IN THE COURT OF APPEALS OF IOWA

No. 2-1159 / 12-0379
Filed January 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KENNY LEE WILLIAMS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil, District Associate Judge.

Defendant appeals his conviction for leaving the scene of a personal injury accident. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams and Vidhya K. Reddy, Assistant Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Shana Schwake, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

Kenny L. Williams appeals from his conviction for leaving the scene of a personal injury accident. He claims his attorney was ineffective in her representation because her motion for judgment of acquittal did not alert the court to a specific complaint regarding the sufficiency of the evidence. We affirm.

We review the claim de novo. *Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012).

After a confrontation with Suzanna Omstead in the parking lot of the apartment building occupied by Williams and Omstead, Williams ran over Omstead's foot with his car. Omstead testified she banged on his car and yelled, "Stop. You hit me." Williams made a gesture and drove off. Williams testified and admitted to being present and to driving away while Omstead was talking to him. However, he testified he was not listening to her, and he denied running over her foot.

The jury was instructed:

> 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.

The jury returned a verdict of guilty. On appeal, Williams concedes we "can accept the general arc of Omstead's testimony . . . she was outside in the parking lot attempting to confront Williams, that he was the driver of the white Mustang, and that the rear tire went over her foot." Williams argues he was

prejudiced by his trial counsel's failure to argue the evidence was not sufficient to establish he knowingly or intentionally drove away from the scene of an accident.

To prevail, Williams must prove by a preponderance of the evidence his trial attorney failed to perform an essential duty and this failure resulted in prejudice. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). "Because proof of both prongs of this test is required, should [Williams] fail to prove prejudice we need not consider whether his trial counsel failed to perform an essential duty." *State v. Tejeda*, 677 N.W.2d 744, 754 (Iowa 2004). Generally, ineffective-assistance claims are resolved by postconviction proceedings to enable a complete record to be developed. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). Sometimes, the appellate record is adequate to resolve the issue on direct appeal. *Id*. We believe the record is adequate to resolve the issue.

At the close of the State's evidence, Williams's attorney made what she referred to as a motion to dismiss, stating:

> I don't think there is enough evidence to go in front of a jury. We have a woman who—the jury has to be deaf, dumb, and blind to find anything credible in what she said. But besides that, she contradicted herself so many times, that we're cherry picking.
>
> In the light most favorable . . . to the State, she may or may not have had a shoe on. She says she was barefoot. The police officer testifies that she had a sock and a shoe on. I asked her about the tire tread, and, you know, she's talking about mud on her pant leg.
>
> She's telling us she's diabetic. The doctor is saying no, she's not—she didn't say she was diabetic.
>
> She did complain of pain, she did make allegations, but they're so convoluted and so twisted . . . but we're looking at [the evidence] in the light most favorable to the State, can [the State] go forward, and on the testimony yesterday, you know, there's just no light favorable.
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> A police officer came out because he was dispatched. He was told a story, and he acted according to his duty. I mean,

> that's—that does not get us to a jury . . . so, I would move to dismiss.

Although counsel's motion did not specifically state which element of the crime the State failed to establish, the district court considered the motion as if counsel had made a more specific challenge and ruled:

> Well, I'll treat the defendant's motion as a motion for judgment of acquittal made at the close of the State's case. And as both counsel pointed out, the court must view all of the evidence to this point in the trial in the light most favorable to the party opposing the motion, which is the State of Iowa.
>
> Certainly there may be issues of credibility in this case with regard to the victim's testimony. However, if the jury chooses to believe the victim, they would be warranted in finding evidence—there is sufficient evidence that has been presented—finding from the evidence that each of the elements of the offense with which the defendant has been charged has been established beyond a reasonable doubt, the elements of the offense being that [1] the defendant was operating a motor vehicle on or about March 10th; [2] the vehicle was involved in an accident resulting in personal injury to any person; and [3] the defendant failed to stop or remain at the scene of the accident.
>
> So, for those reasons, I will overrule the defendant's motion made at this time, and again, I consider the motion to dismiss as motion for judgment of acquittal made at the close of the State's case.

We choose to resolve the matter on the prejudice element. Williams must demonstrate "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Therefore, Williams must establish that had trial counsel made a more specific challenge to the State's evidence, the district court would have granted the defense motion and Williams would likely not have been convicted. Where the evidence of guilt is overwhelming, we will find no prejudice. *See id*. at 696; *State v. Carey*, 709

N.W.2d 547, 559 (Iowa 2006) ("The most important factor under the test for prejudice is the strength of the State's case.").

Williams relies on his challenges to the victim's credibility as his basis for a different outcome. However, the district court specifically considered whether the State's case sufficiently established the elements of the offense and denied the defense motion. Any issues concerning the victim's credibility do not take away from the fact the trial court could reasonably find the elements of the offense were established when it overruled the defendant's motion. Additionally, the jury was free to reject Williams's assertion he was not listening and did not know he had run over the victim's foot. We conclude Williams cannot establish *Strickland* prejudice, and his ineffective-assistance-of-counsel claim therefore fails.

AFFIRMED.