

IN THE COURT OF APPEALS OF IOWA

No. 3-962 / 12-1891
Filed November 6, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EDWARD M. WILLINGHAM,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Edward Willingham appeals from his conviction of domestic abuse assault causing bodily injury (third offense). **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Jacob Marshall, Student Legal Intern, Thomas J. Ferguson, County Attorney, and Michelle Wagner, Assistant County Attorney, for appellee.

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

POTTERFIELD, J.

Edward Willingham was charged with domestic abuse assault causing bodily injury after his paramour telephoned police on February 27, 2012, asserting he had punched her in the mouth, which caused her injury.

Prior to trial, the State informed the court it intended to ask the complaining witness if there had been prior violence. The defense noted the complaining witness had been a defendant in other cases in which Willingham was the victim, and counsel requested that if Willingham's prior convictions were allowed, "We also want to have the opportunity to be able to bring up convictions with [the complaining witness]" to show her intent, motive, and pattern.

At trial, the complaining witness testified Willingham punched her because he was angry with her. She stated they had a rocky relationship and he had previously been convicted of assaulting her. She acknowledged she had been convicted of assaulting him in the past but denied hitting him on that evening.

Willingham testified in his own defense. He testified, "I remember [her] slapping me and she bit me on my arm," but he denied hitting her on that occasion. When asked, "[W]as there an altercation? Did you get physical?" He responded,

The only thing—no, I didn't. But she bit me. Like I said, I know due to me being a boxer and me knowing kick boxing and that's what I have done for the last ten years, I know if I were to hit [her], I would have damaged [her]. I would have broke something.

The defense did not object to the court's proposed jury instructions, which included a justification defense. Trial counsel did not argue justification to the

jury. The jury found Willingham guilty of domestic abuse assault causing bodily injury (third offense).

Willingham appeals, asserting the district court abused its discretion in allowing prior bad acts evidence. He also contends trial counsel was ineffective in failing to object to jury instructions on the defense of justification, when his defense was that he did not assault his paramour, and once the justification defense was submitted to the jury, he also claims trial counsel was ineffective in failing to argue the State failed to disprove the justification defense.

Because trial counsel did not object to the prior bad acts evidence, the claim is not preserved for review. *See State v. Krogmann*, 804 N.W.2d 518, 524 (Iowa 2011).

We review ineffective-assistance-of-counsel claims de novo. *State v. Ondayog*, 722 N.W.2d 778, 783 (Iowa 2006). In order to prove counsel was ineffective, the defendant must establish both a failure of an essential duty and prejudice. *Id.* at 784. We note counsel may have had a strategic reason for not objecting to the justification defense instructions and then for not arguing the defense to the jury, and we preserve the claims for possible postconviction proceedings where the record can be developed more fully. *See id.* at 786–87.

We affirm the conviction.

AFFIRMED.