

**IN THE COURT OF APPEALS OF IOWA**

No. 2-085 / 10-2127  
Filed February 29, 2012

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

**vs.**

**JUSTIN RONALD WEIDEMANN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Dubuque County, Randal J. Nigg,  
District Associate Judge.

Justin Weidemann appeals from his conviction for domestic abuse  
causing bodily injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney  
General, Ralph Potter, County Attorney, and Robert Richter, Assistant County  
Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

**POTTERFIELD, J.**

Justin Weidemann and Jennifer Weidemann were in the process of divorcing, but continued to live in the same house. Justin, six foot two inches and weighing 200 pounds, is a former police officer. Jennifer is five foot seven inches tall and weighs about 125 pounds.

At about 1:30 a.m. on June 3, 2010, Justin returned to the house and during an ensuing argument, he took Jennifer's cell phone, went into the master bedroom, and leaned against the door. Jennifer was able to push the door partially open and reached in to try to get her phone. Justin bit Jennifer on the right bicep breaking the skin and causing bleeding and pain.

At the jury trial on a resulting domestic abuse causing bodily injury charge, Justin claimed he acted in self-defense. The jury returned a guilty verdict and, on appeal, the defendant claims trial counsel was ineffective in failing to move for a new trial challenging the weight of the evidence because "the evidence supports his defense of justification."

We review ineffective-assistance-of-counsel claims de novo. *Nguyen v. State*, 707 N.W.2d 317, 322 (Iowa 2005).

To prove trial counsel was ineffective, a defendant must prove (1) trial counsel failed to perform an essential duty; and (2) this failure resulted in prejudice. *Id.* at 324. Failure to prove either is fatal to the defendant's claim. *See id.*

We have reviewed the evidence presented in Weidemann's trial. We conclude the evidence does not "preponderate heavily against the verdict." *See id.* at 327 (citation and emphasis omitted). Where evidence is in conflict, the

issue of whether the defendant acted in self-defense should be submitted to the jury. See *State v. Beyer*, 258 N.W.2d 353, 357 (Iowa 1977). It was for the jury to determine the credibility of the witnesses and the veracity of Weidemann's claim that biting Jennifer's arm was a justified use of force, required by Weidemann's reasonable belief he was in imminent danger. See *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006) ("Except in the extraordinary case where the evidence preponderates heavily against the verdict, trial courts should not lessen the jury's role as the primary trier of facts and invoke their power to grant a new trial."); *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993).

Weidemann has failed to prove prejudice as we conclude there is no reasonable probability that the district court would have granted a new trial had Weidemann's counsel made a motion. Defendant's ineffectiveness claim fails and we therefore affirm his conviction.

**AFFIRMED.**