

IN THE COURT OF APPEALS OF IOWA

No. 3-463 / 11-0942
Filed June 12, 2013

FREDERICK BRAGGS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

A postconviction relief applicant appeals the denial of relief. **AFFIRMED.**

Benjamin D. Bergmann of Parrish Kruidenier Dunn Boles Gribble Parrish
Gentry & Fisher, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, John Sarcone, County Attorney, and James Ward, Assistant
County Attorney, for appellee State.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VOGEL, P.J.

Benjamin Braggs appeals the district court order denying his application for postconviction relief. As the district court stated, “Petitioner claims every lawyer in this case acted improperly. He accuses both his trial and appellate counsel of being ineffective and accuses the prosecutor of misconduct.” He argues his attorneys were ineffective in (1) failing to challenge the accuracy of testimony that the victim’s blood was found on Braggs’s shirt; (2) opening the door to evidence of Braggs’s drug use; (3) and failing to object to an instruction providing in part, “You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.” He also argues the prosecutor committed misconduct because the prosecutor did not correct the false testimony regarding the blood on the shirt.

On our *de novo* review, we find the district court’s well reasoned order should be affirmed. See *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). First, Braggs is unable to prove the requisite prejudice regarding the “blood on the tank top evidence” because of the overwhelming evidence that either the detective’s comment was merely a misstatement, or as the district court found, it could have been a transcription error, as the answer is out of sync with the all of the surrounding answers—that no blood was found on defendant or his clothing. The prosecutor openly acknowledged during closing argument, “[W]e didn’t find any blood on the defendant.” Moreover, the overwhelming evidence against Braggs included the multiple eyewitnesses including the victim, who identified him as having committed the acts. See *State v. Casady*, 597 N.W.2d 801, 806 (Iowa 1999) (concluding no prejudice when the case against the defendant was

“very substantial”). Second, trial counsel explained her reasonable trial strategy in bringing up the drug culture Braggs, the victim, and an eyewitness were involved with in an attempt to discredit the identifying witnesses. See *State v. Johnson*, 604 N.W.2d 669, 673 (Iowa Ct. App. 1999) (“Where counsel’s decisions are made pursuant to a reasonable trial strategy, we will not find ineffective assistance of counsel.”). Third, trial counsel was not ineffective for failing to object to the jury instruction that merely instructed the jury on how to consider the evidence, particularly in light of the fact it is nearly identical to the uniform instruction and is not a misstatement of law. See *Stringer v. State*, 522 N.W.2d 797, 800 (Iowa 1994) (finding trial courts have broad discretion in determining jury instruction language and trial counsel is not ineffective in failing to object to the instruction when the choice of words does not result in an incorrect statement of law or omits a matter essential for the jury’s consideration).

Lastly, we agree with the district court the prosecutor did not knowingly submit false testimony regarding the blood on the tank top because it is clear from the prosecutor’s other statements, such as, “[T]he mere fact that we did not find blood on his shoes or his clothing does not mean he did not do it,” that the tank top statement was merely a misstatement and failing to correct it was not prosecutorial misconduct. See *Devoss v. State*, 648 N.W.2d 56, 64 (Iowa 2002) (holding a prosecutor’s knowing use of perjured or false testimony violates due process).

We therefore affirm the district court without further opinion. See Iowa Ct. R. 21.26(1)(a),(c), (e).

AFFIRMED.