IN THE COURT OF APPEALS OF IOWA

No. 8-522 / 07-1400
Filed July 30, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NAZARETH ERIC HOWARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Hamilton County, Timothy J. Finn, Judge.

Defendant appeals his conviction for second-degree burglary. **AFFIRMED**.

Mark C. Smith, State Appellate Defender, and Jason B. Shaw, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Patrick B. Chambers, County Attorney, and Jonathan Beaty, Assistant County Attorney, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

On June 6, 2007, Nazareth Eric Howard was convicted by a jury of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5(2) (2007). Howard appeals arguing his counsel was ineffective and arguing there is insufficient evidence to support his conviction. We preserve Howard's ineffective assistance claims for post-conviction relief proceedings and affirm his conviction.

I. Background Facts and Proceedings.

Nazareth Howard and Mindy Boldon had lived together and are the parents of two children. On February 1, 2007, a no-contact order between Howard and Boldon was issued and was in effect at all relevant times. Fearing Howard might attempt to enter her home, Boldon changed the locks on the doors. On the evening of March 8, Boldon barricaded one door with a piece of wood and also arranged for a friend to stay awake listening for signs of a break-in on a baby monitor while Boldon slept. Early in the morning of March 9, 2007, Howard broke through two doors and entered Boldon's home. Boldon and her friend heard Howard breaking in and both immediately called the police while hiding from Howard. Both women heard Howard angrily yelling for Boldon in a hateful voice, asking where she was. Soon, police officers arrived and found Howard hiding in a closet. Howard was uncooperative and the police had to use a tazer to take him into custody. After Howard was removed Boldon discovered the money envelope in her purse had been disturbed and her cash was hanging out, but nothing was missing.

II. Ineffective Assistance of Counsel.

Howard alleges ineffective assistance of counsel in counsel's failing to object to prior bad acts evidence[1] from two witnesses. Howard argues counsel should have objected to testimony from Boldon concerning: (1) Howard being in jail; (2) Howard previously taking money from Boldon's purse; (3) Howard previously kicking in doors; (4) Howard previously breaking Boldon's cell phone to prevent her from calling the police; and (5) Howard previously telling Boldon he would not become violent and then seconds later becoming violent. Some of this testimony was elicited on cross-examination.

Additionally, Howard argues counsel should have objected to testimony from a police officer concerning the fact the officer "had other encounters" with Howard and concerning the fact domestic abuse was the basis for the no-contact order.

In order to prevail on his claims of ineffective assistance of counsel, Howard must show (1) counsel failed to perform an essential duty, and (2) prejudice resulted. *See State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007). We evaluate the totality of the relevant circumstances in a de novo review. *Id*. at 392. 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). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief

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[1] In general, for evidence of other acts to be admissible, the evidence must be probative of a disputed fact or issue other than a defendant's criminal disposition, and the probative value cannot be substantially outweighed by the danger of unfair prejudice. *See State v. Taylor*, 689 N.W.2d 116, 123-24 (2004) (holding prior abuse admissible to prove the nature of relationship and also relevant to intent). *See* Iowa R. Evid. 5.403, 5.404(*b*).

proceedings. *State v. Lopez,* 633 N.W.2d 774, 784 (Iowa 2001). Those proceedings allow an adequate record of the claim to 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.

An adequate record is important because "[i]mprovident trial strategy, miscalculated tactics, mistake, carelessness or inexperience do not necessarily amount to ineffective counsel." *State v. Aldape*, 307 N.W. 2d 32, 42 (Iowa 1981). A defendant is not entitled to perfect representation, but rather only that which is within the range of normal competency. *State v. Artzer*, 609 N.W.2d 526, 531 (Iowa 2000).

Howard's trial attorney has had no opportunity to explain either trial strategy or a theory of defense which could render the lack of an objection to the prior bad acts testimony appropriate. This is not the "rare case" which allows us to decide ineffective assistance on direct appeal without an evidentiary hearing. *See State v. Straw,* 709, N.W.2d 128, 138 (Iowa 2006). We preserve Howard's claims of ineffective assistance of counsel for possible postconviction relief proceedings.

III. Sufficiency of the Evidence.

Howard also argues there is insufficient evidence to support his conviction because the State did not prove Howard had the intent to commit an assault or theft when he entered Bolton's residence. Howard claims his intent at the time of entering was either to retrieve his cell phone charger, to see his children, or to see Bolton.

We review this claim for errors at law. *State v. Rohm,* 609 N.W.2d 504, 509 (Iowa 2000). The jury's verdict is binding upon a reviewing court unless there is an absence of substantial evidence in the record to sustain it. *Fenske v. State*, 592 N.W.2d 333, 343 (Iowa 1999). Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *Rohm*, 609 N.W.2d at 509. "When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record." *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006).

Burglary's intent element "is seldom susceptible to proof by direct evidence." *State v. Finnel*, 515 N.W.2d 41, 42 (Iowa 1994). Intent may be inferred by the surrounding circumstances. *State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004). "[A]n actor will ordinarily be viewed as intending the natural and probable consequences that usually follow from his or her voluntary act." *Id*. (holding because defendant had assaulted victim in recent past and victim "had just obtained a no-contact order against him, the natural and probable consequence of the defendant's conduct" was assault).

Howard's intent at the time of his breaking and entering is the issue and the fact he failed to complete an assault or theft due to the quick arrival of the police does not negate the burglary intent element. *See State v. Redmon*, 244 N.W.2d 792, 798 (Iowa 1976). The jury may infer intent from Howard's entry into the premises (violently breaking through two doors in the middle of the night) and

his acts preceding entry (no-contact order) and his acts following the entry (roaming through the house yelling for Bolton and disturbing the money in Bolton's purse). *See Finnel*, 515 N.W.2d at 42. "The requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not that the inference of intent is true." *Id.* *See Taylor*, 689 N.W.2d at 132.

When viewing the evidence in the light most favorable to the State, we conclude a rational trier of fact could have found Howard intended to commit an assault or theft at time he violently entered Bolton's home. Because substantial evidence supports the jury's verdict, we are bound by it on appeal and affirm the verdict.

AFFIRMED.