

IN THE COURT OF APPEALS OF IOWA

No. 1-271 / 10-1330
Filed May 25, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEREL LAMAR WRIGHT,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Michael J. Shubatt, Judge.

Jerel Wright appeals from judgment and sentence imposed upon his conviction of attempted murder and voluntary manslaughter, contending trial counsel was ineffective in failing to file a motion to suppress. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Ralph Potter, County Attorney, and Christine Corken, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ. Tabor, J., takes no part.

DANILSON, J.

Jerel Wright appeals from judgment and sentence imposed upon his conviction of attempted murder (of Derrick Tye) and voluntary manslaughter (of Jermaris West), contending trial counsel was ineffective in failing to file a motion to suppress statements he made during a police interrogation. Here, defense counsel in closing argument invited the jury to view the recorded interrogation, arguing it showed Wright did not intend to kill Tye, and “had no fixed purpose, no fixed plan to do physical harm to Jermaris West.” Thus, defense counsel may have made a strategic decision not to file a motion to suppress.

To establish a claim of ineffective assistance of counsel, the defendant must prove by a preponderance of the evidence: (1) that trial counsel failed to perform an essential duty and (2) that prejudice resulted from this failure. *State v. Fountain*, 786 N.W.2d 260, 265-66 (Iowa 2010). The United States Supreme Court recently reiterated that in reviewing claims of ineffective assistance, we “begin with the premise that ‘under the circumstances, the challenged action might be considered sound trial strategy.’” *Cullen v. Pinholster*, 563 U.S. ____, ____, 131 S. Ct. 1388, 1404, ___ L. Ed. 2d ____, ___ (2011) (citation omitted).

Because “[i]mprovident trial strategy, miscalculated tactics, and mistakes in judgment do not necessarily amount to ineffective assistance of counsel,” postconviction proceedings are often necessary to discern the difference between improvident trial strategy and ineffective assistance.

The fact that a particular decision was made for tactical reasons does not, however, automatically immunize the decision from a Sixth Amendment challenge. That decision must still satisfy the ultimate test: “whether under the entire record and totality of circumstances” counsel performed competently.

State v. Ondayog, 722 N.W.2d 778, 786 (Iowa 2006) (citations omitted). “[T]here can be a point when the tactical or strategic decisions made by counsel from a host of competing options fall outside the broad scope of a reasonably competent attorney.” *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001).

The State argues Wright can prove neither element of an ineffectiveness claim. Because we do not believe the present record is sufficient to resolve the claim, we preserve Wright’s ineffective assistance claim for possible postconviction relief proceedings.

AFFIRMED.