

**IN THE COURT OF APPEALS OF IOWA**

No. 1-734 / 10-1443  
Filed December 7, 2011

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

**vs.**

**MARQUES DUPREE WILSON,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Scott County, Charles H. Pelton,  
Judge.

Marques Wilson appeals from his convictions for willful injury causing  
serious injury and intimidation with a dangerous weapon with intent. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Jerald Feuerbach,  
Assistant County Attorney, for appellee.

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

**VOGEL, P.J.**

Marques Wilson was charged with willful injury causing serious injury under Iowa Code section 708.4(1) (2009), and intimidation with a dangerous weapon with intent under Iowa Code section 708.6, from events that transpired on September 12, 2009, between Wilson and T. Wayne Allen. As the record contains sufficient evidence to uphold the jury's verdicts on both charges, the district court properly refused Wilson's motion for judgment of acquittal. In addition, Wilson's ineffective-assistance-of-counsel claim fails because, under the narrow facts of this case, trial counsel did not breach an essential duty by not objecting to the use of the word "sustained" instead of "caused" in the jury instruction for willful injury causing serious injury. We therefore affirm.

**I. Background Facts & Proceedings**

In the early morning hours of September 12, 2009, Allen was at Genesis East Hospital in Davenport, Iowa. Allen's wife and son were inside the hospital, where his son was being discharged after receiving treatment in the emergency room. Allen and his sister, Sasha McNeal, went outside and were walking towards Allen's minivan to smoke a cigarette. When Allen observed a few people drinking in the hospital's parking lot, he hollered over to one of them—Johnny Angel—and advised against drinking as there were police inside the hospital. Allen and McNeal then got into the minivan.

One of the other men Allen hollered at approached the passenger side of the van, where McNeal was seated, and asked for a cigarette. McNeal informed the man she was out of cigarettes, and Allen, in the driver's seat, then told the man to "get off my van." At this point, the man walked around the minivan to

Allen and opened the door. Having no prior acquaintance with the man and being startled by the opening of the door, Allen grabbed the man's neck, trying to push him out of the van. Restricted by his fastened seatbelt, Allen could not push the man out of the van, and the man shot Allen in the stomach.

Jennifer Myrick had driven Angel and Wilson to the hospital that night. As Myrick was walking towards the hospital ahead of Angel and Wilson, she heard loud voices behind her. She saw defendant Wilson standing by the driver's side of Allen's van, reaching inside the van and tugging at Allen. Myrick advised Angel to go over and get Wilson away from the van. Described as a "chain," Myrick observed Wilson tugging on Allen, and Angel tugging on Wilson. Myrick then apologized to McNeal, got into her black, Pontiac Bonneville, and left the hospital parking lot.

It was not until after Myrick drove out of the parking lot that Allen was shot. Allen's only recollection of the shooter was that he was a black man with braids, who appeared to be taller than Allen. Mary Lux, the hospital's night secretary, was standing across the street from the hospital, smoking a cigarette, when she "heard a bang and saw smoke" coming from the emergency room parking lot. Shortly thereafter, two black men who came from the E.R. parking lot, walked by Lux; when she asked them what happened, they said they did not know. Lux identified one of the men as wearing a black shirt with a white design, and the other one with a white shirt. At some point following the shooting, Angel called Myrick and asked her to come back to get him. Myrick picked up both Angel and Wilson about one and one-half blocks from the hospital.

Eric Gruenhagen, a police officer with the Davenport Police Department, was approximately twelve blocks away from the hospital when he received a report from dispatch that shots were fired at Genesis East Hospital. Dispatch also relayed that two black males were seen running from the hospital, and one of them was wearing a white t-shirt. As he approached the hospital, Officer Gruenhagen turned down the headlights on his police car and began scanning the area, looking for anyone on foot who might have been leaving the hospital area. Officer Gruenhagen saw one vehicle—a dark-colored Pontiac Bonneville—leaving the hospital area, and decided to stop it.

When Officer Gruenhagen activated his flashing lights, the driver did not stop. A vehicle chase then ensued, with Officer Gruenhagen pursuing the vehicle through Davenport and into Bettendorf, then onto I-74 eastbound, going across the I-74 bridge crossing the Mississippi River, and then going into Illinois. Once the vehicle was on I-74, its speed increased dramatically and Officer Gruenhagen's speed "was hovering at 100 miles an hour, if not a little higher." Once in Illinois, the Moline or Rock Island police had set up spike strips, which caused some of the Bonneville's tires to begin deflating. Despite the deflating tires, the Bonneville continued on. Eventually, however, the Bonneville turned into a dead end street, where it came to a stop.

The police identified the driver of the car as Myrick, the front-seat passenger as Angel, and the backseat passenger as Wilson. Myrick testified that she was ready to pull over when she saw the flashing police car lights, but that "all heck broke loose in the car" as Wilson starting yelling at her not to pull over, and advised her to speed up. Wilson also tugged at the driver's seat and was

moving it back in an attempt to get into the driver's seat. The tugging eventually stopped, however, and Myrick felt something "cold and . . . like steel" on the back of her neck.

Shawn Roth, who was the on-call detective for the Davenport Police Department during the early morning hours of September 13, later met with Wilson at the Moline Police Department. Roth collected Wilson's clothes, and described his shirt as black "with some design on it." During a search<sup>1</sup> of the vehicle on September 14, 2009, a loaded, .45 caliber handgun was found under the front-passenger seat where Angel was sitting during the chase.

In the early afternoon of September 13, James Bunn was riding his motorcycle across I-74 from Bettendorf, and when he took the first exit into Illinois, noticed something lying on the shoulder of the road. Circling back around, Bunn recognized the object as a .22 caliber Beretta handgun that was missing its magazine. Bunn called 911, and the City of Moline Police Department picked up the handgun, and turned it over to detective Roth. The Moline Police Department also turned over a magazine for a .22 caliber handgun, with six rounds, that was found on September 14, 2009, on the Illinois side of the I-74 bridge.

Following the shooting, Allen underwent a six-hour emergency surgery, was in physical therapy for five months, and had not returned to his job at Tyson at the time of the August 2010 trial. The Beretta handgun, firearm magazine, and bullet removed from Allen were sent to the Iowa Division of Criminal Investigation

---

<sup>1</sup> The search was executed pursuant to a warrant obtained by the Davenport Police Department.

(DCI) Criminalistics Laboratory in Ankeny for examination. The DCI Firearms Examination Report identified the bullet removed from Allen as having been fired from the Beretta handgun.

The State filed a trial information, charging Wilson with one count of willful injury, in violation of Iowa Code section 708.4(1), and one count of intimidation with a dangerous weapon with intent, in violation of Iowa Code section 708.6. A jury trial was held in August 2010. At the conclusion of the State's evidence, Wilson moved for a judgment of acquittal, stating the evidence presented by the State was insufficient to support that Wilson committed the crimes as charged. The court overruled the motion. The jury returned a guilty verdict for both the willful injury charge and the intimidation with a dangerous weapon charge. Wilson appeals.

## **II. Standard of Review**

Our review of insufficient-evidence claims is for correction of errors at law. *State v. Enderle*, 745 N.W.2d 438, 443 (Iowa 2007). We review claims regarding ineffective assistance of counsel de novo. *State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011). Although we normally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings, we consider such claims on direct appeal as long as the record is adequate. *Id.*

## **III. Sufficiency of Evidence**

Wilson challenges the sufficiency of the evidence supporting his convictions of willful injury with intent to cause serious injury, and intimidation with a dangerous weapon with intent. He argues the critical issue in this case is the identity of the shooter. He also asserts it was not enough that Allen

“sustained” a serious injury, but that the State must prove Wilson “caused” the injury. “The jury’s findings of guilt are binding on appeal if the findings are supported by substantial evidence. Substantial evidence is evidence that could convince a rational trier of fact that a defendant is guilty beyond a reasonable doubt.” *Enderle*, 745 N.W.2d at 443. In reviewing a challenge to the sufficiency of the evidence, “we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record.” *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006).

As detailed above and summarized here, the State provided the following evidence linking Wilson to having caused Allen’s injury. The two men were both in the Genesis hospital parking lot in the early morning hours of September 13, 2009. Myrick observed Wilson and Allen engaging in a physical struggle. Wilson was observed wearing a black shirt with a white design on it, consistent with the clothing detective Roth collected from Wilson following the incident. A .22 caliber handgun, consistent with the weapon that shot the bullet removed from Allen’s abdomen, was found on the afternoon of September 13, 2009, along I-74, which was traveled by Wilson and his companions during the high-speed chase. A separate magazine clip, which was missing from the handgun, was also found on the I-74 bridge that Wilson and his companions crossed during the pursuit. Allen recalled the man who shot him being black and taller than him—both physical traits the jury could observe as both Wilson and Allen were present at the trial. Because the State presented evidence that, when taken together, could convince

the trier of fact beyond a reasonable doubt that Wilson was the shooter, the district court properly refused Wilson's motion for judgment of acquittal.

#### **IV. Ineffective Assistance of Counsel**

Wilson also claims his trial counsel rendered ineffective assistance by failing to challenge an erroneous jury instruction. In asserting an ineffective-assistance-of-counsel claim, Allen must establish (1) his counsel failed to perform an essential duty and (2) prejudice resulted from such failure. See *Utter*, 803 N.W.2d at 652 (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984)). Both elements must be proved by a preponderance of the evidence. *Id.*

In assessing whether trial counsel failed to perform an essential duty, we begin by presuming that counsel performed his duties competently. *State v. Vance*, 790 N.W.2d 775, 785 (Iowa 2010). "Trial counsel's performance is measured objectively by determining whether counsel's assistance was reasonable, under prevailing professional norms, considering all the circumstances." *State v. Lyman*, 776 N.W.2d 865, 878 (Iowa 2010). Wilson alleges "trial counsel was ineffective for not challenging the marshaling instruction on willful injury causing serious injury because it erroneously instructed the jury that it must find that Allen *sustained* a serious injury, not that Wilson *caused* a serious injury." A person commits willful injury causing serious injury when a person "does an act which is not justified and which is intended to cause serious injury to another . . . [and] the person *causes* serious injury to another." Iowa Code § 708.4(1) (emphasis added).

The jury was instructed on willful injury causing serious injury as follows:



Under Count 1, the State must prove all of the following elements of Willful Injury Causing Serious Injury:

1. On or about the 12th day of September, 2009, the defendant shot T. Wayne Allen with a .22 caliber handgun.
2. The defendant specifically intended to cause a serious injury to T. Wayne Allen.
3. T. Wayne Allen *sustained* a serious injury.

(emphasis added).

Wilson contends that because Allen could not identify the shooter, McNeal and Angel failed to testify, Myrick's credibility was questionable based on her criminal history, and that Angel also possessed a gun, it was arguable that Wilson did not cause the serious injury. The State responds by stating that "trial counsel could have reasonably believed that, in the event the jury found Wilson intentionally shot Allen, causation was a foregone conclusion."

While a jury instruction "need not contain or mirror the precise language of the applicable statute, it must be a correct statement of the law." *State v. Schuler*, 774 N.W.2d 294, 298 (Iowa 2009). In *Schuler*, our supreme court determined that where a marshaling instruction on willful injury causing serious injury used the word "sustained" instead of the word "caused"—as is the case here—the instruction was faulty. *Id.* at 298–99. In *Schuler*, however, there was a violent altercation involving multiple persons, any one of which could have caused the victim's injury, as there was conflicting testimony as to who hit the victim and in what manner. *Id.* at 298. The court determined the use of the word "sustained" instead of "caused" made it "plausible that the jury could find that although [the

defendant] assaulted [the victim], his assault did not cause the victim's bodily injury." *Id.* at 298–99. The court was unwilling to "simply assume . . . that the jury made an implicit finding on the causation issue." *Id.* at 299.

In the case at hand, only one man—Wilson—is alleged to have been the shooter. The record supports that Angel was present at the scene and was involved in trying to pull Wilson away from Allen. As the State argues, the instruction given is the only "reasonable interpretation" under the facts of this case, because Allen testified that only one man shot him. Because sufficient evidence supports the jury's finding that Wilson was the shooter, we agree with the State that the circumstances—multiple assailants—that rendered the jury instruction insufficient in *Schuler* are not present in this case. See *id.* at 298 (holding the State's interpretation of the jury instruction "is not the *only* reasonable inference of the instruction as given, especially under the factual scenario presented here).

Because the first subsection of the challenged jury instruction required the jury to find that Wilson shot Allen with a handgun, and the second subsection required that Wilson intended to cause serious injury, it follows that where only a single defendant is involved, only that single defendant could have caused the injury sustained by the victim. Therefore, we do not find counsel failed to perform an essential duty, as the jury instruction was proper under the circumstances. Failing to meet the first prong of the two-part *Strickland* test, we need not determine whether prejudice resulted. See *Osborn v. State*, 573 N.W.2d 917, 922

(Iowa 1998) (“If the petitioner makes an insufficient showing on either prong of the two-part test, we need not address both components.”).

We affirm Wilson’s convictions.

**AFFIRMED.**