

IN THE UTAH COURT OF APPEALS

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| State of Utah,           | ) | MEMORANDUM DECISION  |                |
|                          | ) | (Not For Official Publication)                             |                |
| Plaintiff and Appellee,  | ) |  |                |
|                          | ) | Case No. 20050282-CA                                       |                |
| v.                       | ) |  |                |
|                          | ) | F I L E D  |                |
| Adam Kyle Price,         | ) | (March 2, 2006)  |                |
|                          | ) |  |                |
| Defendant and Appellant. | ) | <table border="1"><tr><td>2006 UT App 80</td></tr></table> | 2006 UT App 80 |
| 2006 UT App 80           |   |  |                |

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Third District, Salt Lake City Department, 041903671  
The Honorable Robin W. Reese

Attorneys: John Pace, Salt Lake City, for Appellant  
Mark L. Shurtleff and Kris C. Leonard, Salt Lake  
City, for Appellee

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Before Judges Billings, Davis, and Thorne.

PER CURIAM:

Adam Kyle Price appeals his conviction for aggravated assault. Specifically, Price alleges that his trial counsel was ineffective. We affirm.

In order to prevail on an ineffective assistance of counsel claim, a defendant must first demonstrate "that his counsel rendered a deficient performance in some demonstrable manner, which performance fell below an objective standard of reasonable judgment and, second, that counsel's performance prejudiced the defendant." Parsons v. Barnes, 871 P.2d 516, 521 (Utah 1994) (citations and quotations omitted). "Failure to satisfy either prong will result in our concluding that counsel's behavior was not ineffective." State v. Diaz, 2002 UT App 288, ¶38, 55 P.3d 1131. Without reviewing the first prong of the ineffective analysis, we conclude that Price's claim fails because he does not demonstrate that he was prejudiced by any of the actions of his trial counsel.

While Price asserts six different reasons why his trial counsel was ineffective, all the alleged deficiencies are related to whether Price's defense counsel effectively set forth Price's self-defense theory and whether defense counsel effectively

impugned the credibility of the victim. Price argues that if his counsel was not ineffective, there is a significant degree of probability of a different outcome because the victim's credibility would have been completely undermined. Price argues that if the victim's credibility was undermined, there would have been no evidence to support the conviction. However, a review of the record reveals that even if the jury believed that the victim was the initial aggressor and that Price initially feared for his safety, the evidence was sufficient to support Price's conviction of aggravated assault.

Utah Code section 76-2-402 explains when a person is justified to use force in his own defense. See Utah Code Ann. § 76-2-402 (2003). Specifically, the statute reads:

A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that the force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

Id. § 76-2-402(1). Utah Code section 76-2-402(5) lists several factors a finder of fact may consider in determining the imminence of potential harm and the reasonableness of a defendant's actions including the nature and immediacy of the danger. See id. § 76-2-402(5). Further, while there is no duty to retreat from an assault, there is "a duty to act reasonably in defending oneself." In re M.S., 584 P.2d 914, 916 (Utah 1978).

Price made numerous statements to police immediately after the assault. These statements demonstrate that Price did not act reasonably in defending himself. For example, Price stated that after the victim began the confrontation by swinging at him, Price's codefendant "knocked [the victim] . . . out pretty much." Price then stated that he got on top of the victim and "started hammering," acting like the victim "was a speed bag." He further stated that if his codefendant had not pulled him off the victim, he would "probably still be there beating on him." He also repeatedly stated, in colorful terms, that his actions toward the victim were motivated by anger. During the interview, he never stated that he was afraid of the victim. Price's words

demonstrated that even if there was an initial threat, his codefendant incapacitated the victim thereby removing any threat of immediate harm to himself and others. Instead of walking away, Price beat the victim because, according to Price, he "deserved" it.

The injuries sustained by the victim and Price in the altercation also demonstrate that Price's actions were unreasonable. While Price walked away with a swollen eye, a split lip, a bloody nose, and some bloody knuckles,<sup>1</sup> the victim's injuries were significantly worse. The victim suffered multiple facial lacerations and fractures, a broken eye socket, brain trauma, a fractured left hand, memory loss, facial swelling, blood clots, a shattered nose, cracked teeth, broken ribs, broken vertebrae, and a detached retina. These injuries demonstrate that even if the victim initiated the altercation, Price's use of force exceeded that force reasonably necessary to protect himself, thereby negating his self-defense theory.

In sum, Price cannot demonstrate that his trial counsel's actions prejudiced him in any way. Even if we were to assume that the jury believed that the victim began the altercation, Price's own words coupled with the injuries sustained by each man demonstrate that Price did not act in self-defense. Accordingly, Price's claim that his trial counsel was ineffective fails.

Affirmed.

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Judith M. Billings, Judge

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James Z. Davis, Judge

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William A. Thorne Jr., Judge

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<sup>1</sup>There is nothing in the record that indicates which of these injuries he received in the instant confrontation with the victim versus the confrontations earlier that day.