

**IN THE COURT OF APPEALS OF IOWA**

No. 0-175 / 09-1019  
Filed April 21, 2010

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

**vs.**

**TIMOTHY J. MATTHEWS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Lee County, Michael J. Schilling,  
Judge.

Defendant appeals from his convictions of interference with official acts causing bodily injury and assault on persons engaged in certain professions with the intent to inflict serious injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams,  
Assistant State Appellate Defender, for appellant.

Timothy J. Matthews, Fort Madison, pro se.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, Michael P. Short, County Attorney, and Robert Glaser,  
Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

**SACKETT, C.J.**

Defendant, Timothy J. Matthews, allegedly punched a correctional officer while he was being transferred from his cell to an exercise area at the Fort Madison, Iowa, penitentiary. Following a jury trial, he was convicted of interference with official acts causing bodily injury as a habitual offender, in violation of Iowa Code sections 719.1(2) and 902.8 (2009), and assault on persons engaged in certain professions with the intent to inflict serious injury as a habitual offender, in violation of sections 708.3A(1) and 902.8. He appeals, contending the court erred in refusing to grant his motion for a mistrial. He also claims, in a pro se brief, additional errors require reversal of his convictions. We affirm.

**I. BACKGROUND AND PROCEEDINGS.** On January 30, 2009, the State filed a trial information charging Matthews with one count of interference with official acts and one count of assault on a person engaged in a certain occupation. Matthews pleaded not guilty and the charges were tried to a jury on April 27 and 28, 2009. At trial, correctional officer Norman Coffman testified that on January 21, 2009, he was escorting an inmate, defendant Timothy Matthews, from his cell to the outdoor exercise area. He testified that after he unlocked one handcuff securing Matthews's hands behind his back, Matthews spun around and began punching Coffman repeatedly. Another correctional officer testified that she witnessed Matthews punching Coffman but did not see the beginning of the altercation.

Matthews testified that Coffman had touched his buttocks in a sexual manner when he unlocked the handcuffs. He stated that he turned around to confront Coffman, and Coffman threw the first punch. According to Matthews, only after Coffman threw the first punch did he punch back in self-defense. Matthews testified that Coffman had touched him in a sexual manner three times previously. He had filed formal complaints requesting Coffman not be allowed to escort him through the prison and submitted these as exhibits. The corrections department investigated the incidents and found the allegations were not substantiated. These reports were also submitted as exhibits.

During Matthews's testimony, the following exchange occurred,

[Defense Counsel]: So what you want this jury to know is you did that for self-defense?

[Matthews]: That's it. It was a fight. I've never once - -

[Prosecutor]: Objection, self-defense - -

[Matthews]: - - stood over [officer] Coffman and beat him.

[Prosecutor]: Self-defense has not been noticed in this case.

[Defense Counsel]: Your Honor, we don't have to notice it if he's going to testify himself personally,

[Prosecutor]: I believe the State of Iowa deserves a notice of self-defense. That's the rules.

[The Court]: Do you have a copy of your rules with you . . . ?

[Prosecutor]: Yes, I do.

[The Court]: Let's take a look at Rule 211.11, subsection D, on page 186, the last sentence. Would you like to be heard on this matter outside the presence of the jury?

[Prosecutor]: Yes, Your Honor.

The court then excused the jury. The State argued that Matthews could not testify that he used self-defense without providing proper notice under Iowa Rule

of Criminal Procedure 2.11(11)(c).<sup>1</sup> It also claimed the question was improper because it was leading. Defense counsel argued notice was not required under rule 2.11(11)(d)<sup>2</sup> and made a motion for a mistrial. Counsel claimed the objection denied Matthews's right to due process and compromised his right to present a defense. Counsel explained that the State's objection had no basis in the law and could lead the jury to believe Matthews carried the burden of proving his innocence or justification when the jury should presume Matthews's innocence and the State carries the burden of proof.

After taking the matter under advisement, the court ruled on the objection after reconvening the jury, stating

The objection made by the State of Iowa on the basis that the Defendant failed to give notice of self-defense is overruled, and the Court is relying on Iowa Rule of Criminal Procedure 211.11 subsection D . . . to overrule that portion of the State's objection.

The State's objection to the last question of [defense counsel] on the basis that the question was leading is sustained. The request for [the prosecutor's] objection to precede that part of the answer to the question which was leading is granted. . . . In other words, the jury shall disregard the testimony that Mr. Matthews gave after the objection was lodged by [the prosecutor].

The court also overruled the motion for a mistrial. Matthews continued to testify and in relaying his account of the events, explained repeatedly that he punched the officer in self-defense. At the close of the evidence, defense counsel

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<sup>1</sup> Iowa Rule of Criminal Procedure 2.11(11)(c) provides in relevant part, "If defendant intends to rely upon the defense of . . . self-defense, the defendant shall, within the time for filing pretrial motions, file written notice of such intention."

<sup>2</sup> Iowa Rule of Criminal Procedure 2.11(11)(d) provides in relevant part, "The right of a defendant to give evidence of . . . self-defense in the defendant's own testimony is not limited by this rule."

renewed the motion for a mistrial and the court denied the motion. The jury returned a verdict of guilty on both counts.

Matthews appeals, contending the court should have granted his motion for a mistrial because the State's objection and argument about whether notice of a self-defense claim was required, prejudiced the jury.

**II. SCOPE OF REVIEW.** We review a ruling on a motion for a mistrial for abuse of discretion. *State v. Newell*, 710 N.W.2d 6, 32 (Iowa 2006). We will only find an abuse of discretion if “the defendant shows that the trial court’s discretion was exercised on grounds clearly untenable or clearly unreasonable.” *State v. Piper*, 663 N.W.2d 894, 901 (Iowa 2003) (quoting *State v. Henderson*, 537 N.W.2d 763, 766 (Iowa 1995)). To establish an abuse of discretion, the defendant must show he suffered prejudice and it prevented him from receiving a fair trial. *State v. Brotherton*, 384 N.W.2d 375, 381 (Iowa 1986).

**III. ANALYSIS.** Matthews asserts he was prejudiced by the court’s failure to grant a mistrial because although the court correctly overruled the prosecutor’s objection that Matthews could not testify about self-defense without first giving notice to the State, the court never gave further explanation to the jury. Matthews claims the court should have informed the jury that the defendant did have the right to raise a claim of self-defense, he was not required to give notice to the State, and that the prosecutor’s statements should have been disregarded. He claims prejudice is established because “[t]he jury, not understanding that the prosecutor’s statements were legally incorrect, may well have accepted the statement that the defendant could not claim self-defense.”

We conclude Matthews has failed to establish that he was prejudiced by the prosecutor's objection in front of the jury. The court's response and instructions to the jury eliminated the risk of any prejudice caused by the prosecutor's legally erroneous statements. First, the court stated to the jury that it was overruling the State's objection that Matthews had to give notice regarding a claim of self-defense. Therefore, the jury was informed that the prosecutor's position was incorrect. See *State v. Graves*, 668 N.W.2d 860, 877 (Iowa 2003) (stating that one factor in evaluating whether a prosecutor's misstatement caused prejudice is the court's instructions to the jury or other curative measures). Second, Matthews testified repeatedly, even after the court's ruling on the objection, that he hit the correctional officer to defend himself. Thus, the objection did not prevent Matthews from fully presenting evidence on his self-defense claim. Last, the jury was given instructions on justification. The instructions stated that "[a] person may use reasonable force to prevent injury to himself," and that "[a] person is justified in using reasonable force if he reasonably believes the force is necessary to defend himself from any imminent use of unlawful force." They further explained that "[t]he State must prove the defendant was not acting with justification." "A jury is presumed to have followed its instructions absent evidence to the contrary." *State v. Morrison*, 368 N.W.2d 173, 176 (Iowa 1985). It is doubtful that the jury followed the prosecutor's misstatement of the law made during a brief objection rather than the written instructions provided to it by the court. See *State v. Webb*, 244 N.W.2d 332, 333 (Iowa 1976) (noting that in the context of prosecutorial misconduct, "[o]rdinarily a

finding of prejudice results from persistent efforts to inject prejudicial matter before the jury” rather than an isolated instance). We find no abuse of discretion in the court’s denial of Matthews’s motion for a mistrial.

Matthews raises four additional arguments in a pro se brief. He claims (1) officer Coffman provided false testimony that should have been struck from the record, (2) the court erred in striking his statement that he hit the officer in self-defense when the State objected to defense counsel’s question as leading, (3) the State withheld the name of an inmate who witnessed the altercation and may have provided testimony helpful to the defense, and (4) the court’s questions to Matthews during sentencing regarding his status as a habitual offender violated his privilege against self-incrimination and inquired into matters protected by the attorney-client privilege.

Issues must be raised and decided at the trial court before we may consider them on appeal. *State v. Eames*, 565 N.W.2d 323, 326 (Iowa 1997); *State v. Manna*, 534 N.W.2d 642, 644 (Iowa 1995). None of these claims were made at the trial court level; therefore they are not preserved for our review. Having considered all arguments raised, we affirm Matthews’s convictions.

**AFFIRMED.**