

**IN THE COURT OF APPEALS OF IOWA**

No. 0-978 / 10-0330  
Filed February 23, 2011

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

**vs.**

**KIRBY LEE SANDERS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

Defendant appeals his convictions for possession of a firearm as a felon and carrying weapons. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

**EISENHAUER, P.J.**

Kirby Lee Sanders appeals from his convictions for possession of a firearm as a felon and carrying weapons. Sanders claims there was insufficient evidence to support the convictions and, in the alternative, his trial counsel was ineffective for failing to preserve the challenge to the sufficiency of the evidence.

On October 16, 2009, a vehicle was stopped by the Waterloo police. Defendant Sanders was one of five occupants in the four-door Pontiac sedan and was in the back seat directly behind the driver. A search of the vehicle found a loaded, cocked .25 caliber semi-automatic pistol under the driver's seat. It was visible and within reach of Sanders. Fingerprints were taken from the pistol and magazine. A thumb print on the pistol's magazine matched the thumb print of Sanders.

To preserve a challenge to the sufficiency of the evidence, a motion must point out the specific elements of the alleged crime not supported by the evidence. *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999) (stating general motion for judgment of acquittal does not preserve error). Here, defense counsel merely made a general motion claiming the State had failed to prove beyond a reasonable doubt the defendant was guilty. Accordingly, error is not preserved.

To prove counsel was ineffective Sanders must show (1) counsel failed to perform an essential duty and (2) prejudice resulted. *See State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007). His inability to prove either element is fatal. *See Greene*, 592 N.W.2d at 29. We evaluate the totality of the relevant circumstances in a de novo review. *Lane*, 726 N.W.2d at 392.

We normally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). Resolution of the issue on direct appeal is appropriate, however, when the record is adequate to determine as a matter of law the defendant will be unable to establish his ineffective-assistance claim. See *id.* Here, the record is adequate to resolve this issue on direct appeal.

We conclude Sanders cannot prove either prong of his ineffective assistance of counsel claim. Trial counsel has no duty to make a meritless motion. See *State v. Griffin*, 691 N.W.2d 734, 737 (Iowa 2005). Therefore, we consider the sufficiency of the evidence to support the jury's verdict. The jury's verdict is binding unless there is an absence of substantial evidence in the record to sustain it. *Fenske v. State*, 592 N.W.2d 333, 343 (Iowa 1999). Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). We view the evidence in the light most favorable to the State. *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006).

The elements of the offenses Sanders contends were not proven were "possession" of the weapon and "armed" with the weapon. We conclude Sanders's close proximity to the weapon and his fingerprints on the magazine establish both of the challenged elements. Because substantial evidence supports the jury's verdict, his attorney had no duty to make a meritless motion.

Further, Sanders cannot prove prejudice. To meet the prejudice prong, Sanders is required to show that, but for counsel's error, there is a reasonable

probability that the results of the trial would have been different. See *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.” *Id.* Here, there is no reasonable probability the jury’s verdict would have been different. Any alleged failure by counsel did not cause prejudice to Sanders sufficient to establish ineffective assistance of counsel and we affirm his conviction.

**AFFIRMED.**