

IN THE COURT OF APPEALS OF IOWA

No. 8-973 / 07-2086
Filed February 4, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT ANDRE SALLIS,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Marsha Bergan,
Judge.

Robert Sallis appeals his conviction and sentence for ongoing criminal
conduct (pimping and pandering) arguing his counsel was ineffective in failing to
object to certain evidence. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, Janet Lyness, Johnson County Attorney, and Anne Lahey, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

Following a jury trial, Robert Sallis was found guilty of ongoing criminal conduct (pimping and pandering). Sallis now appeals, contending his counsel rendered ineffective assistance by failing to object to certain evidence. We affirm.

I. Background Facts and Proceedings.

The evidence presented at trial was sufficient to establish the following facts: In July 2004 Sallis became reacquainted with Betty Thompson, a woman he had known when she was a young girl. Sallis was not employed at that time, and he subsequently moved in with Thompson in her in Cosgrove, Iowa apartment. Thompson later lost her job, and Sallis then came up with the idea for a business called “Naughty Bi Nature.”

In the fall of 2004, Naughty Bi Nature was started. Although the business ran classified ads in the *Cedar Rapids Gazette* under the category of spas and escorts, the business was actually a prostitution ring. Several Naughty Bi Nature clients testified they paid money for sex acts and services. Additionally, several women, including Felicia Thompson,¹ testified they worked for Naughty Bi Nature as prostitutes.

At Sallis’s direction, Thompson carried out various duties for the business. Thompson placed the ads for the business in the newspaper. Additionally, she generally answered the phone and made appointments for the business. She drove the women (one as young as thirteen years old) to clients’ addresses and waited outside in her car. After finishing their sessions with a client, the women

¹ In order to avoid confusion, we hereinafter refer to Felicia Thompson by her first name.

would come out and give Thompson the session fee. Thompson then gave the money to Sallis. Thompson also recruited young women to work for the business. Thompson also occasionally worked as a prostitute for the business. However, Sallis also took phone calls for the business, recruited young women for the business, and took women out on calls.

In the spring of 2005, Sallis and Thompson moved to Williamsburg, Iowa, where the business continued operating. At some point Sallis began a relationship with Felicia, one of the business's prostitutes. This led to a breakup between Sallis and Thompson. Sallis and Felicia then moved to Wilford, Iowa, where the business continued operating until Sallis's arrest.

On October 16, 2007, Sallis was charged by an amended trial information with ongoing criminal conduct in violation of Iowa Code sections 706A.1, 706A.2(1)(c) or 706A.2(4), 706A.4, 725.2 or 725.3(1) or 725.3(2) (2007). The trial information alleged that Sallis "on or about the Fall of 2004 through Spring, 2005 . . . participated in the operating of a prostitution ring which operated for several months . . . and included using a minor" Sallis entered a plea of not guilty.

The matter proceeded to trial. Ultimately, Sallis claimed it was Thompson, not him, who ran the prostitution ring. The State presented multiple witnesses, including Thompson, who testified that it was Sallis who ran the business, and that Thompson's involvement in the business was done at Sallis's direction, under threats and violence by Sallis. During Thompson's testimony on direct examination by the State, the following exchanges occurred:

Q. Why didn't you hold some money back? A. Because I was scared to hold back. I know stories from when I was a child of what women—happened to women that held back from [Sallis].

...
Q. Did [Sallis] ever tell you what would happen if you contacted the police? A. Yes.

Q. What would he tell you? A. That I would get killed, that I would come up missing. I had heard so many stories at that point from Mr. Sallis, plus I knew him growing up, so I knew what he was capable of, I didn't want to be a statistic either.

Sallis's counsel did not object to either statement by Thompson.

After a four-day trial, the jury returned a guilty verdict. Judgment and sentence was filed December 7, 2007, adjudging Sallis guilty and convicting him in violation of sections 706A.1; 706A.2(1)(c) or 706A.4; and 725.2 or 725.3(1), and specifically not 725.3(2). Sallis was sentenced to an indeterminate term of twenty-five years incarceration.

Sallis now appeals. He contends his trial counsel rendered ineffective assistance by failing to object to Thompson's testimony regarding "stories" of Sallis.

II. Scope and Standards of Review.

We review claims of ineffective assistance of counsel de novo. *Wemark v. State*, 602 N.W.2d 810, 814 (Iowa 1999). To establish ineffective assistance of counsel, Sallis must prove: (1) his attorney's performance fell below "an objective standard of reasonableness" and (2) "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). To prove the first prong, failure to perform an essential duty, Sallis must overcome a strong presumption of counsel's competence and show that under the entire record and totality of

circumstances counsel's performance was not within the range of normal competency. *Osborn v. State*, 573 N.W.2d 917, 922 (Iowa 1998). To prove the second prong, resulting prejudice, Sallis must show that counsel's failure worked to his actual and substantial disadvantage so there exists a reasonable probability that but for counsel's error the result of his trial would have been different. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). On appeal we may reject an ineffective assistance of counsel claim if the defendant fails to prove either prong. *State v. Query*, 594 N.W.2d 438, 445 (Iowa Ct. App. 1999).

We normally preserve ineffective assistance of counsel claims for postconviction relief proceedings to allow the defendant an opportunity to have an evidentiary hearing and develop a more complete record. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). However, resolution on direct appeal is appropriate when the record is adequate to determine as a matter of law that a defendant is unable to establish one of the two elements. *See id.* Here, we find the record is adequate to resolve Sallis's ineffective assistance claim.

III. Discussion.

On appeal, Sallis contends his counsel rendered ineffective assistance by failing to object to two statements made by Thompson on direct examination by the State concerning "stories" of Sallis. Sallis maintains these statements obviously implicated that Sallis "had previously worked as a pimp and had previously severely abused or even killed other women," and thus the statements were improper evidence of prior bad acts and reputation. Sallis argues that, but for these statements, he would not likely have been convicted, and he was therefore prejudiced by the statements.

In this case, we find it unnecessary to analyze Sallis's claim that his trial counsel breached an essential duty by failing to object Thompson's concerning "stories" of Sallis. Assuming without deciding that counsel had some duty to object to this evidence, we find Sallis suffered no prejudice. We reach this conclusion because we believe that Sallis has failed to show a reasonable probability that the outcome of the proceeding would have differed if his counsel had successfully objected to the evidence at issue here. *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698.

The State presented evidence in the form of testimony from many witnesses regarding Sallis's involvement in the business and his violence and threats of violence upon Thompson. Thompson testified that Sallis, under threats and violence, made her perform various duties for the business. Thompson testified Sallis always said: "dick runs this, pussy doesn't run anything." Thompson testified Sallis required her to answer the phone and that he told her what to say in answering the phone. Thompson testified that Sallis had thrown the phone at her for not answering it, and that Sallis threatened to beat her up or kill her. Thompson testified that Sallis occasionally made her go on calls and that she knew he would beat her up if she did not go. Thompson testified that the last day she was with Sallis, Sallis had hit her several times in the head, splitting her head open, requiring her to go to the hospital and have a drainage tube put in her head.

One of the prostitutes for the business testified that Thompson had to have a certain amount of money at the end of the night to give to Sallis, and that Thompson never had any of her own money. This witness testified that

Thompson was afraid she would get hurt by Sallis if the money was “messed up.” The witness heard Sallis and Thompson “banging around” and observed Thompson injured with bruises, cigarette burns, black eyes, and with a split lip.

Another of the prostitutes for the business testified that she observed injuries on Thompson’s head after Thompson and Sallis had gotten into an argument. The witness testified that she was concerned for Thompson’s safety.

Another witness testified she was recruited by Sallis to sell her body. She testified heard Sallis directing Thompson to send a certain woman on a call.

Another witness testified his girlfriend was working as a prostitute for Sallis. Regarding Sallis’s involvement in the business, this witness testified that Sallis was “like the head of the body, the leader of the team.” The witness testified that his girlfriend paid Sallis a percentage of the money she earned. The witness further testified he heard Sallis answer the phone and saw Sallis get money from the women after they returned from their calls. He testified the women gave money to Thompson, who turned it over to Sallis.

Thompson’s son, who had lived with Sallis and Thompson, testified that Sallis was “pretty much in charge of the business,” and that Sallis told him he was making money. Although he testified that his mother did most of the work, he further testified that he observed Sallis answering the phone for the business, and taking the women out on calls. He observed his mother give Sallis money every time she came back from a call. He testified that Sallis told him “if your mom gets out of line, I don’t have no problem hitting her in her [mouth].” He observed Sallis hit Thompson, and he observed injuries on his mother, such as bruises on her neck and cigarette burns on her arm.

Felecia testified she moved in with Sallis and Thompson, and that she began working for them. She testified that Sallis and Thompson were partners. In describing how the operation worked, she testified Sallis wrote a script that Thompson would use in answering the phone. She further testified that she would go out on a call, give Thompson the money, and Thompson would give Sallis the money. She testified she heard arguments between Sallis and Thompson and observed bruises on Thompson. After she began a relationship with Sallis, she testified moved into a hotel Coralville, but she continued to work for Sallis, who took the money from the calls. She testified Sallis had hit and beat her. She testified Sallis told her he had gotten into a fight with Thompson and “split her head open like an orange.” She testified Sallis told her he had beaten Thompson on other occasions. While living in Wilford, Felicia testified she continued going on calls for the business. She testified she had the business’s phone number changed to her number at Sallis’s direction, and that she answered the phone at his direction. She testified she gave Sallis the money from her calls, and that she was beat up by Sallis for not having the right amount of money for the amount of time she had been gone on a call. She testified she was scared of Sallis, and that Sallis told her he would kill her if she ever left him.

A deputy sheriff testified that when he met with Thompson, she was visibly shaken and scared. The deputy sheriff testified Thompson told him that she would be killed if Sallis found out that she was talking with him. He testified he observed injuries on Thompson, including a mark on her face consistent with a cigarette burn and a tube coming out of her head.

Given the convincing evidence against Sallis, we do not find a reasonable probability that the trial would have generated a different result had Sallis's counsel successfully objected to Thompson's two rather vague and nonspecific statements. Because Sallis has failed to prove the prejudice prong of the *Strickland* test, his claim of ineffective assistance of counsel must fail. Accordingly, we affirm Sallis's conviction and sentence.

IV. Conclusion.

Because we conclude his trial counsel was not ineffective, we affirm Sallis's conviction and sentence.

AFFIRMED.

Eisenhauer, J., concurs; Sackett, C.J, concurs in part and dissents in part.

SACKETT, C.J., (concurring in part and dissenting in part)

I concur in part and dissent in part from the majority's well written decision. I affirm the conviction, but I would preserve the claim of ineffective assistance of counsel.