

**IN THE COURT OF APPEALS OF IOWA**

No. 8-915 / 07-2051  
Filed February 4, 2009

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

**vs.**

**ERIC CHRISTOPHER MILLER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovrorn,  
Judge.

Eric Miller appeals from his conviction and sentence for first-degree  
murder. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bruce L. Kempkes, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Frank Severino and Jaki  
Livingston, Assistant County Attorneys, for appellee.

Heard by Sackett, C.J., and Potterfield, J. and Huitink, S.J.\*

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

**POTTERFIELD, J.**

**I. Background Facts and Proceedings**

Eric Miller met Jamey Brucker at the Romantix Adult Emporium bookstore on Wednesday, November 1, 2006. The two men talked for roughly an hour and exchanged phone numbers, agreeing to set each other up with dates because Brucker was homosexual and Miller was heterosexual. The next night, around 11:00 p.m., Miller and Brucker went to Brucker's apartment to drink. Miller owned a twelve-gauge shotgun, which he left in his vehicle when he went inside Brucker's apartment.<sup>1</sup> At some point in the night, they went to the store to get more beer. While they were driving, Brucker tried to touch Miller's leg, and Miller punched him in the face. They also went to Miller's house that he shared with his parents to use the internet. When Brucker became loud, Miller put a ninja star, a bladed martial arts weapon, to Brucker's throat.<sup>2</sup> The two men then returned to Brucker's apartment.

Miller did not testify, but he told police officers during interviews that throughout the night, Brucker repeatedly expressed a desire to die.<sup>3</sup> Miller expressed to Brucker that he would be willing to kill him. Miller saw this as "killing two birds with one stone," as it would allow him to satisfy his "craving" to kill someone and at the same time "do [Brucker] a favor." At first, Miller thought Brucker may not be serious about his suicidal thoughts but stated that, "As soon as I seriously knew he wanted to die, I knew that I would seriously kill him." Then, Miller went to his vehicle and retrieved his gun.

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<sup>1</sup> Miller alleges that they planned on shooting his gun, but that never happened.

<sup>2</sup> Brucker was not seriously harmed, though he complained of pain later.

<sup>3</sup> Brucker had a history of depression, including suicidal thoughts.

As part of their agreement, Miller would fulfill Brucker's last wish by allowing Brucker to perform oral sex on him.<sup>4</sup> Miller undressed, then assembled and loaded the gun. Miller told officers that Brucker first unsuccessfully tried to perform oral sex on him as he stood near the bed. Miller then voluntarily lay down on the bed holding his shotgun and allowed Brucker to attempt again to arouse him. This did not work either, and at that point Brucker straddled Miller and attempted to insert Miller's penis into Brucker's anus. Miller did not see this as part of the agreement and tried to push Brucker off him. He asked Brucker, "Do you want to die"? Brucker said, "Yes," and Miller shot him in the head, just before 7:00 a.m. on November 3, 2006. Miller then got off the bed and shot Brucker a second time in the head.<sup>5</sup>

Miller attempted to clean up Brucker's apartment and remove any incriminating evidence. He went home and showered to clean Brucker's blood from his body. He then told his father that he had killed a man and left his house. He returned to Brucker's residence to retrieve Brucker's cell phone, which he had accidentally left behind. He planned to flee the state without getting caught. However, Miller's father contacted the West Des Moines police and informed them that his son had possibly killed someone.

An officer contacted Miller on his cell phone and planned to meet him near Methodist hospital. Miller lied to the officer, telling her he did not have a gun with him. At 9:13 a.m., area police officers stopped Miller's car as it approached an interstate on-ramp. The officers testified that Miller exhibited no signs of

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<sup>4</sup> Brucker's last wish was to perform oral sex on a heterosexual male.

<sup>5</sup> The toxicology reports from Brucker's autopsy showed that Brucker had a blood alcohol level of .182 at the time of his death.

intoxication. In Miller's car, officers found a shotgun with drops of blood on it, clothing with blood on it, and an empty beer bottle. Miller was taken into custody, and at 10:31 a.m. he consented to a breath test that revealed a blood alcohol content of .048. Officers searched Miller's person and found a driver's license, cell phone, and sixty dollars, all belonging to Brucker.<sup>6</sup>

Detective Paul Castelline interviewed Miller shortly after 9:15 a.m. and testified that he appeared to be coherent and free from the influence of drugs or alcohol. Detective Jeffrey Shannon interviewed Miller at 11:30 a.m. and testified that Miller did not appear to be under the influence of drugs or alcohol at the time of the interview. Miller told a paramedic that he had consumed five or six beers and smoked marijuana earlier. However, when Shannon asked Miller whether he knew how to hold the gun and pull the trigger, Miller responded, "Oh, yeah." Miller told Shannon that he removed all incriminating evidence from Brucker's apartment, including all beer cans out of which he drank, and threw it away in a garbage can outside of Methodist Hospital. Lynn Sprafka, an identification technician with the Des Moines Police Department, collected evidence out of that garbage can. She testified to finding two empty beer bottles, two full beer bottles, two shot glasses, and Brucker's wallet, which contained multiple forms of identification.

Miller was charged with first-degree murder and was tried before a jury. At his trial, the prosecution introduced evidence, without objection, that when Miller purchased his shotgun, he committed a felony by making a false statement

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<sup>6</sup> Miller later explained that Brucker had given him the money, stating that he would not need it after Miller killed him. Miller planned on using Brucker's license for identification when he fled since authorities would be searching for him.

on a federal form. Before purchasing his shotgun, Miller was required to fill out a federal form that states that providing untruthful information on the form is a crime punishable as a felony. One of the questions on the form asked whether Miller was an unlawful user of or addicted to marijuana. Miller answered “no” to that question, though evidence established that he used marijuana.

At trial, Miller offered the defenses of intoxication, diminished responsibility, serious provocation, and justification. The jury found Miller guilty of first-degree murder. Miller appeals from that conviction, arguing that his counsel was ineffective in failing to object to the prosecution’s admission of evidence that he illegally acquired the murder weapon. Miller argues such evidence was irrelevant evidence of a prior bad act that caused the jury to be unfairly prejudiced against him.

## **II. Standard of Review**

Because Miller asserts a constitutional violation, we review the totality of the circumstances de novo. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1984).

## **III. Ineffective Assistance of Counsel**

In order to prove that his counsel was ineffective, Miller must show that: (1) his counsel failed to perform an essential duty; and (2) prejudice resulted from that failure. *Id.* In order to establish the first prong of the test, Miller must show that his counsel did not act as a “reasonably competent practitioner” would have. *State v. Simmons*, 714 N.W.2d 264, 276 (Iowa 2006). In evaluating counsel’s effectiveness, we require more than a showing that counsel’s strategy failed. *Taylor*, 352 N.W.2d at 684. In addition, there is a strong presumption that counsel performed competently. *Id.* To satisfy the second prong, prejudice,

Miller “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* If we can dispose of Miller’s claim under the prejudice prong, we need not evaluate his counsel’s performance. *Id.*

Miller contends that evidence showing that he committed a felony in purchasing his shotgun constitutes irrelevant and prejudicial prior bad act evidence that would be inadmissible under Iowa Rules of Evidence 5.401, 5.403, and 5.404(b). He claims that the admission of the evidence improperly swayed the jury to punish him for a separate and discrete act from the act for which he was on trial. Miller cannot show a reasonable probability that the result of his trial would have been different had evidence of his felonious misinformation not been admitted.

The record overwhelmingly supports the jury’s conviction of Miller for first-degree murder. “[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.” *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984). Miller openly admitted to killing Brucker. While Miller asserted multiple defenses at trial, the record supports the jury’s decision to reject those defenses. Miller’s interviews with Castelline and Shannon establish that Miller intended to kill Brucker after allowing him to perform oral sex on him. Miller told Shannon, “I killed him to help him. He wanted me to kill him.” Miller also told Shannon that he had an agreement with Brucker that after Brucker performed oral sex, Miller “was gonna kill him.” Miller went to his car to

retrieve his gun, put the gun together, loaded it, and showed Brucker what he would use to kill him before Brucker attempted to touch him sexually. Miller repeatedly expressed that he killed Brucker because Brucker wanted to die, telling Shannon that he did not feel guilty for killing Brucker and that he considered his action to be a favor. Miller also told Shannon that if he was trying to stop Brucker from raping him, he “would’ve just given him the butt of the gun.” Thus, while Miller later tried to claim that he was acting in self-defense, as a result of serious provocation, or with diminished responsibility, the record establishes that he intended to kill Brucker before Brucker tried to force him to participate in anal sex.

Miller also offered the defense of intoxication. However, the record supports the jury’s rejection of this defense as well. Miller told Shannon that he threw all of the beer bottles from which he drank in the garbage by Methodist hospital. That garbage can contained only two empty beer bottles. Miller also told Shannon that he knew how to hold the gun and pull the trigger when he killed Brucker, despite having consumed alcohol. Miller showed that he was able to plan and to think ahead when he cleaned up incriminating evidence from Brucker’s apartment.

Multiple officers testified that Miller did not appear to be under the influence of drugs or alcohol. Officer Kenneth O’Brien testified that Miller “certainly didn’t display any physical behaviors that would make me think he was intoxicated.” Officer Kelly Drane testified that according to her observations, she did not believe Miller was intoxicated. Detective Castelline testified that Miller “appeared to be coherent” and did nothing to indicate that he was intoxicated.

Officer Todd Cline testified that Miller did not appear to be intoxicated and also administered a breath test around 10:30 a.m., which revealed a blood alcohol content of .048. Jody Hall, a paramedic who briefly evaluated Miller, testified that she did not get the impression that he was intoxicated. Detective Shannon spent several hours with Miller and testified that he did not appear to be intoxicated. Anne Manly testified that Miller's blood alcohol content would have been higher at the time of the shooting because some of the alcohol had dissipated between the shooting and Miller's apprehension. However, many officers saw Miller within roughly two and one-half hours of the shooting. Also, an empty beer bottle was found in Miller's car when he was arrested, suggesting he may have been drinking after leaving Brucker's apartment. The overwhelming weight of the evidence supported the jury's rejection of Miller's defense of intoxication.

Assuming that the evidence at issue was irrelevant and should not have been admitted, we cannot find that Miller was prejudiced by its admission. Miller asserts that the evidence led the jury to punish him for illegally obtaining the gun. The jury heard evidence that Miller routinely drove his vehicle while under the influence of marijuana and alcohol; that he enjoyed firing his shotgun within city limits, often near the interstate; that he punched Brucker in the face when Brucker tried to touch him; that he put a bladed martial arts weapon to Brucker's throat when Brucker was too loud; that he fantasized about slitting someone's throat from ear to ear; that for several weeks he had craved killing another human being; that he was not remorseful for killing Brucker; that he had stolen Brucker's cash and cell phone; that he had destroyed incriminating evidence and attempted to flee after the murder, believing he could escape and possibly kill

again; and that he had a dark side and enjoyed committing destructive acts that provided him with a thrill. Miller's illegal acquisition of a shotgun was merely one of a long list of offensive behaviors. We cannot determine that there is a reasonable probability that this single piece of information swayed jurors to punish Miller for this unrelated action. In light of Miller's other actions, we find the felony committed in obtaining the shotgun to be rather insignificant. Because Miller cannot show a reasonable probability that the result of his trial would have been different had his counsel objected to the evidence of his illegal acquisition of the gun, he cannot prove prejudice, as is required to prove ineffective assistance of counsel.

**AFFIRMED.**