

**IN THE COURT OF APPEALS OF IOWA**

No. 0-236 / 09-0755  
Filed June 16, 2010

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

**vs.**

**JAMES LEE MACLIN JR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Linn County, Mitchell E. Turner,  
Judge.

James Lee Maclin Jr. appeals from his convictions and sentences for  
attempted murder and two counts of willful injury causing serious injury.

**AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney  
General, Harold Denton, County Attorney, and Susan Nehring and Jennifer  
Clinton, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ. Tabor,  
J., takes no part.

**EISENHAUER, J.**

James Lee Maclin Jr. appeals from his convictions and sentences for attempted murder and two counts of willful injury causing serious injury. He contends the district court abused its discretion in admitting evidence of prior acts of violent behavior and in admitting recordings of phone calls he made from jail. He also contends his trial counsel was ineffective.

On March 8, 2007, Maclin stabbed his girlfriend, Denene Kuennen, in the chest, and repeatedly stabbed Robin Kleppe in the head. Both suffered near-fatal injuries. Maclin admitted the stabbings to several people, including law enforcement officers.

On cross-examination, Maclin's attorney asked Kuennen if Maclin had ever pulled a knife on her during their six-year relationship. Kuennen stated he had not. She was then asked if he had pulled any weapon on her and she replied he may have used a BB gun. On re-direct, the State inquired further about the BB gun. The State then questioned Kuennen about whether Maclin had been physically violent with her during their relationship. Kuennen testified over Maclin's objection regarding numerous incidents of physical violence occurring periodically over the course of their relationship.

We review evidentiary rulings for an abuse of discretion. *State v. Rodriguez*, 636 N.W.2d 234, 239 (Iowa 2001). An abuse of discretion occurs when the trial court exercises its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.* A ground or reason is

untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law. *Id.*

Iowa Rule of Evidence 5.404(b) states:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The purpose of this rule is to exclude evidence that serves no purpose other than to show the defendant is a bad person, from which a jury is likely to infer the defendant committed the crime in question. *Rodriquez*, 636 N.W.2d at 239. Therefore, in order to be admissible, the prior acts evidence must be relevant to prove some fact or element in issue other than the defendant's criminal disposition. *Id.* Furthermore, the evidence's probative value must not be substantially outweighed by the danger of unfair prejudice. *Id.*

Maclin contends the district court abused its discretion in admitting evidence regarding his prior violence against Kuennen because the evidence was both irrelevant and highly prejudicial. We disagree. At trial, Maclin pursued insanity, diminished responsibility, and intoxication defenses. He claimed a head injury two months before the stabbings caused a significant change in his behavior. Part of his strategy was to show his behavior on the night in question was abnormal compared to his behavior before his head injury. To develop his defenses, Kuennen was asked if Maclin had held her by knifepoint at any time in the previous six years of their relationship. Arguing this testimony wrongly suggested there had been no violence in the relationship, the prosecutor sought

to develop the record to establish there had been incidents of violence throughout the relationship.

Finding Maclin's cross-examination had left the jury with the impression there had been no physical violence in the relationship previously, the court allowed "limited questioning" of Kuennen into "actual acts of physical violence between these persons." The testimony was relevant to Maclin's defenses and not the question of whether he had a propensity to commit violent acts. Furthermore, the probative value of the testimony was not outweighed by the danger of unfair prejudice because Maclin admitted to the stabbings in question, which were more brutal than the prior violence between the couple. See *id.* at 243 (holding evidence was not unfairly prejudicial where the prior bad act was no more brutal than the crime charged and the defendant admitted to committing the crime charged). We conclude the district court did not abuse its discretion in allowing the testimony regarding prior violence between Maclin and Kuennen.

In a pro se brief, Maclin contends the court abused its discretion in admitting portions of recordings of phone calls he made from jail. He makes no citation to the record and cites no legal authority in support of his argument. See *State v. Scovill*, 224 N.W.2d 221, 223 (Iowa 1974) ("We are under no compulsion to review any assignment of error when the complaining party cites no authority in support of his argument."). He first contends he was incompetent at the time the calls were recorded in March 2007 and this should prevent their admission as evidence. However, the question of his competency was not raised until November 2007 and no objection to the records based on his competency was

ever made to the trial court. The part of his argument regarding the phone records was not preserved for our consideration. See *State v. Farni*, 325 N.W.2d 107, 109 (Iowa 1982) (holding we do not address issues first raised on appeal).

Second, he argues it was error to admit only portions of the recorded phone calls. At trial, Maclin sought to exclude the recordings in their entirety, and the court allowed select portions to be played. He now claims the court abused its discretion in only playing those selections rather than the entire recordings. The court made a reasoned decision weighing the relevancy of the recordings against the danger of unfair prejudice. We find no abuse of discretion.

In his pro se brief, Maclin also raises claims of ineffective assistance of counsel. He claims his trial counsel was ineffective in failing to present expert testimony on his defenses of insanity, diminished responsibility, and intoxication. He also raises a more general claim regarding his trial counsel's failure to adequately represent him at trial after he filed a disciplinary complaint against his counsel. He specifically cites to counsel's questioning of Kuennen that led to the prior bad acts evidence.

In order to prove counsel was ineffective, Maclin must show (1) counsel failed to perform an essential duty, and (2) prejudice resulted therefrom. *Wemark v. State*, 602 N.W.2d 810, 814 (Iowa 1999). Ordinarily, we preserve ineffectiveness claims raised on direct appeal for postconviction relief to allow full development of the facts surrounding counsel's conduct. *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999). Only in rare cases will the trial record alone be

sufficient to resolve the claim. *Id.* We preserve these claims for possible postconviction proceedings.

We affirm Maclin's convictions for attempted murder and two counts of willful injury causing serious injury.

**AFFIRMED.**