

IN THE COURT OF APPEALS OF IOWA

No. 1-192 / 10-0754
Filed May 11, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DERRICK LAMONT EDWARDS,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mary Ann Brown, Judge.

A defendant challenges the sufficiency of the evidence supporting a jury's finding of guilt for assault with intent to cause serious injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Lisa Taylor, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

Derrick Edwards challenges the sufficiency of the evidence supporting a jury's finding of guilt for assault with intent to cause serious injury. He asserts "there is insufficient evidence to prove that he had the specific intent to cause a serious injury." Edwards did not raise this ground for acquittal in the district court. See *State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004) ("To preserve error on a claim of insufficient evidence for appellate review in a criminal case, the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal."). Accordingly, we analyze the claim under an ineffective-assistance-of-counsel rubric, as alternately suggested by Edwards.

To prevail, Edwards must show that counsel breached an essential duty and prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). While we generally preserve such claims for post-conviction relief, "[a] claim of ineffective assistance of trial counsel based on the failure of counsel to raise a claim of insufficient evidence to support a conviction is a matter that normally can be decided on direct appeal."

Truesdell, 679 N.W.2d at 616. If the record

fails to reveal substantial evidence to support the convictions, counsel was ineffective for failing to properly raise the issue and prejudice resulted. On the other hand, if the record reveals substantial evidence, counsel's failure to raise the claim of error could not be prejudicial.

Id.

The jury was instructed that the State would have to prove the following elements to find Edwards guilty of aggravated assault:

1. On or about September 25, 2009, the defendant did an act which was intended to cause pain or injury, or result in physical contact which was insulting or offensive to Robert Asher.
2. The defendant had the apparent ability to do the act.
3. The act was done with the specific intent to cause a serious injury.

See Iowa Code §§ 708.1 (2009) (defining the offense of assault generally), 708.2(1) (stating that a person who commits an assault with the intent to inflict a serious injury upon another commits an aggravated misdemeanor).¹ The jury was further instructed that a “serious injury”

is a disabling mental illness; condition which cripples, incapacitates, weakens or destroys a person’s normal mental function; bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or extended loss or impairment of the function of any bodily part or organ.

See *id.* § 702.18 (defining “serious injury” consistently with the jury instruction).

A jury could have found that Edwards approached a twelve-year-old boy, grabbed his bicycle and angrily told him to get off the bike. Robert Asher, a man who knew the boy and was in the vicinity, saw the incident and confronted Edwards. After some mutual pushing, Edwards pulled out a knife and chased Asher. Asher later discovered he had been stabbed.

The boy’s nine-year-old cousin also witnessed the incident. He saw Edwards point the knife at Asher and stab him in the leg.

¹ The instruction and sentence imposed make it clear that the crime at issue was the aggravated misdemeanor variety of assault contained in Iowa Code section 708.2(1). See Iowa Code § 708.2(1) (“A person who commits an assault, as defined in section 708.1, with the intent to inflict a serious injury upon another, is guilty of an aggravated misdemeanor.”). However, the judgment entry refers to “Aggravated Assault, in violation of Iowa Code Section 708.2(2).” Section 708.2(2) does not refer to assault causing serious injury but assault causing “bodily injury or mental illness.” This is a serious rather than aggravated misdemeanor. *Id.* § 708.2(2).

The older child's mother did not see the incident but later saw a "razor blade, orange-colored knife" clipped to Edwards's shorts. She also saw a "seven-and-a-half-by-two-and-a-half deep cut" on Asher's right thigh.

Based on this evidence, a jury reasonably could have found that Edwards had the specific intent to cause a serious injury. As substantial evidence supports this element of the crime, Edwards did not suffer *Strickland* prejudice by his trial attorney's failure to challenge the specific intent element in his motion for judgment of acquittal.

AFFIRMED.