

IN THE COURT OF APPEALS OF IOWA

No. 9-901 / 08-1859
Filed December 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SCOTT ALLEN MASON,
Defendant-Appellant.

Appeal from the Iowa District Court for Decatur County, Gary G. Kimes,
Judge.

Defendant appeals the district court's decision denying his application for
funds to obtain an expert witness in his criminal proceedings. **REVERSED AND
REMANDED.**

George Jones, Lamoni, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, and Lisa Hynden Jeanes, County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.**I. Background Facts & Proceedings**

Scott Mason was charged with assault by using or displaying a dangerous weapon, in violation of Iowa Code section 708.2(3) (2007), and stalking, second offense, in violation of section 708.11(2), for events which occurred on January 30, 2008. The minutes of testimony allege Mason threatened his neighbor, William Hamaker, with a two-foot pipe by swinging the pipe in a threatening manner and yelling. Hamaker was in his tractor cab at the time. He called 911 and Mason retreated. Hamaker stated he was placed in fear because Mason had threatened to kill him before.

Mason was also charged with criminal mischief in the second degree, in violation of section 716.4, and stalking, second offense, for events which occurred on April 26, 2008. The minutes of testimony for this incident state Mason drove up the driveway of the Hamaker home “yelling and cussing, making no sense at all.” Mason drove in an erratic manner, got out of his vehicle, “continued to have his raging fit,” got back into his vehicle, then accelerated backwards at a high rate of speed until he hit a livestock trailer owned by the Hamakers. Mason drove a short distance away, got out of his vehicle, had “another raging fit as he threw a cooler from his truck onto the ground all while cussing and yelling.” Mason was stopped by law enforcement officials, who found an open case of beer on the vehicle seat.

Mason filed an application claiming he was indigent, and counsel was appointed for him. Mason, through counsel, filed an application for a psychiatric

evaluation pursuant to section 812.3. The State resisted, claiming the application was premature. Mason then withdrew the application, stating he was currently competent to stand trial.

Mason entered a plea of not guilty by reason of insanity, claiming that at the time of the offenses he was incapable of knowing the nature and quality of the acts he was committing, or he was incapable of distinguishing between right and wrong in relation to his acts. He filed an application for funds to obtain an expert witness under Iowa Rule of Criminal Procedure 2.20(4). He asked the court to give him the right to spend up to \$5000 to retain an expert in psychiatry and/or psychology to assist him in his insanity defense.

Mason sought in camera review of certain of his mental health records. These included records from treatment during an involuntary civil commitment in 1997, further treatment notes from 1997, and treatment records from 2004. The district court reviewed the records and entered an order stating:

Defendant's application for funds to obtain expert witness is denied. The information Defendant relies upon in support of his application is over 10 years old. The report dated 6-6-97, page 4, final diagnosis, does not support the application nor is it helpful to the Defendant in regard to his insanity defense plea.

The court denied Mason's application to obtain an expert witness under rule 2.20(4).

Mason filed an application for discretionary review by the Iowa Supreme Court under Iowa Rule of Appellate Procedure 6.2(1). The supreme court reviewed Mason's medical and mental health records and granted the application

for discretionary review. Proceedings in the district court were stayed. The case was subsequently submitted to the Iowa Court of Appeals.

II. Standard of Review

We review the district court's ruling on an application for the appointment of an expert witness for an abuse of discretion. *State v. Baccam*, 476 N.W.2d 884, 887 (Iowa Ct. App. 1991). We will reverse the court's decision only if that discretion has been abused. *State v. Stewart*, 445 N.W.2d 418, 420 (Iowa Ct. App. 1989). The right to an expert witness falls within the Sixth Amendment right to counsel, however, and to the extent a defendant claims he was denied effective assistance, our review is de novo. *State v. Leutfaimany*, 585 N.W.2d 200, 207 (Iowa 1998).

III. Merits

Iowa Rule of Criminal Procedure 2.20(4) provides:

Witnesses for indigents. Counsel for a defendant who because of indigency is financially unable to obtain expert or other witnesses necessary to an adequate defense of the case may request in a written application that the necessary witnesses be secured at public expense. Upon finding, after appropriate inquiry, that the services are necessary and that the defendant is financially unable to provide compensation, the court shall authorize counsel to obtain the witnesses on behalf of the defendant. The court shall determine reasonable compensation and direct payment pursuant to Iowa Code chapter 815.

This rule is intended to protect an indigent defendant's right to due process of law. *State v. Coker*, 412 N.W.2d 589, 591-92 (Iowa 1987).

The rule contains two requirements: (1) the defendant must be indigent, and (2) the services of an expert must be necessary to the preparation and presentation of an adequate defense. *Id.* at 592. The defendant has the burden

to demonstrate these two elements. *Leutfaimany*, 585 N.W.2d at 208. A court should conduct an objective evaluation of the application, taking into consideration all relevant factors. *State v. McGhee*, 220 N.W.2d 908, 913 (Iowa 1974); *State v. Van Scoyoc*, 511 N.W.2d 628, 630 (Iowa Ct. App. 1993).

The district court “should prevent random fishing expeditions undertaken in *search of* rather than in *preparation of* a defense.” *Coker*, 412 N.W.2d at 592. A defendant is not entitled to the appointment of an expert witness at the State’s expense unless there is a finding that such services are necessary in the interests of justice. *State v. Barker*, 564 N.W.2d 447, 450 (Iowa Ct. App. 1997).

On the other hand, a court “should not withhold appointment of an expert when the facts asserted by counsel reasonably suggest further exploration *may* prove beneficial to defendant in the development of his or her defense.” *Coker*, 412 N.W.2d at 592. “When [the] trial court, upon its independent review of the record made when the motion is submitted, concludes counsel’s request is reasonable under the circumstances and may lead to development of a plausible defense, counsel’s request should be granted.” *Id.* “The underlying question is whether the application is reasonable. If it is reasonable it should be granted.” *Stewart*, 445 N.W.2d at 420.

We conclude the district court abused its discretion by denying Mason’s request for the appointment of an expert witness to assist in his insanity defense. Our review of Mason’s mental health records submitted with this appeal shows he has a history of mental health problems. The allegations against him include instances of bizarre behavior. The appointment of an expert *may* prove

beneficial in the development of his defense. See *Coker*, 412 N.W.2d at 592. The application was reasonable based on Mason's mental health problems, and because it was reasonable it should be granted. See *Stewart*, 445 N.W.2d at 420.

We reverse the decision of the district court and remand for further proceedings in accordance with this opinion. Nothing in this opinion should be construed as preventing the district court from assessing the appropriate amount to be approved for said appointment.

REVERSED AND REMANDED.