

IN THE COURT OF APPEALS OF IOWA

No. 3-1046 / 12-2269
Filed December 5, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CRAIG DOUGLAS REED,
Defendant-Appellant.

Appeal from the Iowa District Court for Marion County, Terry R. Rickers,
Judge.

Craig Reed appeals from the judgment and sentence entered upon his
conviction for assault causing bodily injury. **AFFIRMED.**

Nicholas A. Bailey of Bailey Law Firm, P.L.L.C., Mitchellville, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, Ed Bull, County Attorney, and Nicole Olson, Assistant County Attorney,
for appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

DOYLE, P.J.

Craig Reed appeals from the judgment and sentence entered upon his conviction for assault causing bodily injury, in violation of Iowa Code sections 708.1 and 708.2 (2011). Reed claims the evidence was insufficient to support his conviction and he received ineffective assistance of counsel. We affirm.

I. Background Facts and Proceedings

This case arose following a physical altercation between Craig Reed and Danny Clark at the town park in Bussey, Iowa. The following can be deduced from the record.

On November 6, 2011, Danny Clark went to a bar in Oskaloosa with his girlfriend. Clark had already consumed “six to eight beers” that day and ordered another when he arrived at the bar. Clark encountered Leroy Lanphier, Craig Reed’s cousin, at the bar. Their conversation became “pretty much an argument.” Clark finished his beer and left to go home.

Word quickly spread to Reed about his cousin’s encounter with Clark at the bar in Oskaloosa. Reed and Clark had known each other for many years. When Clark arrived home in Bussey, he realized he had a voice mail from Reed. Clark returned Reed’s call. Reed and Clark agreed to “meet at the park” in Bussey.

Reed and his wife were at the park when Clark and his girlfriend arrived. Although Clark’s and Reed’s accounts of that day are similar up to that point, there is a clear divergence as to what happened once they arrived to the park.

According to Clark, Reed approached him and said, “I’m not here to talk,” and then hit Clark in the head. Clark fell to the ground and Reed sat on top of

him. After Reed dished out “four or five punches,” he asked Clark if he had “had enough.” Clark answered, “Yes,” and then Reed said, “No, you haven’t,” and then hit Clark “one more time.” Reed then got off Clark and said he hoped this would teach Clark to leave Reed’s relatives alone. Clark stated he “never attempted to swing a fist or anything towards [Reed].” When asked if he went to the park intending to fight Reed, Clark stated, “Absolutely not. I’m scared to death of [Reed]. . . . He’s tough. I don’t know of anybody that’s ever whipped him.” When asked if Reed tried to walk or run away, Clark stated, “Absolutely not. He was the aggressor.”

According to Reed, Clark approached him yelling and “grabbed [him] right by the shirt.” Reed noticed Clark had taken his glasses off and his fists were clenched, which meant “he was there to fight.” Reed stated he “grabbed [Clark] back by the shirt,” they “scuffled around,” and Clark “hit [him] under the left eye.” Reed acknowledged Clark did not get “a good whack” at him. They “wrestled and went to the ground,” where Clark “swung again and just missed the front of [Reed’s] face.” Reed then got Clark “held back over, and hit him a couple times in the head.” Reed recalled Clark was a “well-known biter” and did not fight fairly. At that point, however, Reed “could see [Clark] couldn’t do no harm.” Reed asked, “Danny, are you done,” and Clark responded, “Yes.” Reed started to get up and “pushed [him]self away from [Clark] so [he] couldn’t get hit.” At that point, Clark “got all bristled up again and started hollering,” but Reed “got in [his] truck and left.” Reed stated he retreated as soon as he had Clark “under control.”

Clark received medical attention for injuries he sustained from the incident. Clark’s eye was “nearly swollen shut,” his face and head were cut, and

one of his teeth was chipped. Reed had “a knot under [his] left cheek” that resulted in “[b]asically no mark.”

Justin Thomas happened to be driving by the park that evening. He stated he saw Clark walking toward Reed with his fists clenched. On cross-examination, Thomas admitted to being a convicted felon, as well as a friend of Reed’s son.

Marion County Deputy Sheriff Jacob Smith interviewed Clark two days after the incident. He interviewed Reed one week later. Deputy Smith recalled:

I asked [Reed] at one point if [Clark] had swung at him. [Reed] stated yes, but it was at the point when [Clark] was already on the ground and [Reed] was on top of him. He’d hit him a couple of times when he was on the ground.

....

[Reed] stated that he did receive a hit in the shoulder, his left shoulder. I asked him if he had any marks on him. He stated, no, that [Clark] couldn’t get a full swing in because they were both on the ground at that point.

Deputy Smith also stated he could not recall Reed saying he tried to leave the park at any point or that he acted in self-defense.

Reed was charged with assault causing bodily injury. He waived his right to a jury trial, and a bench trial commenced in October 2012. Reed’s defense was self-defense. The district court rejected the defense and found Reed guilty as charged. Reed filed a combined motion for new trial and motion to enlarge findings of fact and conclusions of law. Following a hearing, the district court denied the motions. The court entered judgment against Reed and sentenced him to serve sixty days in jail, with all but five days suspended, pay a \$315 fine, and attend an assaultive behavior course. Reed appeals.

II. Sufficiency of the Evidence

Reed does not challenge the sufficiency of the evidence establishing that he assaulted Clark or that Clark suffered bodily injuries as a result. See Iowa Code §§ 708.1, 708.2. Instead, Reed contends there is insufficient evidence to show his use of force was unreasonable or excessive such that it overcame “his legitimate claim of self-defense.” See *id.* § 704.3.

We review challenges to the sufficiency of the evidence for errors at law. Iowa R. App. P. 6.907; *State v. Hennings*, 791 N.W.2d 828, 832-33 (Iowa 2010). “A district court’s finding of guilt is binding upon us unless we find there was not substantial evidence in the record to support such a finding.” *State v. Dalton*, 674 N.W.2d 111, 116 (Iowa 2004). We give consideration to all of the evidence, not just that supporting the verdict, and view such evidence in the light most favorable to the State. See *id.* Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

“A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force.” Iowa Code § 704.3. When the defense is raised, the burden rests on the State to disprove the defense beyond a reasonable doubt. *State v. Rubino*, 602 N.W.2d 558, 565 (Iowa 1999). The defense is not available if the State proves the force used by the defendant was unreasonable. See *id.*

We conclude there is sufficient evidence in the record to support Reed’s conviction. While some evidence of justification exists in the record, the State refuted the defense with evidence that Reed’s use of force was unreasonable.

Even assuming Reed was initially justified to defend himself, Clark and Reed both testified Reed struck Clark more than once while Reed was on top of Clark and Clark was no longer a threat to him. In addition, the district court relied on the testimony of Deputy Smith, who stated that during an interview with Reed, Reed told him that Clark swung at him only “at the point when [Clark] was on the ground and [Reed] was on top of him.” Reed also told Deputy Smith that Clark “couldn’t get a full swing in because they were both on the ground at that point.”

In reaching its conclusion that Reed’s justification defense failed, the district court noted Reed continued to hit Clark “while Mr. Clark was down and not able to defend himself further.” The court found the force used by Reed “was excessive,” stating “Reed probably had [Clark] subdued after maybe one punch and not three or four or however many more occurred while [Clark] was down.” We agree there is sufficient evidence in the record to conclude Reed acted without justification because the amount of force he used was unreasonable. We affirm on this issue.

III. Ineffective Assistance of Counsel

Reed also contends his trial counsel was ineffective in failing to present further evidence of Clark’s “propensity for extreme violence.” In particular, Reed claims his attorney should have offered testimony from witnesses regarding Clark’s reputation for “generally fighting dirty,” including “that Danny Clark had actually bitten a guy’s nose off in another fight.” Reed believes such evidence would have bolstered his justification defense.

We review claims of ineffective assistance of counsel *de novo*. See *State v. Finney*, 834 N.W.2d 46, 49 (Iowa 2013). To prevail, Reed must show that

(1) counsel breached an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The claim fails if either element is lacking. *Anfinson v. State*, 758 N.W.2d 496, 499 (Iowa 2008).

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Clay*, 824 N.W.2d 488, 494 (Iowa 2012). “That is particularly true where the challenged actions of counsel implicate trial tactics or strategy which might be explained in a record fully developed to address those issues.” *Id.* (quoting *State v. Rubino*, 602 N.W.2d 558, 563 (Iowa 1999)). If we determine the claim cannot be addressed on appeal, we must preserve it for a postconviction relief proceeding, regardless of our view of the potential viability of the claim. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010).

The State urges us to preserve Reed’s claim for possible postconviction proceedings, in light of the strategic decision by trial counsel “not to call certain character witnesses.” We agree the record is inadequate to decide this issue on direct appeal. Accordingly, we preserve the matter for possible postconviction relief proceedings.

IV. Conclusion

We preserve Reed’s claim of ineffective assistance of counsel for possible postconviction relief proceedings. We affirm Reed’s conviction and sentence.

AFFIRMED.