

IN THE COURT OF APPEALS OF IOWA

No. 6-420 / 05-0970
Filed November 16, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTHONY WILLIAM MANNING,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

Defendant appeals his conviction for murder in the first degree.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and James Katcher, Assistant
County Attorney, for appellee.

Considered by Huitink, P.J., and Miller, J. and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

NELSON, S.J.***I. Background Facts & Proceedings***

Anthony Manning appeals his conviction for murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2 (2003), in relation to the death of his brother, Randy Manning. Manning and Randy lived together in a house owned by Randy. During 2004, Randy expressed plans to sell the house, stating he was afraid to continue living with Manning. The brothers were both alcoholics and had a history of arguments. On March 21, 2000, Manning pled guilty to assault causing bodily injury where Randy was the victim.

Randy was last seen alive on Sunday, July 25, 2004, when he was outside drinking beer with Manning, Elizabeth Griffith, and Joseph Dean. After a period of time Griffith and Dean went home. April Halverson stopped by the house later that evening to borrow some firewood. She tapped on Randy's window, and got no response. She then noticed Manning, sitting outside alone. Manning stated, "Randy's not going to answer." He then said, "I hope you don't mind me sitting back here. It's peaceful." Halverson got some firewood and left.

On Tuesday, July 27, Manning came to the home of Griffith and Dean. Manning was "kind of moody," and eventually he stated he thought Randy was dead. He stated he thought Randy fell on a knife. Griffith demanded to see Randy, and Manning took her over to his house. Griffith saw Randy on the floor of his room, and his body was stiff and cold. After Griffith got home Dean called 911.

Emergency personnel came to the home and found Randy was dead. An autopsy showed he had been killed by a single stab wound to the chest. The knife was never recovered. Manning told police officers that on July 25, Randy was in a drunken rage and attempted to attack him with a knife. Manning stated he knocked Randy down, and then left the house for two days. Randy had a blood alcohol level of .22 at the time of his death.

Griffith and Dean, who were friends and neighbors of the brothers, testified that in the past Manning had stated he was going to “stick” Randy. Terry Lantz testified Manning stated, “I hate my brother.” Another friend, Michael Devine, testified to an incident about three or four weeks before Randy died when he was fishing with Manning and Manning stated Randy “was going to get it.” Manning stated it would be easy to hide a weapon in the rocks by the river. Devine also testified that in the year before Randy died Manning explained how someone could be killed by one stab by a knife in the chest, and demonstrated this with a gesture.

Manning raised defenses of intoxication and self-defense. Based on the evidence, a jury found Manning guilty of first-degree murder. He was sentenced to life in prison. Manning now appeals his conviction.

II. Motion in Limine

In a motion in limine, Manning sought to exclude Devine’s testimony that Manning had stated it was possible to kill someone with one stab of a knife, and made a gesture to demonstrate this. According to Devine, Manning also stated it would be easy to hide a weapon in the rocks. The district court determined the

evidence was admissible under Iowa Rule of Evidence 5.404(b). The court found the evidence was probative on the issues of preparation, plan, and absence of mistake or accident. On appeal, Randy claims the court abused its discretion.

Rulings on the admissibility of evidence of prior acts are reviewed for an abuse of discretion. *State v. White*, 668 N.W.2d 850, 853 (Iowa 2003). Iowa Rule of Evidence 5.404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person 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.

For evidence to be admissible under rule 5.404(b), it must be probative of “some fact or element in issue other than the defendant’s criminal disposition.” *State v. Newell*, 710 N.W.2d 6, 20 (Iowa 2006). If the evidence is relevant, then the court must determine “if its probative value is *substantially* outweighed by the danger of unfair prejudice to the defendant.” *State v. Taylor*, 689 N.W.2d 116, 124 (Iowa 2004). Evidence is unfairly prejudicial if it “cause[s] a jury to base its decision on something other than the established propositions in the case.” *State v. Rodriguez*, 636 N.W.2d 234, 240 (Iowa 2001).

In order to prove first-degree murder, the State was required to show that Manning acted with malice aforethought and that he “willfully, deliberately, and with premeditation kill[ed] another person.” Iowa Code §§ 707.1, 707.2(1); *State v. Reeves*, 636 N.W.2d 22, 25 (Iowa 2001). The prior relationship between a defendant and victim, “including bad feelings, quarrels, and physical acts, is a

circumstance that may be shown to prove the defendant's state of mind and motivation at the time of the crime." *Newell*, 710 N.W.2d at 21.

We determine the court did not abuse its discretion in permitting the State to present this evidence. The evidence was probative for the reasons cited by the court—that the evidence was relevant on the issues of preparation, plan, and premeditation. Additionally, the evidence was not unfairly prejudicial because it consisted of only a conversation about the same type of crime as that committed in this case. It is unlikely the evidence would improperly influence the jury. See *State v. Martin*, 704 N.W.2d 665, 672 (Iowa 2005).

III. Motion for Mistrial

During the direct examination of Griffith, she testified as follows:

Q. Along with your description of arguments between Randy and Tony Manning, was there any particular topic that seemed to be something that they would argue about more often than not? A. Sometimes, yeah.

Q. What was that? A. They would argue a lot about Randy selling Tony's stuff when he was locked up, and the house. That's –

During the first break in Griffith's testimony Manning sought a mistrial because of the reference to his prior incarceration.

The district court determined the motion for mistrial was not untimely. The court stated:

My impression is, particularly in light of the fact that it hasn't been emphasized to the jury, and the jury will or has been presented with evidence that there was a domestic assault conviction, that any prejudicial impact on the defendant in his case is minimal. However, if an admonishment is requested, I would be glad to give one.

Manning did not ask for the jury to be admonished. At the close of the evidence the court revisited the matter and denied the motion for a mistrial. On appeal, Manning asserts the district court should have granted his motion for a mistrial.

The district court has broad discretion in ruling on a motion for a mistrial. *State v. Piper*, 663 N.W.2d 894, 901 (Iowa 2003). A mistrial is appropriate only when an impartial verdict cannot be reached or the verdict would have to be reversed on appeal due to an obvious procedural error in the trial. *Newell*, 710 N.W.2d at 32. We determine the district court did not abuse its discretion under the facts of this case. The jury was told that Manning had a prior conviction for assault causing bodily injury, and therefore, we find he was not prejudiced by the short statement that he had been locked up.

IV. Ineffective Assistance

Manning contends that he received ineffective assistance of counsel. To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006).

Manning asserts that he received ineffective assistance due to defense counsel's failure to object to evidence of prior bad acts consisting of (1) statements that he hated Randy; (2) statements that he was going to "stick" Randy, or kill him; and (3) incidents of arguing or fighting between the brothers.

This evidence was clearly relevant to show malice aforethought, deliberation, and premeditation. The evidence was relevant to negate a claim of

accident or mistake. The evidence was admissible “to prove the defendant’s state of mind and motivation at the time of the crime.” *Newell*, 710 N.W.2d at 21. The evidence was not unfairly prejudicial because it related to the propositions of the case, and would not lead the “jury to base its decision on something other than the established propositions in the case.” *Rodriguez*, 636 N.W.2d at 240. We conclude Manning has not shown that he received ineffective assistance based on counsel’s failure to object to this evidence. See *State v. Hochmuth*, 585 N.W.2d 234, 238 (Iowa 1998) (noting that counsel is not ineffective for failing to pursue a meritless issue).

We affirm Manning’s conviction for first-degree murder.

AFFIRMED.