

**IN THE COURT OF APPEALS OF IOWA**

No. 8-318 / 07-0914  
Filed June 11, 2008

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ROGER MARTIN BECKER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Bremer County, Peter B. Newell,  
District Associate Judge.

Roger Becker appeals from his conviction for assault on a police officer.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney  
General, Kasey E. Wadding, County Attorney, and Jill Dashner, Assistant County  
Attorney, for appellee.

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

**VOGEL, J.**

Defendant Roger Becker appeals from his conviction for assault on a police officer. He contends (1) the district court erred in admitting prejudicial evidence of a threat of violence made subsequent to the altercation that led to assault charges, and (2) his counsel was ineffective for failing to properly and fully object to this evidence. We affirm.

**I. Background Facts and Proceedings**

On February 10, 2007, jailers Tristan Land and Kelly Jacobsen, along with jail administrator Jeremy Eberhart, conducted a routine search of cells and inmates in the Bremer County Jail. Officer Land arrived at the cell of Roger Becker and asked him to set down papers that he was holding and to step out of his cell. After Land repeated the command four times, Becker obeyed Land's order.

Officer Land began to conduct a pat-down search of Becker in the hallway area just outside of Becker's cell. Land had to request three times that Becker place his hands on the wall before Becker complied. As Land conducted his search, Becker was "verbally aggressive," repeatedly threatening Land. Because Land felt that Becker was behaving in an aggressive manner, Land pulled out his handcuffs to restrain Becker.

While Officer Land was conducting the pat down of Becker outside of his cell, Eberhart was conducting a search inside Becker's cell. From inside the cell, Eberhart could hear Becker's aggressive comments. When Eberhart heard Land get out his handcuffs, Eberhart left the cell to assist Land. Eberhart told Becker

to put his hands behind his back, but Becker refused to cooperate. Becker continued to be verbally aggressive toward both Land and Eberhart.

As Eberhart removed Becker's left hand from the wall, Becker turned, threw a closed-fist punch at Eberhart using his right hand, and charged at Eberhart, driving his head into Eberhart's chest. Land and Eberhart immediately regained control of the situation, handcuffed Becker, and took him to a special status cell where he could be observed. Becker continued to be verbally aggressive as he was being placed in this cell.

After Becker calmed down, Land and Eberhart entered his cell. Becker apologized to the officers. Becker stated that he thought the officers were going to hurt him and that he had a flashback from the Vietnam War. Becker also handwrote a letter apologizing for the misunderstanding.

Jailer Kelly Jacobsen observed this entire incident through two glass windows. She also observed Becker once he had been placed in the special cell. She testified that while in this special cell Becker pulled down his pants, exposed his penis, and said to Land, "I'm going to shove this in your ass."

Becker testified that he had not received his Zoloft or his pain medication for a recent tooth removal while he was in the jail. Becker also testified that when Eberhart removed his hand from the wall, he lost his balance and "might have brushed up against" Eberhart as a result. Becker denied throwing a punch at Eberhart or making any verbal threats. He explained that his pain made him unable to understand what the jailers were asking of him.

The State charged Becker with assault on a peace officer in violation of Iowa Code section 708.3A (2007). The jury returned a verdict finding Becker

guilty of assault. Becker appeals his conviction, claiming erroneous admission of prejudicial evidence and ineffective assistance of counsel.

## **II. Standard of Review**

We review the district court's ruling on the admission of evidence for an abuse of discretion. *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005). "An abuse of discretion occurs when the trial court 'exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable.'" *Id.* (citations omitted). The right to reasonably effective assistance of counsel is a Sixth Amendment right, and therefore we review ineffective-assistance-of-counsel claims de novo. *State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005).

## **III. Admission of Defendant's Threat of Violence**

### **A. Preservation of Error**

Becker contends that the district court erred in admitting evidence of the sexually violent threat that he made to Land because the evidence is not relevant under Iowa Rules of Evidence 5.401 and 5.402, and in addition, is impermissible as other bad acts evidence under Rule 5.404(b). In order to raise this issue on appeal, Becker must first have raised these same objections at trial. *State v. Mulvany*, 603 N.W.2d 630, 632-33 (Iowa Ct. App. 1999). "Fairness and considerations of judicial economy dictate that we not consider a contention for the first time on appeal." *State v. Sanborn*, 564 N.W.2d 813, 815 (Iowa 1997). Becker cannot "amplify or change" the objection that was raised at trial. *State v. Spates*, 735 N.W.2d 202 (Iowa Ct. App. 2007). Thus, Becker's claim on appeal is limited only to the admission of evidence to which he raised an objection at trial.

Becker raised a relevancy objection to Jacobsen's testimony of a sexually violent threat made by Becker after the incident with Eberhart. However, the defense failed to raise any objections as to the State's cross-examination of Becker regarding this same evidence. Becker also failed to make any objection to any testimony under Iowa Rule of Evidence 5.404(b) regarding other bad acts. Because Becker objected only to Jacobsen's testimony and only on grounds of relevancy at trial, he is limited to that argument on appeal. The defense cannot make a rule 5.404(b) objection or object to the admission of Becker's cross-examination because those objections were not raised at trial. Therefore, Becker has preserved only his relevancy challenge as it relates to Jacobsen's testimony. *State v. Ashburn*, 534 N.W.2d 106, 109 (Iowa 1995).

### **B. Relevance**

Relevant evidence has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. Only evidence which is relevant is admissible. Iowa R. Evid. 5.402.

In order to prove that Becker had committed an assault in violation of Iowa Code section 708.3A (2007), the State was required to prove that Becker intended either to place another individual in fear of immediate physical contact which would be painful, injurious, insulting, or offensive or to cause pain, injury, or physical contact which would be insulting or offensive, as defined in Iowa Code section 708.1. Thus the State had the burden of proving Becker's intent.

Becker testified that he did not swing at Eberhart, but that he was thrown off balance when Eberhart "jerked [him] off the wall." This testimony put Becker's

intent in dispute. The State therefore had the burden of proving that Becker's actions were not an accident and that he had the requisite intent to commit an assault. To satisfy this burden, evidence of Becker's verbal aggression and threats was relevant to prove his intent. In addition, evidence of Becker's actions immediately after the confrontation was necessary to show the complete story of the incident and allow the jury to understand the whole picture. *State v. Shortridge*, 589 N.W.2d 76, 83 (Iowa Ct. App. 1998).

#### **IV. Ineffective Assistance of Counsel**

Becker also claims that his counsel was ineffective in failing to properly object to bad acts evidence under Iowa Rules of Evidence 5.404(b). To prevail on a claim of ineffective assistance, Becker must prove that (1) counsel failed to perform an essential duty, and (2) prejudice resulted. *State v. Simmons*, 714 N.W.2d 264, 276 (Iowa 2006). In order to establish the first element of the test, Becker must show that his counsel did not act as a "reasonably competent practitioner" would have with a "strong presumption that counsel's conduct was within the 'wide range of reasonable professional assistance.'" *Id.*; *Harrington v. State*, 734 N.W.2d 487 (Iowa Ct. App. 2007). To satisfy the second element of the test, Becker must show that "there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Simmons*, 714 N.W.2d 264, 276 (Iowa 2006). Courts are encouraged to dispose of an ineffective assistance claim under the second prong of the test when possible. *State v. Nebinger*, 412 N.W.2d 180, 192 (Iowa Ct. App. 1987).

Becker cannot show that he was prejudiced by his counsel's failure to object to the admission of other bad acts evidence under rule 5.404(b). Even without the evidence of Becker's subsequent violent threats, there is ample evidence that he committed an assault. Eberhart testified that Becker "threw his right arm, trying to punch [Eberhart], and then was charging [him] at [his] chest." Land testified that Becker "threw a punch [at Eberhart] and charged at him." Jacobsen testified that she saw Becker with a "swinging fist, trying to swing at Administrator Eberhart." Eberhart testified that Becker's actions made him fear that he would be hurt. In addition, the entire incident was recorded on a surveillance disk, admitted into evidence and played for the jury. Thus, the unchallenged evidence is more than sufficient to convict Becker beyond a reasonable doubt, and there is not a reasonable probability that the exclusion of the challenged evidence would have led to a different result. Therefore, there is no need to evaluate the first prong of the test for ineffective assistance because we conclude no prejudice resulted.

## **V. Conclusion**

The district court did not abuse its discretion in admitting relevant evidence of Becker's verbal threats made following an assault. Defense counsel's failure to fully object to evidence of verbal threats did not result in prejudice to the defendant. Therefore, we affirm the district court.

**AFFIRMED.**