

**IN THE COURT OF APPEALS OF IOWA**

No. 0-061 / 09-0706  
Filed March 24, 2010

**SHALONDA DENISE GREEN,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Eliza Ovrom, Judge.

Shalonda Green appeals the district court's denial of her application for postconviction relief. **AFFIRMED.**

Susan Stockdale, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha Trout, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael T. Hunter, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.\*

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

**VOGEL, P.J.**

Shalonda Green appeals the district court's denial of her application for postconviction relief. She claims her trial attorney provided ineffective assistance in failing to object to alleged prosecutorial misconduct and by not introducing evidence that she failed a polygraph test.<sup>1</sup>

**I. Background Facts and Proceedings**

Green was found guilty of first-degree murder in violation of Iowa Code sections 707.1 and 707.2, following a four-day jury trial. The victim was Green's five-year-old stepson, C.G. This court, after detailing the horrific acts perpetrated on the boy and his tragic death, rejected Green's sufficiency of the evidence challenge, concluding "the evidence of guilt is overwhelming." *State v. Green*, No. 03-0032 (Iowa Ct. App., April 28, 2004). *Id.* We further rejected Green's claim her counsel was ineffective in not seeking a new trial, to test whether her convictions would stand under the weight-of-the-evidence standard. Green filed an application for postconviction relief, which following a hearing, the district court rejected and denied relief. Green appeals.

**II. Scope of Review**

We review claims of ineffective assistance of counsel *de novo*. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). In order to succeed on a claim of ineffective assistance of counsel, Green must prove by a preponderance of evidence that (1) counsel failed to perform an essential duty and (2) prejudice

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<sup>1</sup> Green was represented by defense counsel, John Wellman, who died prior to Green's postconviction hearing.

resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984).

### **III. Prosecutorial Misconduct**

Green claims the prosecutor should not have accused her of lying during the State's cross-examination of her, or in his closing argument, and her counsel was ineffective for failing to object to such questioning. When Green was first interviewed by the police, she denied knowing how her stepson had been injured. She then agreed to take a polygraph test, and was truthfully told that she had failed the test. Having received some information from the hospital, the police then asked Green how C.G. could have suffered a lacerated liver. At this point, Green changed her story and told the officers she had shoved, pushed, punched, and finally repeatedly kicked C.G. in his side.<sup>2</sup> She was then transported back to her house, and agreed to reenact the incident and have the police videotape her demonstration.

C.G. did not die from the injuries to his liver. Instead, the autopsy report ultimately showed he had also suffered a head trauma and died of asphyxiation.<sup>3</sup>

At her trial, Green took the stand and testified in her own defense, against her counsel's advice. During her direct examination Green admitted that she lied to the police when she was first interviewed. She also testified that she provided a false statement to police, and gave a false video reenactment of the blows she had inflicted on her stepson. Green then testified that she had shaken C.G., and

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<sup>2</sup> Green signed a written statement admitting such facts.

<sup>3</sup> During the postconviction hearing, Green argued that because C.G. did not die from injuries to the liver, this was evidence supporting her argument that she did not kick her stepson.

he fell to the floor unconscious. When asked by her attorney why she initially gave the police a very different explanation of the way the boy might have received his fatal injuries, she answered, "I lied."

On cross examination the State picked up on Green's admission that she had lied. The prosecutor began to test the facts, as Green's testimony at trial differed from the admissions she made during the police investigation. At one point the prosecutor asked and Green answered:

Q: But you did harm [C.G.], didn't you? A: No.

Q: Well, you have described grabbing him and shaking him.

A: I lied, sir.

Q: Oh, you lied to this jury when you described grabbing and shaking C.G.? A: No.

Q: Oh. You really have told so many lies you can't keep them straight, can you? A: I know when I said it when I was being questioned. That is the lie that I told.

Q: Well, is it true that you grabbed and shook Charles? A: That is true.

She also testified several times, that in trying to "cover up" for her husband's abusive behavior towards C.G. she had lied about other events within the home.

In *State v. Graves*, our supreme court held that asking a defendant whether *another* witness was lying was incompatible with the duties of a prosecutor, but also outlined five required factors in order to prove such questioning resulted in misconduct causing prejudice.<sup>4</sup> *State v. Graves*, 668 N.W.2d 860, 873 (Iowa 2003). *Graves* was decided after Green's trial. *Id.*

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<sup>4</sup> In determining prejudice the court looks at several factors within the context of the entire trial: (1) the severity and pervasiveness of the misconduct; (2) the significance of the misconduct to the central issues in the case; (3) the strength of the State's evidence; (4) the use of cautionary instructions or other curative measures; and (5) the extent to which the defense invited the misconduct. *Graves*, 668 N.W.2d at 869.

Here, the prosecutor did not have the benefit of the *Graves* decision in framing his cross-examination of Green. Nonetheless, the questions put to Green were to sort out the conflicting facts, as Green herself had reported them. Initially she denied involvement in the boy's injuries. Later she detailed her actions of shoving, pushing, punching and kicking C.G. in a signed statement, and reenacted the incident, for a video-tape recording. Then, during her direct examination she denied all of her previous admissions and testified she had been lying. It is important to observe that in the State's case in chief, there was no mention by the prosecution as to Green's veracity. However, in response to her defense counsel's questions, Green admitted that she had lied to the police in her interview, during the polygraph test, and during her reenactment and in her signed statement. It was not until this admission that the State began questioning Green about her truthfulness. As the postconviction court concluded, Green "invited the prosecutor's questions about whether she was lying." Further, in contrast to the lack of substantial evidence found in the *Graves* case, the evidence against Green was "overwhelming," thereby minimizing the effect of the prosecutor's questions as to when Green was lying or when she was telling the truth.

In the closing argument, the prosecutor made this statement,

And the defendant told you that she didn't punch or kick [C.G.]. That is what she told you. But she told the police that. And she is a chronic liar by her own admission. She lies a lot. So use your common sense when you decide what it is Shalonda Green says that you believe and why you believe it. Why would she say she kicked and punched him to police until he stopped breathing? Because she did. Not because the police browbeat her until she confessed.

Although Green claims the prosecutor's purpose was to "brand her in the mind of the jury as a liar," this argument must fail as Green herself testified repeatedly that she had lied. She "branded" herself, and the prosecutor picked up on that admission. The prosecutor's final argument is an area which is traditionally "cut some slack" or allowed a little latitude. *State v. Carey*, 709 N.W.2d 547, 559 (Iowa 2006). Based on Green's admissions and the evidence presented, we find the prosecutor reasonably drew conclusions and argued permissible inferences during his cross-examination and closing argument. *State v. Greene*, 592 N.W.2d 24, 32 (Iowa 1999). We affirm the postconviction court in denying Green relief. We agree her trial counsel did not breach an essential duty by not objecting to the prosecutor's cross-examination of Green or the closing argument.

#### **IV. Polygraph Test**

Green next claims she received ineffective assistance of counsel as to the "manner in which her polygraph test was handled." She claims she did not want the details of the examination to be admitted, but only the fact that she took the test, and was told (correctly) that she failed the test. She reasoned that had the jury known that information, they would have understood why she changed her story; from initially declaring she had no knowledge of her stepson's injuries to later admitting, among other things, kicking him and causing lacerations to his liver. Citing *Haldeman v. Total Petroleum, Inc.*, Green claims this information was part of the "operative facts" which should have been admitted with a limiting instruction to the jury for its proper use. See *Haldeman v. Total Petroleum, Inc.*, 376 N.W.2d 98, 101 (Iowa 1985) (allowing polygraph evidence with a limiting

instruction because evidence was not reflective on the question of plaintiff's truthfulness, but part of the "operative facts" relevant to plaintiff's other claims), *abrogated on other grounds by Barreca v. Nickolas*, 683 N.W.2d 111 (Iowa 2004).

Green claims the postconviction court applied a "flawed legal analysis" and failed to consider the limited use of the polygraph information, as "operative facts," to explain her change of story. The postconviction court found that Green could not prove either a breach of duty nor prejudice, as she "conveyed her explanation to the jury." We agree. She was able to tell the jury the sequence of events, and how she had lied and changed her story. To inject that she had failed a polygraph test as the force behind her changing her story would not have affected the result of the trial. The same information came in without the jury hearing that she had failed a polygraph test. As the State adds on appeal, "She initially argued counsel should have objected to the prosecutor's questions regarding her lies. Now, she is claiming the jury should have known she lied during the polygraph. Applicant cannot have it both ways." We affirm the postconviction court's denial of her application on this ground.

Finding no breach of essential duty by trial counsel nor resulting prejudice, we affirm the postconviction court's denial of Green's application for postconviction relief.

**AFFIRMED.**