

IN THE COURT OF APPEALS OF IOWA

No. 6-429 / 05-1519
Filed August 9, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEPHANIE NICOLE SHANNON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce Zager, Judge.

Stephanie Shannon appeals a judgment and sentence for willful injury.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and David Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Raymond D. Walton, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Stephanie Shannon appeals a judgment and sentence for willful injury. She contends the district court erred in admitting hearsay evidence that she “stomped” on someone. She also contends she was denied effective assistance of counsel. We affirm.

I. Background Facts and Proceedings

Shawna Cummings was at a bar in Waterloo when a woman, later identified as Stephanie Shannon, grabbed her purse. Cummings and Shannon exchanged words, after which Shannon pushed Cummings. Cummings fell into some crates.

According to Cummings, Shannon then began “stomping on [her] leg.” Two police officers broke up the fight. Cummings was taken to a hospital, where she had surgery to insert a metal rod in her broken leg.

The State charged Shannon with willful injury. See Iowa Code § 708.4(1) (2003). At trial, several of the State’s witnesses reiterated Cummings’s testimony that Shannon “stomped” on her leg. One of the police officers at the scene described the action as “kicking.”

Following the close of the State’s case, the defense called Shannon and Chantel Boldon, both of whom denied that Shannon “stomped” on Cummings.

On rebuttal, the State offered the complaint charging Shannon with willful injury. The complaint stated in pertinent part, “The victim said the defendant was also stomping on her knee and ankle.” Defense counsel objected on hearsay grounds. The district court overruled the objection and the State proceeded to question the officer who drafted the complaint about its contents.

A jury found Shannon guilty as charged and the court imposed sentence. On appeal, Shannon argues that the district court erred in admitting the complaint. She also contends that defense counsel was ineffective in failing to object to the prosecutor's use of the complaint and to the prosecutor's questioning of Boldon.

II. Admission of Complaint

Shannon argues that the complaint was admitted "as substantive evidence to establish that defendant had 'stomped' on the leg of the victim." She maintains the complaint was hearsay and its admission was prejudicial. *See State v. Hildreth*, 582 N.W.2d 167, 170 (Iowa 1998) (reviewing rulings on the admission of hearsay evidence for prejudicial error).

Prejudice will not be found "if the admitted hearsay is merely cumulative." *Id.* *See also State v. Newell*, 710 N.W.2d 6, 19 (Iowa 2006). Here, the record is replete with unchallenged references to Shannon's act of stomping on Cummings.

Cummings's sister, Heather, testified that she had a clear view of the altercation between Cummings and Shannon. She stated she saw Shannon "stomping" on Cummings's leg.

A woman who worked at the bar stated: "I heard [Cummings] scream, 'My leg!' and one of the girls say, 'What leg?' And I looked up, and there was a girl standing with her head down, hands up on the walls, and said, 'What leg?' and then stomped down." Although the woman was unwilling to identify Shannon as the person who "stomped down" on Cummings, her testimony that someone stomped on Cummings came in without objection.

A police officer at the scene stated, "Basically, I turned around, and I [saw] someone that was later identified as Stephanie Shannon in a black coat kicking at

something.” Although he declined to characterize the kicking as “stomping,” we believe this evidence is substantially similar to the complaint’s “stomping” reference.

The manager of the bar referred to stomping, although he expressed uncertainty that Shannon was the one doing the stomping. He said, “It appeared that she was stomping on the legs of the person, the other girl.”

Because substantially similar evidence entered the record without challenge, we conclude the district court’s admission of the complaint was non-prejudicial.

III. Ineffective Assistance of Counsel

To succeed on her ineffective-assistance-of-counsel-claims, Shannon must establish that (1) her counsel failed to perform an essential duty, and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 697, 104 S. Ct. 2052, 2070, 80 L. Ed. 2d 674, 699 (1984).

A. Failure to Object to Prosecutor’s Use of Complaint.

Shannon contends her attorney was ineffective in failing to object to the prosecutor’s use of the complaint during cross-examination. She also contends defense counsel should have objected to the use of the complaint in rebuttal on the ground that it was “improper rebuttal.” We elect to resolve these related issues on the prejudice prong of the *Strickland* test. See *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006) (stating we need not determine whether trial counsel’s performance was deficient before proceeding to the prejudice prong). *Strickland* prejudice requires a showing of a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different. *State v. Atwood*, 602 N.W.2d 775, 784 (Iowa 1999).

The State was required to prove that Shannon committed an unjustified act which was intended to cause serious injury, and the act caused either serious or bodily injury.

Iowa Code § 708.4. On our de novo review of the record, we conclude the evidence overwhelmingly established these elements, even with the equivocations on the identity of Shannon as the perpetrator. If counsel had objected to the complaint on the grounds now urged, there is not a reasonable probability that the outcome would have changed.

B. Failure to Object to Boldon's Cross-Examination.

As noted, Chantel Boldon testified for the defense that she did not see Shannon stomping on anyone. On cross-examination, she invoked her Fifth Amendment privilege against self-incrimination in response to certain questions posed by the prosecutor. The State moved to exclude Boldon's testimony on this basis and the court sustained the motion.

Shannon argues that counsel was ineffective in calling Boldon to testify and in failing to object to the continued cross-examination of Boldon. We again cannot find *Strickland* prejudice. Boldon's testimony was stricken and the jury was instructed to disregard it. In addition, as noted, the State presented overwhelming evidence to support the elements of the crime.

IV. Disposition

We affirm the judgment and sentence for willful injury.

AFFIRMED.