IN THE COURT OF APPEALS OF IOWA

No. 8-233 / 07-0913
Filed April 30, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROGER MARTIN BECKER,
Defendant-Appellant.

Appeal from the Iowa District Court for Bremer County, Peter B. Newell, Judge.

Defendant appeals his conviction for assault causing bodily injury claiming ineffective assistance of counsel. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Kasey E. Wadding, County Attorney, and Jill Dashner, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

Roger Martin Becker appeals his April 26, 2007 conviction for assault causing bodily injury. He contends his trial counsel was ineffective in failing to object to alleged prosecutorial misconduct. We normally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). However, direct appeal is appropriate when the record is adequate to determine as a matter of law the defendant will be unable to establish one of the elements of his ineffective-assistance claim. *Id.*

We review Becker's claims de novo. *See State v. Lane,* 726 N.W.2d 371, 392 (Iowa 2007). In order to prevail, Becker must show by a preponderance of evidence deficient performance and prejudice. *See id.* at 393. Becker may establish prejudice by showing a reasonable probability that, but for counsel's errors, the result of the proceeding would have differed. *See State v. Nguyen,* 707 N.W.2d 317, 324 (Iowa 2005). Becker's inability to prove either element is fatal. *See id.* We can resolve Becker's ineffective-assistance-of-counsel claim on direct appeal because we conclude, as a matter of law, the prosecutor's actions did not prejudice Becker so as to deny him a fair trial.

Becker and his nephew went to the grocery store on the same morning as William and Mary Gaede. The Becker vehicle was behind the Gaede vehicle when the Gaedes stopped to wait for other cars to move in the busy parking lot. The Becker vehicle passed the Gaedes and then nearly collided with another car. William testified they were getting a shopping cart when Becker and his nephew came into the store. William talked to Becker about nearly causing an accident.

William testified Becker came toward him, hit him in the mouth, and tried to kick him in the groin. Becker and his nephew immediately left the store.

Mary Gaede testified she heard her husband talking to Becker about almost causing an accident and "the next thing I know, a man ran over and hit him." A store cashier testified she saw Becker walk up to William and punch him in the face and kick him in the groin. The cashier, William, and Mary all testified William did not go toward Becker or hit him prior to Becker hitting William. Becker's nephew testified he thought William was going to hit Becker, but Becker "threw the first punch."

Becker's version of the events was inconsistent. At the time of his arrest Becker told the arresting officer he had never been in the grocery store and did not assault anyone. Eventually, Becker admitted he had been at the store. After arriving at the jail, Becker stated he had felt threatened so he hit William first. Becker did not state William had hit him, did not mention stitches in his mouth, and did not show an injury to himself.

At trial Becker testified he was scared when William talked to him about nearly causing an accident. Becker stated he moved to avoid William because he didn't want a fight due to recent stitches in his mouth. Becker claimed William approached him and hit him below the eye, smashing his glasses and leaving a red mark on his face. Becker testified he only hit William in response to being hit by William.

On appeal, Becker claims his trial counsel was ineffective in failing to object to two questions: "Q. In fact, Mr. Becker, you're the only person that has come in here today and is saying that [William] hit you, aren't you?" and "Q. Mr.

Becker, all of these people that have come in here and testified today, they're all wrong and you are right. Is that right?" Becker asserts these questions violate the mandates of *State v. Graves*, 668 N.W.2d 860 (Iowa 2003).

Even assuming trial counsel was deficient in his performance, Becker is unable to show how he was prejudiced by any failure. "The most important factor under the test for prejudice is the strength of the State's case." *State v. Carey*, 709 N.W.2d 547, 559 (Iowa 2006). The only material dispute was whether Becker's actions were justified. Becker's trial testimony claiming William hit him first cannot be reconciled with any of the other witnesses' testimony nor with Becker's statement during police questioning. Becker's companion, his nephew, testified Becker hit William first. Additionally, Becker's statements included other inconsistencies.

Because other evidence, properly admitted, overwhelmingly proved Becker was guilty of assault causing bodily injury, there is no reasonable probability the verdicts would have been different if Becker's counsel had objected to the testimony at issue. In the entire scope of the trial, we cannot say two questions during cross-examination were so pervasive or so severe as to deny Becker a fair trial. *See Graves*, 668 N.W.2d at 869 (finding prejudice when misconduct was not isolated). Any alleged misconduct did not cause prejudice to Becker sufficient to establish ineffective assistance of counsel and we affirm his conviction.

AFFIRMED.