

IN THE COURT OF APPEALS OF IOWA

No. 3-835 / 12-2223
Filed October 23, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JESSICA CHRISTINE BURTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick (trial), and Joel W. Barrows (revocation and sentencing), Judges.

The defendant appeals her conviction for willful injury causing bodily injury. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Melinda Nye, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney General, Michael Walton, County Attorney, and Joseph Grubisich and Kimberly Shepard, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

TABOR, J.

Jessica Christine Burton appeals her conviction for willful injury causing bodily injury in violation of Iowa Code section 708.4(2) (2009). She alleges insufficient evidence to convict, ineffective assistance of counsel, and sentencing error. We find substantial evidence of willful injury as the district court marshaled that offense for the jury. But we find Burton was prejudiced by counsel's failure to object to an incomplete aiding and abetting instruction and remand for a new trial. Because of the remand, we don't need to address the improper sentence.

I. Background Facts and Proceedings

On May 27, 2010, Jessica Burton called Luciano Garcia to complain that his girlfriend, Destiny Castaneda, was "fooling around" with her boyfriend and father of her children, Matt Hernandez. Later that day Burton, her sister Marisa Navarrett, and their friend Monica Morris arrived at the Wendy's restaurant where Garcia worked and told him they were going to go to Castaneda's workplace and "beat her ass."

Castaneda then received a phone call from Burton. Burton called Castaneda a "stupid fucking oompa-loompa fat bitch." That night Burton, Navarrett, and Morris went to the Days Inn where Castaneda worked. Navarrett and Morris went in while Burton stayed in the car. Castaneda did not know either Navarrett or Morris. The two women asked about room rates. After a few minutes, Navarrett and Morris said: "We're not here for room rates, we're here to fuck you up for Jessica." They began knocking over papers and other items. They threw a cordless phone at Castaneda. They hit her face with a flat-screen

computer monitor. The two women then opened the door between the lobby and the front desk and pulled Castaneda from the room. The two women began pulling her hair. Castaneda tried to fend them off with a plastic “wet floor” sign but the two women took it from her and began hitting her with it. Eventually, Castaneda ended up curled in a ball on the floor. Morris and Navarrett continued to kick her in the back and head until Castaneda’s boss walked into the lobby. Navarrett and Morris walked out the front door, where Burton picked them up. The whole fight lasted two minutes.

Castaneda followed them outside and asked Burton, “[W]hy would they have done this to me?” Navarrett stopped Castaneda and told her, “You’ve already got your ass beat enough. Do you want me to beat your ass more? Just leave already. Back off.” The three women then left. Castaneda sustained head, neck, and back injuries, along with severe facial bruises.

On October 13, 2010, the State charged Burton and her companions with willful injury causing serious injury under Iowa Code section 708.4(1), a class “C” felony. Before trial, the State amended the trial information to charge willful injury causing bodily injury under section 708.4(2), a class “D” felony. The district court tried Burton, Navarrett, and Morris together. The State prosecuted Burton under an aiding and abetting theory, stating in closing argument:

If you determine Jessica Burton, who stayed in the car, knew what was going to happen, drove the other two ladies up there, waited for the assault to end, and left, she is an aider and abetter and she is just as guilty as the person who threw the punches.

A jury found all three defendants guilty of willful injury causing bodily injury. On July 14, 2011, the district court granted Burton a deferred judgment

and ordered her to pay a civil penalty of \$750. On November 29, 2012, the court revoked Burton's probation due to an unrelated charge, and sentenced her to a term of incarceration not to exceed five years to be served concurrently with another conviction. The court also imposed a \$750 fine. Burton now appeals.

II. Standard of Review

We review a challenge to the sufficiency of the evidence for correction of errors at law. *State v. Millsap*, 704 N.W.2d 426, 430 (Iowa 2005). We review ineffective assistance of counsel claims de novo. *State v. Brothorn*, 832 N.W.2d 187, 192 (Iowa 2013).

III. Analysis

A. Did the State Offer Sufficient Evidence To Establish The Specific Intent Element Of Burton's Conviction For Willful Injury?

Our goal is to determine whether the evidence could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Anspach*, 627 N.W.2d 227, 231 (Iowa 2001). We view the evidence in the light most favorable to the State in making this determination. *Millsap*, 704 N.W.2d at 429.

The court instructed the jury as follows:

The State must prove all of the following elements of Willful Injury.

1. On or about the 27th day of May, 2010, the defendant, without justification, assaulted Destiny Castaneda.
2. The defendant specifically intended to cause a serious injury to Destiny Castaneda.
3. Destiny Castaneda suffered a bodily injury.

The court also gave the jurors the following instruction on aiding and abetting:

All persons involved in the commission of a crime, whether they directly commit the crime or knowingly “aid and abet” its commission, shall be treated in the same way.

“Aid and abet” means to knowingly approve and agree to the commission of a crime, either by active participation in it or by knowingly advising or encouraging the act in some way before or when it is committed. Conduct following the crime may be considered only as it may tend to prove the defendant’s earlier participation. Mere nearness to, or presence at, the scene of the crime, without more evidence, is not “aiding and abetting”. Likewise, mere knowledge of the crime is not enough to prove “aiding and abetting.”

The guilt of a person who knowingly aids and abets the commission of a crime must be determined only on the facts which show the part [he] [she] has in it, and does not depend upon the degree of another person’s guilt.

If you find the State has proved the defendant directly committed the crime, or knowingly “aided and abetted” other person(s) in the commission of the crime, then the defendant is guilty of the crime charged.

But the court did not include an additional paragraph from the uniform jury instruction that addresses specific intent offenses. That paragraph reads:

The crime charged requires a specific intent. Therefore, before you can find the defendant “aided and abetted” the commission of the crime, the State must prove the defendant either has such specific intent or “aided and abetted” with the knowledge the others who directly committed the crime had such specific intent. If the defendant did not have the specific intent, or knowledge the others had such specific intent, [he] [she] is not guilty.

Burton did not object to the instructions given to the jury at trial. Therefore, the aiding and abetting instruction—without the specific-intent paragraph—became the law of the case for purposes of our review to determine if the State presented sufficient evidence. See *State v. Canal*, 773 N.W.2d 528, 530 (Iowa 2009).

Burton argues that because she did not go inside the hotel with her co-defendants, she did not know what their intent was. She also argues threats to

“fuck [Castaneda] up” and “beat her ass” are too ambiguous to express the necessary intent to cause serious injury.

The State’s evidence revealed Burton’s animosity toward Castaneda and her recruitment of two friends to harm Castaneda. Castaneda did not know Navarrett or Morris. Only Burton knew Castaneda. Earlier in the day Burton, Morris, and Navarrett went to Castaneda’s boyfriend and told him they were going to “beat her ass.” Thirty minutes before the assault Burton telephoned Castaneda, calling her derogatory names and accusing her of sleeping with Burton’s boyfriend, who is also the father of Burton’s children. Burton then took Navarrett and Morris to the Days Inn where Castaneda worked.

The State also presented ample evidence to show Burton’s accomplices had specific intent to inflict serious injury on Castaneda. First, it was two against one. Second, Navarrett and Morris used everyday items as weapons against Castaneda. Navarrett hit Castaneda with a flat screen computer monitor on the side of her face. Navarrett and Morris kicked Castaneda on the head and back while she was on the ground. The only reason why the two women stopped the beating was because the hotel manager came into the room.

The evidence Navarrett and Morris acted on their specific intent to cause serious injury to Castaneda, combined with the proof Burton aided and abetted the vicious attack carried out by her friends, qualified as substantial evidence under the instructions given. An actor’s specific intent is a mental process seldom capable of direct proof. *State v. Walker*, 574 N.W.2d 280, 289 (Iowa 1998). But specific intent “may be shown by circumstantial evidence and the

reasonable inferences drawn from that evidence.” *Id.* A rational jury could view all the State’s evidence together and find beyond a reasonable doubt that Burton’s co-defendants had the necessary intent and Burton aided and abetted their endeavor. As instructed, the jurors were not required to find Burton knew Navarrett and Morris specifically intended to cause serious injury to Castaneda. When viewed in the light most favorable to the verdict, the evidence was sufficient to convict Burton of aiding and abetting willful injury causing bodily injury.

B. Was Burton’s Trial Counsel Ineffective In Failing To Request The Additional Paragraph of the Uniform Jury Instruction On Aiding And Abetting that Addressed Specific Intent Offenses When Burton’s Intent Was A Determinative Factor In The Prosecution?

In her second assignment of error, Burton alleges her counsel breached a duty in not objecting to an incomplete aiding-and-abetting instruction. As discussed in the first issue, the district court did not give the jury the supplementary paragraph from the uniform jury instruction explaining how the concept of aiding and abetting works in the context of specific-intent crimes. Burton contends she was prejudiced because it was reasonably probable the jurors reached their guilty verdict without finding she had specific intent or knew the friends she aided and abetted had the specific intent to cause serious injury.

Normally we deal with ineffective-assistance-of-counsel claims after postconviction-relief proceedings. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa

2008). But if the record is sufficient to permit a ruling, as it is here, we will decide such a claim on direct appeal. *Id.*

To demonstrate ineffective assistance of counsel, Burton must prove: first, her counsel failed to perform an essential duty and second, prejudice resulted. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prove counsel failed to perform an essential duty, Burton “must show that counsel’s performance was deficient” meaning her attorney committed errors so serious that he “was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *See id.* We measure effective performance by determining “whether counsel’s assistance was reasonable considering all the circumstances.” *See id.* at 688. To prove prejudice, Burton must prove “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. To show a reasonable probability the result would have been different, Burton must demonstrate the probability of a different result is enough to undermine our confidence in the outcome. *See Bowman v. State*, 710 N.W.2d 200, 206 (Iowa 2006) (quoting *State v. Graves*, 668 N.W.2d 860, 882–83 (Iowa 2003)).

Under Iowa Code section 708.4, “any person who does an act which is not justified and which is intended to cause serious injury to another” commits willful injury. Willful injury is a specific intent crime. *See State v. Smith*, 739 N.W.2d 289, 292 (Iowa 2007). When specific intent is an element of the crime charged a person may be convicted on a theory of aiding and abetting only if that person

participated while possessing the required intent or with knowledge the principal had the required intent. *State v. Tangie*, 616 N.W.2d 564, 574 (Iowa 2000).

The district court has a “duty to instruct fully and fairly” on the law applicable to “all issues raised by the evidence.” *State v. Schuler*, 774 N.W.2d 294, 297 (Iowa 2009). Here, the court provided the jury with Iowa Uniform Jury Instruction 200.8, Aiding and Abetting. But it did not include the additional paragraph of the uniform instruction (quoted above) required for offenses involving specific intent.¹

We believe trial counsel breached an essential duty in not objecting to the absence of this paragraph and the breach resulted in prejudice to Burton. The State argues Burton cannot show prejudice because “[r]ational jurors would infer that Burton specifically intended to cause a serious injury to Castaneda and used Navarrett and Morris to accomplish that intention.” We agree rational jurors could have inferred Burton’s specific intent to cause serious injury, but that is not the only fair inference available from the evidence. Rational jurors also could have rejected such an inference, finding the violence perpetrated by Navarrett and Morris exceeded Burton’s intent when she aided and abetted their assault on Castaneda.

Our confidence in the outcome is undermined because the jurors were improperly instructed. Without the missing paragraph, the jury could convict Burton of willful injury without finding *either* that she personally possessed the

¹ We also note the marshaling instruction for willful injury did not include aiding and abetting language. This omission from the marshaling instruction magnified the risk that jurors would not understand how to assess Burton’s specific intent if she was not a principal in the assault of Castaneda.

specific intent to cause serious injury when she aided and abetted her co-defendants in the attack *or* that she had knowledge her co-defendants had specific intent to cause serious injury. The full instruction would have offered the jurors clear guidance regarding the State's burden to prove specific intent in an aiding-and-abetting scenario. The State has the duty to prove every element of the crime beyond a reasonable doubt. See *State v. McMullin*, 421 N.W.2d 517, 519 (Iowa 1988). The failure to include the specific intent paragraph in the aiding and abetting instruction denied Burton the due process right of having the State meet that burden here.

Where the issue of specific intent is "vital" to the defense, as it was here, trial counsel's failure to object to its omission from the jury instruction is a breach of duty which results in prejudice to the defendant. See *State v. Goff*, 342 N.W.2d 830, 838 (Iowa 1983). Accordingly, we reverse and remand for a new trial.

REVERSED AND REMANDED.