

IN THE COURT OF APPEALS OF IOWA

No. 1-423 / 10-1312
Filed July 13, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DENNIS MITCHELL BROOKS II,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Thomas H. Preacher, District Associate Judge.

A defendant appeals from his conviction for domestic abuse assault resulting in bodily injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Michael J. Walton, County Attorney, and James J. Crosby, Assistant County Attorney, for appellee.

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

DOYLE, J.

Dennis Brooks II appeals from his judgment, conviction, and sentence for domestic abuse assault resulting in bodily injury to his wife, Jessica DeFrieze-Brooks. Dennis contends his trial counsel rendered ineffective assistance in failing to request a specific intent jury instruction be given. We affirm.

I. Background Facts and Proceedings.

On April 16, 2010, the State filed its trial information charging Dennis with domestic abuse assault resulting in bodily injury in violation of Iowa Code sections 708.1, 236.2, and 708.2A(2)(b) (2009). Dennis asserted a defense of justification (self-defense).¹ A jury trial was held on July 12, 2010. Dennis did not testify.

Jessica DeFrieze-Brooks testified that on March 30, 2010, Dennis came home intoxicated. She testified Dennis was upset because her daughter (Dennis's stepdaughter), J.D., had friends over at the house. Dennis told J.D.'s friends to leave, and they did. Jessica testified that she and Dennis began to argue, and he then punched the side of her nose with his fist. Jessica testified that prior to being struck by Dennis, she did not say anything threatening to him nor was physical with him. She testified she believed he hit her "out of spite." Jessica stated that J.D.'s friends returned to stop Dennis, and an altercation between Dennis and one of J.D.'s friends, D.B., ensued. Jessica testified that police officers arrived shortly thereafter, and she told the officers Dennis had

¹ Defense of self or another is codified in Iowa Code section 704.3, which 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."

punched her in the nose. J.D. and D.B. testified, giving essentially the same account of the evening as Jessica.

Responding Officer Scott Crow testified that he spoke with Jessica, J.D., and one of J.D.'s friends after arriving that evening. Officer Crow testified that all three told him Dennis had arrived home, started yelling at everyone, and then punched Jessica in the face. He testified that, based on the information stated to him that night, it was his belief Dennis had punched Jessica right away after arriving home, rather than after J.D.'s friends had left.

After the State rested, the defense rested without presenting any evidence. The jury was then instructed on the case. Relevant here, the jury was instructed that to find Dennis guilty of domestic abuse assault resulting in bodily injury, the State must prove:

1. On or about the 30th day of March, 2010, [Dennis] did an act to Jessica [DeFrieze-Brooks] which resulted in physical contact which was meant to cause pain or injury, but was without the intent to inflict a serious injury.
2. [Dennis] had the apparent ability to do the act.
3. [Dennis's] act caused a bodily injury to Jessica [DeFrieze-Brooks] as defined in [another instruction].
4. [Dennis] was not acting with justification.

A general intent instruction was also given, stating:

To commit a crime a person must intend to do an act which is against the law. While it is not necessary that a person knows the act is against the law, it is necessary that the person was aware he was doing the act and he did it voluntarily, not by mistake or accident. You may, but are not required to, conclude a person intends the natural results of his acts.

Dennis's counsel did not object to the instruction, nor did he request the standard specific intent instruction² be given. However, Dennis's requested instructions on justification were given.

The jury found Dennis guilty of domestic abuse assault resulting in bodily injury. Dennis now appeals.

II. Discussion.

On appeal, Dennis contends his trial counsel rendered ineffective assistance in failing to request a specific intent jury instruction be given. We review claims of ineffective assistance of counsel de novo. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). Although we generally preserve such claims for postconviction relief, where the record is sufficient to address the issues, we may resolve the claims on direct appeal. *Id.* We find the record here is adequate to address the issue.

In order to establish a claim for ineffective assistance of counsel, Dennis must demonstrate his trial counsel (1) failed to perform an essential duty and (2) prejudice resulted. *Anfinson v. State*, 758 N.W.2d 496, 499 (Iowa 2008) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984)). If either element is not met, the claim will fail. *Id.*

² The standard specific intent instruction is set forth in the Iowa Criminal Jury Instructions and provides:

“Specific intent” means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.

Because determining the defendant's specific intent requires you to decide what [he][she] was thinking when an act was done, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine the defendant's specific intent. You may, but are not required to, conclude a person intends the natural results of [his] [her] acts.

1 Iowa Crim. Jury Instructions 200.2 (available at <http://iabar.net>).

There is a strong presumption counsel's representation fell within the wide range of reasonable professional assistance, and Dennis is not denied effective assistance by counsel's failure to raise a meritless issue. *State v. Graves*, 668 N.W.2d 860, 881 (Iowa 2003). To demonstrate prejudice, Dennis must show that "but for the counsel's unprofessional errors, the result of the proceeding would have been different." *Anfinson*, 758 N.W.2d at 499.

In *State v. Fountain*, 786 N.W.2d 260, 264 (Iowa 2010), the Iowa Supreme Court stated:

Since 2003, we have had the opportunity to address the intent requirement for assault multiple times. See *State v. Keeton*, 710 N.W.2d 531, 533 (Iowa 2006); *State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004). In each of these cases, including the most recent case involving this issue, *Wyatt v. Iowa Department of Human Services*, 744 N.W.2d 89, 94 (Iowa 2008), we focused on the elements of the crime. In each of these cases, we found that regardless of the specific label attached to the crime—specific intent or general intent—the State must prove the elements of the crime and their accompanying mens rea beyond a reasonable doubt. See, e.g., *Keeton*, 710 N.W.2d at 534.

The elements of assault under Iowa Code section 708.1 have not changed since our decision in [*State v. Heard*, 636 N.W.2d 227, 231 (Iowa 2001)]. Under this section, a defendant must commit an act that he intends to cause pain or injury to the victim or to result in physical contact that would be insulting or offensive to the victim or to place the victim in fear of physical contact that will be injurious or offensive. Iowa Code § 708.1(1), (2). Because the elements of these assault alternatives include an act that is done to achieve the additional consequence of causing the victim pain, injury or offensive physical contact, the crime includes a specific intent component. See *Heard*, 636 N.W.2d at 231-32. Therefore, we adhere to our prior decisions holding that the 2002 amendment "did not alter the substantive content of the statute." [*State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003)].

786 N.W.2d at 265.

Based upon *Fountain*, Dennis argues that his trial counsel had a duty to seek a specific intent instruction in his domestic abuse assault trial and that he

was prejudiced by his attorney's failure to do so.³ The State concedes that assault is a specific intent crime, but argues the marshalling instruction correctly stated the law requiring the jury find Dennis's act was intended to cause Jessica pain or injury. The State further argues Dennis could not demonstrate a reasonable probability of a different outcome at trial had the specific intent instruction been given.

Upon our review we agree with the State that, even assuming without deciding that Dennis's trial counsel had a duty to request a specific intent jury instruction be given, Dennis cannot demonstrate the requisite prejudice. Here, the evidence was overwhelming that Dennis intentionally hit Jessica in her face. Jessica and J.D. both testified that Dennis punched Jessica in the face without any provocation. There was no evidence presented that supported Dennis's justification defense. Given the evidence against him, Dennis cannot show that but for his trial counsel's alleged unprofessional error, the result of his trial would have been different. We are therefore convinced the failure to give a specific intent instruction caused the defendant no prejudice. Accordingly, we affirm Dennis's judgment, conviction, and sentence for domestic abuse assault resulting in bodily injury.

AFFIRMED.

³ Because this case was tried July 12, 2010, neither the district court nor Dennis's trial counsel had the benefit of *Fountain*, which was decided July 30, 2010.