IN THE COURT OF APPEALS OF IOWA

No. 1-620 / 10-0956
Filed September 8, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CRAIG AARON LATSA,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, Judge.

A defendant appeals from his conviction of assault causing injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Janet M. Lyness, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

MULLINS, J.

Craig Latsa appeals from his conviction for assault causing injury in violation of Iowa Code sections 708.1(1) and 708.2(2) (2009). He raises an ineffective-assistance-of-counsel claim, arguing that his trial counsel should have objected to the general intent jury instruction and requested the jury be instructed on specific intent. He also asserts the district court erred in permitting hearsay evidence. We find that Latsa cannot prevail on his ineffective-assistance-of-counsel claim. In addition to the fact that there was overwhelming evidence Latsa intentionally hit and punched the victim in the face, the defense strategy was to deny an assault occurred. Consequently, we find that even had the jury been instructed as to specific intent, the record demonstrates there is not a reasonable probability the result of the trial would have been different. We further find that even if it was erroneous to admit a witness's prior written statement, there was no prejudice because it contained essentially the same information as his trial testimony. We affirm.

I. Background Facts and Proceedings.

In February 2009, Latsa was involved in a physical altercation with Christopher Jarvis at Latsa's rooming house. On March 6, 2009, Latsa was charged with assault causing injury in violation of Iowa Code section 708.1(1) and 708.2(2). A trial was held, which included testimony from a witness to the assault and several police officers who responded to the 911 call reporting the assault. Latsa also testified, denying that an assault occurred. Following the trial, the jury found Latsa guilty as charged. Latsa appeals.

II. Ineffective Assistance of Counsel.

Latsa first asserts that his trial counsel was ineffective. We review ineffective-assistance-of-counsel claims de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). Although ineffective-assistance-of-counsel claims do not need to be raised on direct appeal, a defendant may do so if he has reasonable grounds to believe the record is adequate to address his claim. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010). If we determine the record is adequate, we resolve the claim. *Id.* If we determine the record is inadequate, we must preserve the claim for postconviction-relief proceedings, regardless of our view of the potential viability of the claim. *Id.* In the present case, we find the record is adequate to reach Latsa's claim.

To prevail on an ineffective-assistance-of-counsel claim, a defendant must show by a preponderance of the evidence that (1) his trial counsel failed to perform an essential duty, and (2) prejudice resulted from this failure. *Straw*, 709 N.W.2d at 133. A defendant's inability to prove either element is fatal and therefore, we may resolve a claim on either prong. *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003).

Latsa asserts that his trial counsel was ineffective for failing to object to the general intent jury instruction and request a specific intent jury instruction be given. The jury was instructed:

> Instruction No. 10
>
> To commit a crime a person must intend to do an act which is against the law. While it is not necessary that a person knows an act is against the law, it is necessary that the person was aware he was doing the act and he did it voluntarily, not by mistake or

> accident. You may, but are not required to conclude a person intends the natur[al] result of his acts.
>
> Instruction No. 11
>
> The State must prove all of the following elements of assault causing bodily injury:
>
> 1. On or about the 5th day or February, 2009, the Defendant did an act which was intended to result in physical contact which was insulting or offensive to Christopher Jarvis.
>
> 2. The Defendant had the apparent ability to execute the act.
>
> 3. The Defendant's act caused bodily injury to Christopher Jarvis as defined in Instruction No. 13.
>
> If the State has proved all of the elements, the Defendant is guilty of Assault Causing Bodily Injury. If the State has proved only elements 1 and 2, the Defendant is guilty of Assault. If the State has failed to prove either element 1 or 2, the Defendant is not guilty.

See Iowa Crim. Jury Instructions 200.1 (General Criminal Intent—Definition and Proof); 800.2 (Assault Causing Bodily Injury or Mental Illness—Elements). Latsa argues that instead of Instruction Number 10, the jury should have been instructed,

> "Specific intent" means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.
>
> Because determining the defendant's specific intent requires you to decide what [he] was thinking when an act was done, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine the defendant's specific intent. You may, but are not required to, conclude a person intends the natural results of [his] acts.

Iowa Crim. Jury Instruction 200.2 (Specific Intent—Definition and Proof).

At trial, the neighbor who witnessed the assault testified that Latsa was sitting on top of Jarvis "with his arms down across [Jarvis's] neck . . . there was blood everywhere on the floor," Latsa was "pressing down and choking" Jarvis,

and Latsa "refused to get off" Jarvis. He explained that another neighbor called 911 and police arrived shortly thereafter. He also testified that he did not see any injuries to Latsa and described Jarvis's injuries:

> [The victim] was a mess. . . . His eyes were swollen shut. He was bleeding from his mouth and his nose, and his face was—it was bad. He couldn't even see. . . . It looked like he was seriously hurt, and we were concerned about him.

A police officer who responded to the 911 call testified that the only injuries he witnessed on Latsa were abrasions and scratches on Latsa's knuckles, which were consistent with someone throwing punches. Another police officer testified that Latsa "appeared worked up and upset and said that he had gotten into some kind of altercation with an acquaintance." There was significant evidence that Latsa intentionally hit and punched Jarvis multiple times in his face.

The defense strategy was to generally deny the assault. Latsa testified that he did not get into a fight or physical altercation with Jarvis, claiming that Jarvis had not been in his room and he had gone to get something from his car before the police arrived. He explained that any abrasions on his knuckles were from him rubbing his knuckles on the door moving into the rooming house. "If the defense strategy is to deny that any assaultive contact occurred, the individual elements of assault become unimportant." *State v. Fountain*, 786 N.W.2d 260, 267 (Iowa 2010). Assuming that Latsa's trial counsel was ineffective, Latsa cannot establish prejudice. *See id.* at 265 (explaining the "trial court erred in failing to instruct on specific intent because the crime of assault includes a specific intent element," but if the trial strategy was that an assault did not happen then trial counsel may not have been ineffective for failing to request a

specific intent jury instruction). Under the present circumstances, even had the jury been instructed as to specific intent, the record demonstrates there is not a reasonable probability the result of the trial would have been different. *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001) ("To sustain this burden, the applicant must demonstrate 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'"). We are therefore convinced that any failure to give a specific intent jury instruction caused the defendant no prejudice.

III. Hearsay.

Latsa next argues the district court erred in admitting hearsay evidence. Our review is for correction of errors at law. *State v. Paredes*, 775 N.W.2d 554, 560 (Iowa 2009). "'Hearsay' is a statement, other than one made by a declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Iowa R. Evid. 5.801. Although generally the admission of hearsay is presumed prejudicial, "prejudice will not be found where substantially the same evidence is in the record without objection." *State v. McKettrick*, 480 N.W.2d 52, 60 (Iowa 1992).

At trial, the neighbor testified to the assault, as discussed above. On cross-examination, defense counsel implied that the neighbor's testimony was not accurate, questioning him about minor inconsistencies between his testimony and the 911 call log and another witness's written statement. On redirect, the State introduced the neighbor's written statement he gave to police on the night of the assault.

On appeal, the State argues that the statement was admissible as a prior consistent statement of a witness offered to rebut a charge of recent fabrication or motive under Iowa Rule of Evidence 5.801(*d*)(1)(B) (providing a statement is not hearsay if the declarant testifies at the trial and is subject to cross-examination concerning the statement, and the statement is "consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive"). The State further argues that even if the written statement was improperly admitted, Latsa was not prejudiced because the neighbor's testimony and the written statement were substantially the same. The neighbor's written statement described the same events as his trial testimony, namely that he witnessed Latsa on top of Jarvis and Latsa continued to choke Jarvis. We agree with the State that the written statement contained essentially the same information as the trial testimony. Therefore, even if the admission of the statement was erroneous, there was no prejudice. We affirm.

AFFIRMED.