

IN THE COURT OF APPEALS OF IOWA

No. 8-913 / 07-1984
Filed March 11, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CATHRYN ANN LINN,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden, Judge.

The defendant appeals from her conviction and sentence for first-degree murder. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Gary Allison, County Attorney, and Alan R. Ostergren and Korie L. Shippee, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Cathryn Ann Linn appeals from her conviction and sentence for first-degree murder. She contends the district court erred in overruling her motion to suppress evidence. She also contends the record contains insufficient evidence to support the conviction. Finally, Linn contends her counsel was ineffective in several respects. We affirm.

I. Background Facts and Proceedings. Muscatine police officers were dispatched to Linn's residence in the early morning hours of February 7, 2007, after Linn called 911 to report she had shot someone. Several officers arrived at the residence brandishing weapons. Linn appeared at the door, yelling and screaming, and was told to show her hands. Upon determining Linn was unarmed, the officers entered the residence and discovered the body of Barry Blanchard in the bedroom. An M-1 carbine rifle and gun case were on the bed.

While the officers were investigating inside of the house, Officer Jason Williams stayed on the porch with Linn. She was only wearing a nightgown, so another officer located a pair of boots and coat inside the home for Linn. While Linn was sitting on the steps, an officer yelled out of the house and asked, "Is she saying she shot him?" In turn, Williams asked her, "Did you shoot him?" to which Linn replied, "Yes." Linn also stated, "I only had one gun and one bullet, and I shot him because he was not being nice to me."

Linn was informed she needed to go to the Public Safety Building and speak with a detective. Officer Williams transported Linn in the backseat of his squad car. Linn was informed she was not under arrest. She was not

handcuffed and Officer Williams did not attempt to question her. Linn asked Officer Williams if Blanchard had died and Williams replied that he did not know. Linn also stated, "My life has ended up as [a] murder."

Detective Mark Lawrence was asked to interview Linn upon her arrival at the station. Detective Lawrence was told Linn was not under arrest. However, he decided to advise her of her Miranda rights because she was confined to an investigation room, believing it to be the prudent thing to do. Linn asked, "Did I kill him?" and "Did he die?" Detective Lawrence told Linn that before he could answer her questions, he had to read the Miranda form to her. He also told her he did not know if Blanchard was dead. Linn signed the waiver. An analysis of Linn's urine shows her blood alcohol concentration at the time was .181.

During the police interview, Linn admitted to threatening Blanchard with the rifle. She also stated that she told Blanchard no one was going to tell her what to do in her house and that the shooting occurred after Blanchard dared her to shoot him.

On February 14, 2007, Linn was charged with first-degree murder. She filed a motion to suppress the statements "made . . . to Muscatine Police Officers after she was in custody of the officers" because "the waiver of her right to counsel was not made knowingly, voluntarily and intelligently." Following a hearing on the motion, the court concluded Linn's waiver of her Miranda rights was valid and overruled the motion to suppress.

A jury trial was held in September 2007. Linn testified and relied on a defense of intoxication and justification. The evidence presented shows Linn and

Blanchard had been involved in a romantic relationship and were living together. Before the shooting, the couple agreed their relationship was not working and Blanchard planned to move out of the house. However, he was unable to find a place to stay and Linn agreed to allow him to sleep on her couch. Both Blanchard and Linn consumed alcohol on the night of the shooting.

According to Linn's trial testimony the following occurred: at some point in the evening, Blanchard slapped her and asked her, "How many marks do you want in the morning, bitch?" Linn told Blanchard he was not going to tell her what to do in her house. Blanchard followed Linn into the bedroom and told her he would "fuck [her] dead or alive" and undressed. Blanchard choked her and she was frightened he was going to rape her. The rifle was retrieved from the closet and both Linn and Blanchard handled the weapon while screaming at each other. The gun discharged and "[t]he next thing I knew, he was on the floor, and I had then realized that he had been the victim of the discharge of the weapon." She denied having any intention of killing Blanchard.

Contrasting statements by Linn to the 911 operator and the police officers were presented to the jury. She told the 911 operator she shot Blanchard and they were fighting and drinking. The officers testified to the statements she made on the steps when they arrived and how in the squad car on the way to the police station she stated, "My life has to end up as [a] murder." Linn also told officers Blanchard had dared her to shoot him and she shot him because she was angry.

On September 14, 2007, the jury returned a verdict finding Linn guilty of first-degree murder.¹ On October 24, 2007, Linn was sentenced to life in prison. She appealed on November 13, 2007.

II. Motion to Suppress. Linn first contends the court erred in failing to grant her motion to suppress evidence of her statements to police made after she waived her Miranda rights because her waiver was not knowing, voluntary, and intelligent. She contends the officers acted improperly by withholding information about Blanchard until after she signed the Miranda waiver. Linn also contends she was in custody beginning with the arrival of officers at her home, and therefore any statements made to the officers should have been suppressed. However, the motion to suppress and the court's ruling thereon were limited to the issue of whether Linn's waiver of her Miranda rights was knowingly and voluntarily given. Therefore, we confine our review to that issue alone, finding the issue of whether Linn was in custody prior to the waiver of her rights was not preserved for our review. *See State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal.").

In reviewing the alleged violation of Linn's constitutional rights, our standard of review is de novo. *See State v. Washburne*, 574 N.W.2d 261, 263 (Iowa 1997). We conduct an independent evaluation of the totality of the circumstances as shown by the entire record. *State v. Turner*, 630 N.W.2d 601,

¹ The jury was instructed on the defenses of intoxication and justification. The instructions also included the lesser included offenses of murder in the second degree, voluntary manslaughter, and assault with intent to inflict serious injury.

606 (Iowa 2001). “We give deference to the district court’s fact findings due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings.” *Id.*

A suspect’s waiver of his or her Fifth Amendment privilege against self-incrimination is valid only if it is made voluntarily, knowingly, and intelligently. *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694, 706-07 (1966). “In assessing the validity of a defendant’s Miranda waiver, the State bears the burden of proving these factors by a preponderance of the evidence.” *State v. Hajtic*, 724 N.W.2d 449, 453 (Iowa 2006). In determining whether a waiver is valid, we consider two things. *Moran v. Burbine*, 475 U.S. 412, 421, 106 S. Ct. 1135, 1141, 89 L. Ed. 2d 410, 420-21 (1986).

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the “totality of the circumstances surrounding the interrogation” reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Id. (quoting *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S. Ct. 2560, 2572, 61 L. Ed. 2d 197, 212 (1979)).

Courts use an objective standard to determine whether a defendant’s waiver is voluntary, knowing, and intelligent. *Hajtic*, 724 N.W.2d at 453.

Factors bearing on voluntariness include the defendant’s age, experience, prior record, level of education, and intelligence; the length of time the defendant is detained or interrogated; whether physical punishment was used, including deprivation of food or sleep; the defendant’s ability to understand the questions; the defendant’s physical and emotional condition and his reaction to

the interrogation; whether any deceit or improper promises were used in gaining the admissions; and any mental weakness the defendant may possess.

Id. at 454. We are aided in our de novo review of this case by a complete videotape and audiotape of the interaction between Linn and the officer, her signing the Miranda form, and the interrogation that followed. *See id.*

We conclude that Linn's waiver of her Miranda rights was knowing, intelligent, and voluntary. Detective Lawrence told Linn he did not know if Blanchard was dead and asked her to go over the Miranda waiver with him before answering her questions. However, his actions did not overbear Linn's free will. No promises were given to Linn, nor was she tricked into signing the waiver. The detective simply asked that Linn review her Miranda rights before answering her questions. Given the totality of the circumstances, we conclude the waiver was not coerced.

We further conclude Linn demonstrated the requisite level of comprehension in waiving her rights. Although she was intoxicated, "The fifth amendment's guarantees do not protect a defendant from his or her own compulsions or internally-applied pressures which are not the product of police action." *State v. Countryman*, 572 N.W.2d 553, 558-59 (Iowa 1997) (citation omitted). Linn was able to answer the officer's questions and was coherent. She could appreciate the gravity of the situation. Because Linn's waiver was voluntarily made, we affirm the district court's overruling of her motion to suppress.

III. Sufficiency of the Evidence. Linn next contends the record contains insufficient evidence to support her conviction. Specifically, she argues there is insufficient evidence to show premeditation. She also argues she used reasonable force to defend herself.

We review claims of insufficient evidence for errors at law. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). We will uphold a finding of guilt if substantial evidence supports the verdict. *Id.* “Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt.” *Id.*

A person commits murder in the first degree when he or she “willfully, deliberately, and with premeditation kills another person.” Iowa Code § 707.2(1) (2007). Premeditation is defined as “to think or ponder upon the matter before acting.” *State v. Buenaventura*, 660 N.W.2d 38, 48 (Iowa 2003). Premeditation is not required to “exist for any particular length of time.” *Id.* at 49. It may be shown in any of the following three ways:

- (1) Evidence of planning activity of the defendant which was directed toward the killing;
- (2) Evidence of motive which might be inferred from prior relationships between defendant and the victim; and
- (3) Evidence regarding the nature of the killing.

State v. Helm, 504 N.W.2d 142, 146 (Iowa Ct. App. 1993) (citing *State v. Wilkens*, 346 N.W.2d 16, 20 (Iowa 1984)). The third option may be satisfied by showing “the use of a deadly weapon combined with an opportunity to deliberate.” *Buenaventura*, 660 N.W.2d at 48.

Viewing the evidence in the light most favorable to the State, we conclude there is substantial evidence to support the jury's conclusion Linn acted with premeditation. Linn admitted she may have retrieved the rifle from her closet after fighting with Blanchard. She told him he wasn't going to tell her what to do in her house. She was angry with Blanchard, who had dared her to shoot him. Linn had indicated during her interview that after the dare, she shot Blanchard. Given the use of a deadly weapon and Linn's opportunity to deliberate, we conclude the evidence is sufficient to show premeditation.

Linn contends that she was justified in shooting Blanchard because she was defending herself from assault and sexual abuse. Iowa Code section 704.3 provides, "A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force." When the defense is raised, the burden rests upon the State to prove—beyond a reasonable doubt—that the alleged justification did not exist. *State v. Rubino*, 602 N.W.2d 558, 565 (Iowa 1999). The State can meet its burden by proving any of the following facts:

1. The defendant initiated or continued the incident resulting in injury; or
2. The defendant did not believe he was in imminent danger of death or injury and that the use of force was not necessary to save him; or
3. The defendant had no reasonable grounds for such belief; or
4. The force used was unreasonable.

Id.

Linn claims that she shot Blanchard because she feared for her life. In contrast, the State presented evidence that Linn was angry with Blanchard, she

pointed the gun at his chest, he dared her to shot him, and she pulled the trigger. Substantial evidence supports the jury's conclusion Linn was not justified in shooting Blanchard.

IV. Ineffective Assistance of Counsel. Finally, Linn contends her trial counsel was ineffective in the following respects: (1) In failing to obtain a court order extending the deadlines for filing a motion to suppress; (2) for failing to argue the statement was involuntary in addition to the waiver itself being involuntary; (3) for failing to argue the State failed to prove justification in the motion for judgment of acquittal; (4) for asking improper questions of a witness regarding Linn's credibility; and (5) for failing to object to the State's improper business records evidence.

We review claims of ineffective assistance of counsel de novo. *State v. McBride*, 625 N.W.2d 372, 373 (Iowa Ct. App. 2001). Ordinarily, we preserve ineffectiveness claims raised on direct appeal for postconviction relief to allow full development of the facts surrounding counsel's conduct. *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999). Only in rare cases will the trial record alone be sufficient to resolve the claim. *Id.* "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Kirchner*, 600 N.W.2d 330, 335 (Iowa Ct. App. 1999) (citing *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978)).

To establish an ineffective assistance of counsel claim a defendant must show (1) counsel failed to perform an essential duty, and (2) prejudice resulted therefrom. *Wemark v. State*, 602 N.W.2d 810, 814 (Iowa 1999). The test of

ineffective assistance of counsel focuses on whether counsel's performance was reasonably effective. *Strickland v. Washington*, 466 U.S. 668, 697, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). The defendant must show counsel's performance fell below an objective standard of reasonableness so that counsel failed to fulfill the adversarial role that the Sixth Amendment envisions. *Id.* A strong presumption exists that counsel's performance fell within the wide range of reasonable professional assistance. *Wemark*, 602 N.W.2d at 814. The defendant has the burden of proving both elements of his ineffective assistance claim by a preponderance of the evidence. *Ledezma v. State*, 626 N.W.2d 134, 145 (Iowa 2001).

Additionally, our courts have ruled that trial strategy, miscalculated tactics, mistake or inexperience do not constitute ineffective assistance. *Id.* at 143. We may dispose of the defendant's ineffective assistance claims under either prong. *Id.* In order to prove the prejudice prong, the defendant must show a reasonable probability that but for counsel's alleged errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 695, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. With one exception we find the trial record sufficient to resolve the claims.

1. Deadline for motion to suppress. Linn's counsel was ineffective in filing an untimely motion to suppress. Linn's first counsel received an extension of the deadline to file pre-trial motions, but the order is not dated and signed by a judge. However, the State did not object to Linn's motion to suppress on the

grounds it was untimely and the district court received arguments on the matter and made a ruling. Accordingly, Linn was not prejudiced by an error of counsel.

2. Failure to argue voluntariness of statement. Linn next contends counsel was ineffective in failing to argue her statement to police was involuntary in addition to the waiver of her Miranda rights being involuntary. An incriminating statement is not involuntary in the constitutional sense unless it can be established that it was extorted from the defendant by means of coercive activity. *State v. Davis*, 446 N.W.2d 785, 789 (Iowa 1989).

Many factors bear on the issue of voluntariness. These include the defendant's age, experience, prior record, level of education and intelligence; the length of time the defendant is interrogated; whether physical punishment was used; defendant's ability to understand the questions; defendant's physical and emotional condition; whether any deceit or improper promises were used in gaining the admission; and any mental weaknesses the defendant may possess. In the event the questioning was custodial, defendant's knowledge and waiver of his Miranda rights and the length of his detention would also be considered.

Id. (citations omitted). As analyzed previously, under the totality of the circumstances, Linn has failed to show she was coerced into signing the waiver of her Miranda rights. We likewise conclude she was not coerced into making any statements following the signing of the waiver.

To the extent Linn makes any argument regarding counsel's failure to raise the issue of Linn's statements to officers prior to the signing of the waiver of her Miranda rights, this claim may be brought in postconviction relief to allow for further development of the record.

3. Justification. Linn also claims her counsel was ineffective in failing to specifically argue in her motion for judgment of acquittal that the evidence proved

justification. Because we have found this claim as to have no merit, we conclude any failure of counsel to perform an essential duty was not prejudicial.

4. Questions regarding credibility. Linn argues her counsel was ineffective in asking improper questions of Detective Lawrence regarding her credibility. Specifically, she complains of the following exchange:

Q. At what points did you think she was lying to you? A. Well, I mean there's a lot of different—I mean, my part that night is to figure out what her side of the story is. I wanted to find out from her what her side of the story is. It comes to a point towards what she's telling me and what the evidence techs are telling me, what I determine what she's lying about.

I mean, there's—there's times during the interview that there's certain questions she wouldn't answer that she had to have known the answer to. I don't believe she didn't know the answer to those questions, and I think the interview speaks for itself. There's times when, you know, I'm asking her how can you not know, you're the only person that was there, you're the one that's going to know the answer to those questions.

Q. And so when you asked her, and I ran out of fingers and toes to count with, who loaded the weapon and she tells you, "I don't know," is that a deception in your mind? A. I didn't believe her.

...
Q. So today do you have an opinion as to whether or not she knew? A. She had to have known who loaded that weapon.

Detective Lawrence also stated in response to questions by Linn's trial counsel that Linn's memory of the events of the night in question was "selective" and, "That doesn't sound like self defense to me." Linn argues her trial counsel failed to perform an essential duty by encouraging and failing to object to this opinion testimony as to her truthfulness.

Linn cites to *Johnson v. State*, 495 N.W.2d 528, 530 (Iowa Ct. App. 1992), and *State v. Myers*, 382 N.W.2d 91, 97-98 (Iowa 1986), in support of her claim. In these cases, the court found counsel was ineffective in failing to object to

testimony regarding the truthfulness of a complaining witness. *Johnson*, 495 N.W.2d at 531; *Myers*, 382 N.W.2d at 97-98. However, those cases dealt with the issue of expert witness opinion testimony regarding an ultimate fact issue. *Id.* Here, counsel was questioning Detective Lawrence on his method of interview, the Reid method,² and to show Linn was being truthful in her interview. His questions also sought to show Linn was too intoxicated to recall the events of the night in question. We find counsel did not breach an essential duty in questioning Detective Lawrence in this manner.

5. Business record evidence. Finally, Linn contends counsel was ineffective in failing to object to the State's improper business record evidence. The evidence was a cell phone bill showing calls made from Linn's home. She argues counsel should have sought to have the evidence excluded because the State did not provide a foundation for the evidence.

We conclude counsel was not ineffective. Two witnesses testified regarding phone calls they received from Blanchard and Linn, originating from Linn's residence on the night of the shooting. They testified as to the times the phone calls were received. Because the phone record evidence was cumulative, it was not prejudicial.

V. Summary. Defendant's conviction is affirmed and her claim trial counsel was ineffective in failing to argue her statements to the police were involuntary is preserved for possible postconviction relief.

AFFIRMED.

² The Reid method is a commonly used interview and interrogation practice. See generally Fred E. Inbau, et al., *Criminal Interrogation and Confessions* (4th ed. 2001).