

IN THE COURT OF APPEALS OF IOWA

No. 2-963 / 11-1671
Filed January 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JASON DWAYNE TATE,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, Nancy S. Tabor,
Judge.

The defendant appeals from his conviction of first-degree murder and
possession of a firearm by a felon. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik and Doug Hammerand,
Assistant Attorneys General, and Michael L. Wolf, County Attorney, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ. Tabor, J., takes no
part.

MULLINS, J.

Jason Tate appeals from a jury verdict finding him guilty of first-degree murder and possession of a firearm by a felon. Tate contends there was insufficient evidence to support the first-degree murder conviction and the court erred in admitting evidence of prior bad acts. Tate argues the killing was accidental and the trial court erred in admitting certain evidence about the decedent. Alternatively, should trial counsel have failed to preserve error, Tate raises these issues as an ineffective assistance of counsel claim. For the reasons contained herein, we affirm.

I. Background Facts & Proceedings

Jason Tate and Kelsey Stahl knew each other well. In the spring of 2010, Stahl moved into a one bedroom apartment at Miller Ridge Apartments in Clinton, Iowa. Tate moved into her apartment approximately forty-five days later. At the time, she was dating Tate and working as a certified nursing assistant in a local nursing home. However, between November and December 2010, Stahl's friends reported seeing a change in her behavior and in her relationship with Tate.

On December 19, 2010, Jason Tate fired a single shot from a .38 caliber revolver that pierced Stahl's neck just below her jaw line on the right side of her body. The bullet severed Stahl's spinal cord and lodged into her third cervical vertebra. The shot caused Stahl to collapse on her bedroom floor. Medical experts later testified the gun shot likely caused instant paralysis and Stahl remained conscious, if at all, for a matter of minutes or seconds.

Immediately after the shooting, Tate grasped Stahl's body and attempted to drag her out of the apartment. He pulled her out of the bedroom, down a short hallway, and into the entrance of the kitchen. At some point, he stopped trying to move her and left Stahl's body lying on the linoleum floor. Tate then grabbed the gun, ran down the apartment stairs, and threw the gun away from the apartment and into the snow. He rushed back into the apartment, stepped over Stahl's body, and changed his blood-stained jeans in the bedroom. After changing, Tate again stepped over Stahl's body, took her car keys off the top of refrigerator, and locked the door on his way out of the apartment.

After leaving Stahl's apartment, Tate drove her car to a nearby gas station. He purchased gas, cigarettes, and a lighter—in three separate, successive transactions. He then drove across the Mississippi River and into Illinois. While in the car, he placed several phone calls. He called his mother, Jerri Ross (his ex-girlfriend's mother and grandmother to one of his three children), and Neelie Wallace.

Wallace is another one of Tate's ex-girlfriends with whom he had a child. Beginning at or around 9:45 p.m. on December 19, 2010, Tate placed between nine and eleven phone calls to Wallace. Wallace later testified Tate left a frantic message saying he wanted to see his son "one last time" because "he was gonna be gone for a while, so he just wanted to be with people that he loved." Wallace eventually returned Tate's calls and agreed to allow him to come to her home in Rockford, Illinois.

At approximately 11:30 p.m. on December 19, 2010, Tate arrived at Wallace's home. Upon his arrival, he told Wallace he was "on the run for murder." When she asked him what he meant, he laughed while he said "from a long time ago." Wallace then noticed blood on Tate's shirt and shoes. She asked him what had happened. He told her he was at a "trap house" with Stahl when someone robbed them. He said someone came into the room and started shooting. In the midst of everything, he looked over at Stahl and noticed that she had been shot but did not know who did it. Later that night, he told Wallace that "he had a gun and that he thought maybe he had shot her, but he wasn't sure." He explained that after Stahl had been shot, he tried to lift her arms over her head and then just grabbed her keys and left. After explaining the blood on his clothes, he took what appeared to be a shell casing out of his pocket and told Wallace he needed to "get rid of it." Wallace allowed him to shower and stay the night. Tate and Wallace then engaged in sexual intercourse.

The next day, Tate changed his story to Wallace. He began to cry and said, "I swear it was an accident." He confided in Wallace that he had accidentally shot Stahl. While explaining what happened, he said he was in Stahl's bedroom and she asked to see his new "banger." He thought the gun was unloaded and he gave it to Stahl. He then said she accidentally shot herself. Wallace asked Tate what he would have done if she had been shot instead of Stahl. Tate said he would have taken her to the hospital immediately.

On December 21, 2010, Tate asked Wallace to move Stahl's car. Tate had parked Stahl's car away from Wallace's apartment in a different apartment

complex. Once they reached Stahl's car, they decided to park it alongside of an abandoned house. After parking the car alongside the abandoned house, Tate asked Wallace if she would drive him to Chicago. As Wallace later explained, she did not want to get in trouble for helping him, so she declined. However, she agreed to take him to the gas station, give him money, and pay for gas in Stahl's car. After Tate left, Wallace called a Crime Stoppers hotline, told law enforcement she had heard Kelsey Stahl had been killed, and requested law enforcement check Stahl's apartment.

Later on December 21, 2010, police arrived at Stahl's apartment to investigate the Crime Stoppers tip. Upon arrival, police officers noticed blood on Stahl's apartment door. After gaining entry into the apartment, officers discovered Stahl's body lying on the floor in the hallway between the bedroom and the kitchen. A blood spatter analysis revealed Stahl had been shot in her bedroom near the closet. Large transfer stains indicated someone dragged Stahl's body from the bedroom to the hallway near the kitchen. Police officers found two live .38 caliber rounds of ammunition in the bedroom, and one in the hallway between the bedroom and the kitchen. Authorities later matched Tate's fingerprints to the bloody prints on the door.

Meanwhile, Tate drove Stahl's car to Evanston, Illinois—a northern suburb of Chicago. He then took a train to the south side of Chicago to meet a friend. Undercover police officers acted on a tip that Tate was in Chicago and apprehended him on the street. Illinois State Police Officer Tim Gainer later testified that as he patted Tate down for weapons, Tate said he had thrown the

gun into the Mississippi River. Gainer testified Tate thanked him for not shooting him, and Tate said he “deserved to be shot.” While in the car with Gainer, Tate reportedly said he was having difficulty sleeping because he kept seeing Stahl’s face. Gainer reported Tate said, “She was just too heavy. I couldn’t get her in the garbage.” Tate then said he “was going to jail for a very long time, wasn’t gonna see his kids.”

In the spring of 2011, a Miller Ridge employee found a .38 caliber revolver with a pearl handle near Stahl’s apartment. One of the chambers still had a casing inside it. The casing was at the 2:00 position, indicating the trigger had been pulled again after the bullet housed in that casing was fired, or that someone opened the gun and rotated the chamber after the shot was fired. A ballistics report later matched the bullet recovered from Stahl’s body to the .38 caliber revolver found outside the apartment. The ballistics report indicated the gun had been fired one foot to two-and-a-half feet away from the entry wound.

The State charged Tate with first-degree murder and possession of a firearm by a felon. Tate’s counsel filed a motion in limine and, in relevant part, requested the court exclude any specific instances of conduct to prove character. Tate argued references to allegations Tate verbally and physically abused Stahl were inadmissible character evidence. The State urged references to verbal altercations and signs of bruising on Stahl in the months leading up to the shooting were relevant to issues of motive, plan, and intent. The judge denied Tate’s motion to the extent the State used such evidence and testimony for a permissible purpose.

Tate was tried by jury for the charges of first-degree murder and possession of a firearm by a felon. At the close of the State's case, Tate moved for acquittal based on the insufficiency of the evidence against him. He renewed his motion for acquittal at the close of all the evidence. The court denied both motions. The jury found the defendant guilty on both counts. The court sentenced Tate to life in prison without the possibility of parole for first-degree murder to be served concurrently with five years in prison for possession of a firearm by a felon. This appeal follows. Additional facts and circumstances will be developed as necessary in the analysis section below.

II. Preservation of Error

Tate contends the trial court erred in admitting evidence of prior bad acts, including a verbal altercation and bruising on Stahl in the months leading up to her death. Tate did not object to the admission of such evidence at trial. Unless a motion in limine was resolved in such a way the admissibility of evidence is beyond question, a party challenging the admissibility must object to the admission of the evidence at trial to preserve error. *State v. Tangie*, 616 N.W.2d 564, 568–69 (Iowa 2000). Upon our review, we find the trial court's ruling was preliminary. Thus, Tate waived any alleged error, and his predication of error on the admission of prior bad acts must stand or fall on his ineffective assistance of counsel claim.¹

¹ See *infra* Part IV.B.

III. Standard of Review

We review sufficiency-of-the-evidence claims for correction of errors at law. *State v. Tucker*, 810 N.W.2d 519, 520 (Iowa Ct. App. 2012). A verdict supported by substantial evidence is binding on appeal. *Id.* “Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt.” *Id.* (quoting *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008)). To determine whether substantial evidence supports a verdict, “we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions that may be fairly and reasonably deduced from the evidence.” *Id.*

We review ineffective assistance of counsel claims de novo. *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). Generally, we preserve such claims for postconviction relief proceedings. *State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005). However, we may address ineffectiveness claims on direct appeal where the record is adequate. *State v. Rubino*, 602 N.W.2d 558, 563 (Iowa 1999).

IV. Analysis

A. Sufficiency of the Evidence

Tate contends the evidence is insufficient to show he acted with the requisite malice aforethought, deliberation, and premeditation. To prove first-degree murder, the State must establish the defendant acted with malice aforethought and willfully, deliberately, and premeditatedly caused another’s death with the specific purpose to bring about that result. See Iowa Code

§ 707.2(1) (2011); *State v. Reeves*, 636 N.W.2d 22, 25 (Iowa 2001). A defendant's "use of a deadly weapon accompanied by an opportunity to deliberate, even for a short period of time, is evidence of malice, deliberation, and premeditation." *State v. Frazer*, 267 N.W.2d 34, 39 (Iowa 1978). The law presumes "malice aforethought from the use of a deadly weapon in the absence of evidence to the contrary." *State v. Reeves*, 670 N.W.2d 199, 207 (2003). The defendant may rebut the presumption of malice aforethought from the use a deadly weapon by showing the killing was accidental. *Id.*

Tate argues he did not know the gun was loaded and the killing was accidental. During the trial, Tate testified. He indicated that on the morning of December 19, 2010, he picked up his son from his ex-girlfriend's mother, Jerri Ross. At some point, he and his son drove Stahl to work at the nursing home. He then took his son to a friend's home to play with similarly aged children. While at this home, Tate learned of a .38 caliber gun with a pearl handle that had been placed in a dumpster. Tate then drove his son back to his grandmother's home. Afterwards, Tate drove to Jordan Guy's home. Tate and Guy smoked marijuana and drove to the dumpster to locate the gun. Once Tate found the gun, he offered to sell it to Guy. Guy declined.

Tate testified that on the night of December 19, 2010, he left Guy's house around 7:30 or 8:00 p.m. He then drove to Stahl's apartment. While inside the apartment, Tate asserted that he unloaded the revolver and placed the gun and the bullets into a purple Crown Royal bag. Tate placed the bag in Stahl's

bedroom closet. Tate then drove to the nursing home to pick Stahl up from her shift. The two returned to Stahl's apartment.

Tate maintained that once inside the apartment, Stahl requested to see the gun. While showing Stahl the gun, Tate testified that he pulled the trigger to prove to her that it was not loaded. The gun fired a bullet into Stahl, and she dropped to the floor with blood gushing from her neck. Tate claims he panicked, attempted to administer aid, and moved Stahl out of the bedroom. He then threw the gun out of the apartment because, as he explained, he was a felon and not supposed to have a gun.

In an effort to corroborate his assertion of an accidental killing, Tate presented evidence from a gunsmith. The gunsmith testified that a .38 revolver does not always eject all of the ammunition. The State's firearm expert indicated it was possible for a live round to be in the chamber with no warning to the user that the gun was loaded.

The quintessential function of the jury is to decide questions of fact. See *State v. Liggings*, 557 N.W.2d 263, 269 (Iowa 1996). "A jury is free to believe or disbelieve any testimony as it chooses to give as much weight to the evidence as, in its judgment, such evidence should receive." *Id.* Tate admits to shooting and killing Stahl with a .38 caliber revolver. Tate denies telling Wallace he was "on the run for murder," insists he did not tell her anything other than that the killing was an accident, and maintains he did not have sex with her in the hours after the shooting. He also denies showing Wallace what appeared to be a bullet or a bullet casing, and attempting to hide Stahl's car alongside an abandoned

house. The jury was free to reject any or all of Tate's testimony, and may consider false exculpatory statements as circumstantial evidence of guilt. *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993).

Tate also denies telling Officer Tim Gainer that he disposed of the gun in the Mississippi River, that Stahl's body was too heavy to place in the garbage, that he deserved to be shot for what he had done, and that he was going away for a long time. The question of credibility is uniquely suited for the jury, and a reasonable jury was again free to reject any or all of Tate's version of the events in favor of testimony from Wallace and Gainer. See *Liggings*, 557 N.W.2d at 269.

The jury was also in a position to assess Tate's assertion that the killing was accidental. Authorities found the revolver with the spent casing in the 2:00 position, indicating that the gun had been opened and the chamber rotated after firing, or someone pulled the trigger twice. A reasonable jury could conclude from the live rounds of ammunition found scattered about the floor and the position of the chamber containing the spent casing that the defendant had not unloaded the gun prior to leveling it at Stahl and pulling the trigger—but did so after the shooting.

Tate argues there is no credible evidence to show he acted with premeditation. The State may show premeditation "by the nature of the crime and the defendant's actions afterwards." *State v. Buenaventura*, 660 N.W.2d 38, 49 (Iowa 2003). A jury may consider evidence of the defendant's "conduct in leaving the scene or locality [as] circumstantially relevant to prove both the

commission of the act and the intent and purpose for which that act was committed.” *State v. Brokaw*, 342 N.W.2d 864, 865 (Iowa 1984). After shooting Stahl, Tate did not stay to administer aid. Although the defendant had a cell phone, he never called for emergency assistance. Instead, he attempted to dispose of the murder weapon. On his way out of the apartment, the defendant locked the door—ensuring no one would have access to render aid or find her body. The defendant then fled the state, attempting to conceal the location of Stahl’s car along the way.

We find the evidence, when viewed in a light most favorable to the State, with all reasonable inferences drawn therefrom, was sufficient to allow a reasonable jury to conclude beyond a reasonable doubt that Jason Tate willfully and deliberately shot Kelsey Stahl with premeditation and malice aforethought, specifically intending to cause her death. Accordingly, we find no error in the district court’s denial of Tate’s motion for acquittal.

B. Ineffective Assistance of Counsel

Tate contends trial counsel was ineffective in failing to object to evidence of a verbal altercation between Tate and Stahl, testimony about Stahl’s change in behavior after she began dating Tate, and testimony from three witnesses describing the presence of bruising on Stahl in the months before her death. To establish an ineffective assistance of counsel claim, a claimant must show “(1) counsel failed to perform an essential duty; and (2) prejudice resulted.” *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). If either element is missing, the claim must fail. *See id.*

First, Tate argues trial counsel was ineffective in failing to object to evidence of a verbal altercation. The State contends this evidence is probative of motive, intent, and absence of mistake. When the State offers evidence of the defendant's prior bad acts "to establish an ultimate inference of mens rea, the court should require the prosecutor to 'articulate a tenable noncharacter theory of logical relevance.'" *State v. Sullivan*, 679 N.W.2d 19, 28 (Iowa 2004). Evidence of "the defendant's prior conduct directed to the victim of a crime, whether loving or violent, reveals the emotional relationship between the defendant and the victim and is highly probative of the defendant's probable motivation and intent in subsequent situations." *Taylor*, 689 N.W.2d at 125. At trial, Phyllis Pickens testified she witnessed a verbal altercation between Tate and Stahl during which Tate said, "Shut the fuck up, bitch, before I choke the shit out of you." We find this evidence probative of an emotionally charged relationship between Tate and Stahl, and its probative value is not substantially outweighed by the danger of unfair prejudice. See Iowa R. Evid. 5.403; *Buenaventura*, 660 N.W.2d at 49 ("Evidence of bad feelings or quarrels between the defendant and the victim are circumstances that may be used to support a finding of malice aforethought.").

Second, Tate maintains trial counsel erred in failing to object to testimony Stahl exhibited a change in behavior and a change in how she wore her hair after Tate moved in with her. As a general rule, "relevant evidence is admissible and irrelevant evidence is not admissible." *State v. Taylor*, 689 N.W.2d 116, 123 (Iowa 2004). However, even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Iowa R.

Evid. 5.403. At trial Janet Berkey, one of Stahl's co-workers, testified about Stahl's behavior after Tate moved in with her. Berkey explained, "She stopped doing her hair. She didn't wear the makeup to work anymore. She stopped going out with her friends." We find the testimony relevant as circumstantial evidence of Tate's relationship with Stahl, and its probative value is not substantially outweighed by a danger of unfair prejudice. See Iowa R. Evid. 5.403.

Finally, Tate asserts trial counsel was ineffective in failing to object to testimony from three witnesses about bruising on Stahl in the months leading up to her death because the State did not present clear proof the defendant caused the bruising. Three witnesses, Malorie Van Thun, Knessha Williams, and Christina Fay, testified they observed bruises on Stahl in the months prior to December 19, 2010.

Even assuming, *arguendo*, the trial counsel erred in not objecting to testimony about bruising in the months leading up to Stahl's death, Tate must show prejudice. *Maxwell*, 743 N.W.2d at 195. We have held "[p]rejudice exists where the claimant proves by 'a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* at 196 (quoting *Bowman v. State*, 710 N.W.2d 200, 203 (Iowa 2006)). As we have previously articulated,

[T]he prejudice prong of the *Strickland* test does not mean a defendant must establish that counsel's deficient conduct more likely than not altered the outcome in the case. A defendant need only show that the probability of a different result is sufficient to undermine confidence in the outcome.

Id. (citation and internal quotation marks omitted). As we do not consider whether trial counsel failed to perform an essential duty by failing to object to the evidence of bruising, we must consider the cumulative effect such evidence may have in prejudicing the jury. *Schrier v. State*, 347 N.W.2d 657, 668 (Iowa 1984).

Tate's trial counsel cross-examined each witness about the origin of the bruises. On cross-examination, Tate's trial counsel elicited responses from each witness denying Stahl implicated Tate as having caused the bruising. Tate's trial counsel also elicited responses from each witness indicating the bruises did not cause them to fear for Stahl's safety. In light of the substantial inculpatory evidence discussed above, we find the cumulative effect of this evidence is insufficient to undermine confidence in the jury's verdict. See *Maxwell*, 743 N.W.2d at 196.

In sum, we find the record adequate to address the ineffective assistance of counsel claims. See *Rubino*, 602 N.W.2d at 563. For the foregoing reasons, we find Tate cannot establish claims of ineffective assistance of counsel.

V. Conclusion

When viewed in a light most favorable to the State, with all reasonable inferences drawn therefrom, we find the evidence sufficient to allow a reasonable jury to conclude Jason Tate willfully and deliberately shot Kelsey Stahl with premeditation and malice aforethought, specifically intending to cause her death. We find Tate's failure to preserve error in the complained about testimony insufficient to predicate ineffective assistance claims. Accordingly, we affirm.

AFFIRMED.