.W.2d 607, 612 (Iowa 1978). This is true even where neither party has requested the instruction. *Id.* Because the court's instruction meets this three-part test, counsel had no duty to object to its submission.

Loggins also contends counsel was ineffective in failing to preserve error on the court's refusal to admit a proffered exhibit. The exhibit in question included both a letter from the president of the local NAACP chapter and a letter in which Loggins detailed his version of how his arrest occurred. The court excluded the evidence, finding it was inadmissible hearsay.

We conclude counsel had no duty to object to the court's refusal to admit Loggins's exhibit. The letter from the president of the NAACP was inadmissible hearsay because the writer did not testify and her statements were offered for the truth of the matter asserted. See Iowa R. Crim. P. 5.801. Loggins argues the letter he wrote himself was admissible as a prior statement offered to rebut a charge of recent fabrication. See Iowa R. Crim. P. 5.801(d)(1)(B). However, a witness's prior consistent statement is admissible under rule 5.801(d)(1)(B) only

if the statement was made before the alleged improper motive to fabricate arose. *State v. Johnson*, 539 N.W.2d 160, 165 (Iowa 1995). That circumstance is not present here.

Loggins's next claim involves a definition the court read to the jury following a jury question as to the meaning of the word "inflict." Loggins argues counsel was ineffective in failing to object to this supplemental instruction because the court gave no indication as to the source of the definition. He does not argue the definition was incorrect. Instead, he argues the court provided the jury with "evidence" that was not introduced at trial.

The definition the court read to the jury was not evidence, but was a supplemental jury instruction, which defined a term contained within one of the elements of the interference with official acts charge. The trial court's definition was accurate. As noted above, a jury instruction must be given if it relates to a material issue and states the applicable legal principles, supported by requisite evidence. *Thomas*, 262 N.W.2d at 612. Because the court's supplemental instruction meets this three-part test, we find counsel had no duty to object to its submission.

Finally, Loggins contends counsel was ineffective in failing to object to the court's failure to conduct an adequate colloquy to determine that he voluntarily and intelligently admitted to his prior convictions for public intoxication. Loggins does not note how the outcome would have been different if he had not admitted his prior convictions. When complaining about the adequacy of his attorney's representation, it is not enough to simply claim that counsel should have done a

better job. *State v. Astello*, 602 N.W.2d 190, 198 (Iowa Ct. App. 1999). Because Loggins failed to articulate how adequate representation would have changed the outcome, we decline to preserve this issue for postconviction relief. See *id.* at 199.

Because Loggins's claims of ineffective assistance of counsel are without merit, we affirm his convictions for public intoxication and interference with official acts inflicting bodily injury.

AFFIRMED.