

IN THE COURT OF APPEALS OF IOWA

No. 6-214 / 04-2022

Filed May 24, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER JOSEPH WHEELER,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson,
Judge.

Christopher Wheeler appeals his conviction for murder in the first degree.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Guddall, Assistant Attorney
General, Harold Denton, County Attorney, and Susie Nehring and Laurie Craig,
Assistant County Attorneys, for appellee.

Heard by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

Christopher Joseph Wheeler appeals his conviction for murder in the first degree. He contends the trial court erred in denying his motion for new trial and that he received ineffective assistance of trial counsel. We affirm his conviction and preserve his ineffective assistance of counsel claim for a possible postconviction proceeding.

I. BACKGROUND FACTS AND PROCEEDINGS.

On August 20, 2003, the State charged Wheeler with murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2 (1) (2003) in connection with the death of Shelley Razor-Markwell in July 2003 from asphyxia due to manual strangulation. Prior to trial Wheeler filed, withdrew, and re-filed notices of the defenses of diminished responsibility and intoxication. On October 7, 2003, the trial court approved defense counsel's request for a psychological evaluation of Wheeler by a clinical psychologist, Dr. Daniel Rogers. On July 2, 2004, the court ordered a psychiatric evaluation by the State's named expert, Dr. Michael Taylor. Wheeler filed a notice of an insanity defense on July 16, 2004. On July 27, 2004, over defense objections, the court granted the State's application for another psychiatric evaluation of Wheeler, at the Iowa Medical Classification Center at Oakdale (Oakdale). At trial Wheeler conceded he killed Razor-Markwell and relied on the defenses of diminished responsibility, intoxication, and insanity. As a result, expert witnesses for both the State and the defense testified regarding Wheeler's state of mind and mental status at the time of the murder.

Dr. Tracy Gunter evaluated Wheeler at Oakdale at the State's request and testified for the State at trial as to her findings. She concluded that although Wheeler was very likely intoxicated at the time of the killing, he was able to form the specific intent to kill and was aware of the wrongfulness of his actions. Dr. Gunter found no evidence of mental illness outside the context of Wheeler's substance abuse problem.

Dr. Ali Safdar, a psychiatrist at the Abbe Center for Community Mental Health in Cedar Rapids, testified for the defense. Wheeler was seen at the Abbe Center a total of four times prior to the crime. He was initially seen twice by Dr. Eggerman, a psychologist. Dr. Eggerman diagnosed him with depressive disorder with psychotic features and referred him to Dr. Safdar. Dr. Safdar diagnosed Wheeler with psychotic disorder not otherwise specified, as well as alcohol and cannabis dependence. He prescribed anti-psychotic medication for Wheeler. However, Dr. Safdar opined that at the time he saw him prior to the crime Wheeler was not a danger to himself or others. Dr. Safdar did not provide an opinion at trial regarding either insanity or Wheeler's capacity to form specific intent at the time of the killing.

The defense also called Dr. Michael Taylor to testify at trial. Dr. Taylor, a psychiatrist, had evaluated Wheeler on two occasions. The State requested the first evaluation, after which Dr. Taylor diagnosed Wheeler with probable major depressive disorder with psychotic features, possibly associated with some variant of attention deficit disorder. After this initial evaluation Dr. Taylor was of the opinion that at the time of the killing Wheeler was not able to form the specific intent to kill and was not capable of understanding the wrongfulness of his acts.

Dr. Taylor later learned from the county attorney that Dr. Rogers had evaluated Wheeler some nine months earlier and Dr. Rogers had not found a basis for a psychiatric defense. The day after learning this information Dr. Taylor notified counsel for the parties that he held no opinions within a reasonable degree of medical certainty, and would need to review the result of Wheeler's psychological testing by Dr. Rogers as well as what Wheeler had told Dr. Rogers in order to present a fully informed opinion. Dr. Taylor also found out that Wheeler had, subsequent to Dr. Taylor's initial evaluation, been evaluated at the Iowa Medical and Classification Center, and wished to review its records before expressing any further opinion.

After he received and reviewed Dr. Roger's records, and the Medical and Classification Center records, Dr. Taylor conducted a second evaluation of Wheeler. Dr. Taylor ultimately concluded that at the time of Razor-Markwell's death Wheeler was able to form the specific intent to kill and that he was able to understand the wrongfulness of his acts. He opined the only diagnosis that would apply to Wheeler in the past was a substance abuse disorder involving methamphetamine and alcohol. Dr. Taylor testified in part that Wheeler told him his prior attorney had advised him not to speak with Dr. Rogers about the killing because at the time they were going with an "I didn't do it" defense.

Finally, Dr. Daniel Rogers testified for the defense. Dr. Rogers had evaluated Wheeler at the request of his attorney. He diagnosed Wheeler with adjustment reaction with depression and anxiety, antisocial personality with narcissistic features, a possible learning disability, and marijuana and methamphetamine dependence with partial remission. He did not offer an

opinion regarding psychological defenses, insanity, or Wheeler's ability to form specific intent.

The jury found Wheeler guilty as charged. Wheeler was sentenced to a mandatory term of life in prison without the possibility of parole and ordered to pay restitution, including \$150,000 to Razor-Markwell's estate.

On appeal Wheeler contends the district court erred in denying his motion for new trial and that he received ineffective assistance of trial counsel.

II. MERITS.

A. Motion for New Trial.

Wheeler filed a motion for new trial contending the verdict was contrary to the weight of the evidence because the State failed to provide any evidence he had formed a specific intent to kill the victim or that his actions were the product of malice aforethought and no reasonable jury could find either. The district court summarily denied the motion, concluding simply "The Motion for New Trial is overruled." Wheeler contends the court erred in denying his motion for new trial, because there was no showing the district court applied the proper standard in ruling on the motion. More specifically, he argues the court "erred in failing to make its own determination that the verdict was contrary to the evidence, as distinguished from finding that the evidence was legally sufficient."¹ Wheeler requests a remand with directions that the district court apply the correct standard.

¹ We note that although Wheeler did not timely file his motion for new trial pursuant to Iowa Rule of Criminal Procedure 2.24(2), the district court ruled upon his motion thereby preserving error for our review. Thus, we address this issue on substantive grounds and do not consider it within the context of an ineffective assistance of counsel claim.

Our review of a claim the district court applied an incorrect legal standard is for legal error. Iowa R. App. P. 6.4; *State v. Robinson*, 506 N.W.2d 769, 770 (Iowa 1993).

Simply because the district court's ruling on the motion for new trial was terse it would be inappropriate for us to assume, as Wheeler urges, that the court applied an incorrect legal standard in making its ruling. To the contrary, we believe the court's ruling was presumptively based on the correct legal standard. See, e.g., *State v. Miles*, 346 N.W.2d 517, 519 (Iowa 1984) (holding that in criminal cases tried without a jury in the absence of a motion seeking amendment or enlargement of the court's findings and conclusions the appellate court will presume the findings of any facts supported by the record that would warrant the judgment). Furthermore, if Wheeler believed the district court applied the wrong standard, it was his burden to provide this court with a record for review that affirmatively discloses the error upon which he relies. *State v. Mudra*, 532 N.W.2d 765, 767 (Iowa 1995) ("It is a defendant's obligation to provide this court with a record affirmatively disclosing the error relied upon."); *State v. Mark*, 286 N.W.2d 396, 402 (Iowa 1979). "A reviewing court cannot predicate error on speculation." *State v. Douglas*, 485 N.W.2d 619, 625 (Iowa 1992).

Wheeler has provided no evidence showing the district court applied an incorrect legal standard in ruling on his motion for new trial. We conclude he has not demonstrated the court erred as claimed.

B. Ineffective Assistance of Counsel.

We review claims of ineffective assistance of counsel de novo. *State v. Martin*, 704 N.W.2d 665, 668 (Iowa 2005). To prove trial counsel was ineffective

the defendant must show that counsel breached an essential duty and that prejudice resulted from counsel's error. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Griffin*, 691 N.W.2d 734, 736-37 (Iowa 2005).

Here, Wheeler claims his trial counsel was ineffective for calling Drs. Taylor and Rogers to testify. More specifically, he argues Dr. Taylor's testimony was detrimental to his defense because he changed his mind about his mental state and ability to form specific intent. He also contends the testimony of neither Dr. Taylor nor Dr. Rogers was necessary to his defense because of the testimony presented by Dr. Safdar.

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002); *State v. Kinkead*, 570 N.W.2d 97, 103 (Iowa 1997). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001); *State v. Ceron*, 573 N.W.2d 587, 590 (Iowa 1997). "[W]e preserve such claims for postconviction relief proceedings, where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims." *Biddle*, 652 N.W.2d at 203.

As set forth above, Wheeler can only succeed on his ineffectiveness claim by establishing both that his counsel breached an essential duty and that prejudice resulted. *Griffin*, 691 N.W.2d at 736-37. No record has yet been made before the trial court on this issue. Trial counsel has not been given an opportunity to explain his actions and the trial court has not considered and ruled

on the ineffectiveness claim. Under these circumstances, we pass the issue of ineffective assistance of counsel in this direct appeal and preserve it for a possible postconviction proceeding. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986). Accordingly, we preserve Wheeler's specified claim set forth herein for a possible postconviction proceeding.

III. CONCLUSION.

We conclude that Wheeler has not affirmatively shown that the district court applied an incorrect legal standard in ruling on his motion for new trial. We thus find no error in the denial of the motion. Wheeler's conviction is affirmed. We preserve his specified ineffective assistance of counsel claim for a possible postconviction proceeding.

AFFIRMED.