

**IN THE COURT OF APPEALS OF IOWA**

No. 1-703 / 10-2104  
Filed November 23, 2011

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

**vs.**

**MITCHELL WAYNE MORRIS, SR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Des Moines County, Michael G. Dieterich (trial) and Emily S. Dean (sentencing), District Associate Judges.

A defendant appeals from his conviction for carrying weapons in violation of Iowa Code section 724.4(1) (2009). **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Jennifer Slocum, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**VOGEL, P.J.**

Mitchell Morris was convicted of aggravated assault in violation of Iowa Code sections 708.1 and 708.2(3) (2009); carrying weapons in violation of Iowa Code section 724.4(1); and public intoxication as a third or subsequent offender in violation of Iowa Code sections 123.46 and 123.91. On appeal, Morris only challenges his conviction for carrying weapons. See Iowa Code § 724.4(1) (“[A] person who goes armed with a dangerous weapon concealed on or about the person . . . commits an aggravated misdemeanor.”). Morris argues his trial counsel was ineffective for failing to assert in his motion for judgment of acquittal that there was insufficient evidence of concealment.

Our review is de novo. *State v. Bearse*, 748 N.W.2d 211, 214 (Iowa 2008). In order to prevail on an ineffective-assistance-of-counsel claim, a defendant must demonstrate (1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006); see also *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003) (explaining a defendant’s inability to prove either element is fatal and therefore, we may resolve a claim on either prong).

A claim of ineffective assistance of trial counsel based on the failure of counsel to raise a claim of insufficient evidence to support a conviction is a matter that normally can be decided on direct appeal. Clearly, if the record in this case fails to reveal substantial evidence to support the convictions, counsel was ineffective for failing to properly raise the issue and prejudice resulted. On the other hand, if the record reveals substantial evidence, counsel’s failure to raise the claim of error could not be prejudicial.

*State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). We find the record is adequate to address Morris's claim.

In *State v. Newsom*, 563 N.W.2d 618, 619–20 (Iowa 1997), the supreme court stated:

[T]he policy underlying the prohibition against concealed weapons to be based on the protection of those persons who may come into contact with a weapon bearer. If a weapon is not concealed, one may take notice of the weapon and its owner and govern oneself accordingly. No such opportunity for cautious behavior or self-preservation exists for one encountering a bearer of a concealed weapon. We believe that the intended protection of the statute is best furthered by applying an objective test for determining the concealment element of the crime. Other courts that have applied this objective standard have found that a weapon is concealed if it is not “discernible by ordinary observation.”

The evidence presented at trial demonstrated that Morris had the knife positioned behind his back, tucked between his belt and pants. Morris approached William Hills, with the knife not visible to Hills. Morris stated, “I told you I would be back.” When Morris and Hills were a few feet apart, Morris pulled out the knife and a physical altercation ensued.

Morris argues the knife was not concealed and points to a witness located behind him who was aware Morris had a knife. Morris approached Hills with the knife hidden behind his back and the knife was not discernible to Hills by ordinary observation. *Cf. Newsom*, 563 N.W.2d at 620 (“With reference to weapons contained in vehicles, the better rule is that concealment is considered from the vantage point of one approaching the vehicle.”). While someone behind Morris may have been able to view the knife, this does not negate the fact that Morris concealed the knife as he approached Hills. On the facts before us, we find there was sufficient evidence for the jury to find the knife was concealed.

Consequently, Morris's trial attorney was not ineffective for failing to argue otherwise and Morris's claim must fail. We affirm.

**AFFIRMED.**