

IN THE COURT OF APPEALS OF IOWA

No. 8-303 / 06-1536

Filed May 14, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JESSE LYLE KEITH,
Defendant-Appellant.

Appeal from the Iowa District Court for Hardin County, Michael J. Moon,
Judge.

Defendant appeals his conviction for first-degree murder. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor and Doug
Hammerand, Assistant Attorneys General, and Randall J. Tilton, County
Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

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

On June 17, 2006, Jesse Keith came home from work at about 5:30 in the morning, and found his girlfriend, Kelsi Christianson, had left their nearly two-year-old daughter in the care of his step-siblings, who were then twelve and seven years old. Keith became very upset that Christianson had left the children home alone. Soon thereafter Keith's friends, Cody Mark, Ryan Murra, and Michael Thompson, came over. The men each drank two to three beers, then left the children at home while they bought more beer.

Keith and his friends drove around Iowa Falls, Iowa, looking for Christianson. Keith suspected Christianson was with Adam Brekke. The group stopped at the home of Jodie Cory to inquire about Brekke's address. Jodie would not give the address, but told Keith to ask her brother, Paul Cory, who was asleep in the home. Keith and Cory were unacquainted. Cory agreed, however, to take Keith to Brekke's residence, and they left together. Keith's friends stayed at Jodie's house.

Keith and Cory went to the home of Alaine Sprain, the mother of Brekke. She got Brekke from his room, and Brekke admitted Christianson was there. Keith and Christianson got into an argument. Sprain then asked Keith to leave, and he apologized to her for bringing his problems to her home. Keith drove away, and Cory walked back to his house.

Keith picked his friends up from Jodie's home, and took them to his house. He went alone to the home of Christianson's mother, Nancy Green, and retrieved

a gun. Keith then went home, put his daughter in his minivan, and asked Thompson to come with him. Keith returned to Sprain's home, where he again argued with Christianson when she approached his van. He pulled out the gun and shot the floor of the minivan. He also fired a few shots, possibly at the front of the house. Thompson told Keith to stop shooting because his daughter was in the vehicle.

Keith drove home, where Mark and Murra were sitting on the front steps drinking beer. Cory and Jodie came by, and Cory asked Keith why he had been shooting at his friend's house, and said something to the effect of, "If you think you're so tough why don't you shoot me?" Keith then shot Cory at least five times. There was evidence that Keith may have reloaded the gun during the shooting. Cory died as a result of the gunshot wounds. In addition to Mark, Murra, Thompson, and Jodie, the incident was observed by three neighbors.

Keith drove away with his daughter still in the minivan. Police officers saw him driving near Crosser's Ford Park. Keith shot at the officers, and they returned fire, not knowing the child was in the vehicle. Keith drove into a ditch, got out of the vehicle, screamed that officers had shot his child, and then ran away. Officers retrieved the uninjured child from the vehicle. Keith held officers at bay for about four hours, at times threatening to shoot himself. Finally, Green was brought to the scene and she convinced Keith to give himself up.

Keith was charged with first-degree murder, in violation of Iowa Code sections 707.1 and 707.2 (2005). Keith filed notice that he intended to rely on the defenses of intoxication and diminished capacity. The defense presented the

testimony of Dr. William Logan, a forensic psychiatrist. Dr. Logan reviewed Keith's history of mental health problems, beginning with a hospitalization at age nine for a conduct disorder. Dr. Logan diagnosed Keith with a borderline personality disorder. He noted that Keith "had not only pretty significant behavioral problems but he had a lot of problems with what I would call emotional control." Dr. Logan gave the opinion that at the time Cory died, Keith "did not have the ability to premeditate and deliberate to form the intent to kill Paul Cory."

The jury returned a verdict finding Keith guilty of first-degree murder. He was sentenced to life in prison. Keith appeals his conviction, claiming he received ineffective assistance of counsel.

II. Standard of Review

We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, 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). Absent evidence to the contrary, we assume that the attorney's conduct falls within the wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995).

III. Merits

Keith claims he received ineffective assistance due to defense counsel's decision to call Dr. Logan as a witness. He asserts Dr. Logan's testimony sabotaged his case and did more harm than good. He believes Dr. Logan's

review of his mental health history presented jurors with highly prejudicial evidence they might not have otherwise heard. Keith also believes Dr. Logan's testimony undermined his defense of intoxication by instead focusing on his mental health status.

Generally, improvident trial strategy, miscalculated tactics, and mistakes in judgment do not amount to ineffective assistance of counsel. *State v. Ondayog*, 722 N.W.2d 778, 786 (Iowa 2006). We will not second-guess defense counsel's reasonable trial strategy. *Fullenwider v. State*, 674 N.W.2d 73, 75 (Iowa 2004). A defendant cannot rely on hindsight; he must show more than the fact defense counsel's strategy backfired, or another attorney would have used another defense. *Pettes v. State*, 418 N.W.2d 53, 56 (Iowa 1988). The supreme court has stated:

After a certain course has proven unsuccessful, it is easy to say some other one should have been tried instead. This is unfair to counsel, who must make a choice between existing alternatives *before* the fact. We have refused to assume the role of Monday morning quarterback in condemning counsel's judgment in choosing between what are frequently equally hazardous options available to him.

State v. Losee, 354 N.W.2d 239, 244 (Iowa 1984) (citations omitted).

We determine Keith has not shown defense counsel's trial strategy in this case was so unreasonable it amounted to ineffective assistance of counsel. Based on the fact that at least seven witnesses observed Keith shoot Cory, defense counsel reasonably attempted to present a defense of diminished capacity based on Keith's history of mental health problems. Dr. Logan, a forensic psychiatrist with twenty-five years of experience, testified Keith did not

have the ability to premeditate or deliberate to form the intent to kill Cory. The fact that, in hindsight, Keith wishes defense counsel had focused more on the intoxication defense than the diminished capacity defense does not make defense counsel's strategy unreasonable.

We conclude Keith has failed to show he received ineffective assistance of counsel. We affirm his conviction.

AFFIRMED.