

**IN THE COURT OF APPEALS OF IOWA**

No. 6-236 / 05-0879  
Filed April 26, 2006

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

vs.

**HASAN KUDUZOVIC,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,  
Judge.

Hasan Kuduzovic appeals his conviction of domestic abuse assault causing bodily injury, enhanced, a class D felony in violation of Iowa Code section 708.2A (4) (2003). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Greta Truman, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Myers, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vaitheswaran and Eisenhauer, JJ.

**HUITINK, P.J.**

Hasan Kuduzovic appeals his conviction of domestic abuse assault causing bodily injury, enhanced, a class D felony in violation of Iowa Code section 708.2A (4) (2003).

***I. Background Facts and Proceedings.***

Hasan Kuduzovic was charged with the foregoing offense based on allegations that he physically abused his wife, Melissa, on January 2, 2005. Kuduzovic pleaded not guilty, and the case proceeded to a jury trial beginning on April 12, 2005.

On direct examination at trial Melissa testified that Kuduzovic repeatedly struck her with a water pitcher causing bruises and cuts to her lower back and on her legs. Although Melissa initially testified that Kuduzovic said nothing after striking her, she acknowledged a January 3, 2005, statement to Waterloo police officers indicating that Kuduzovic threatened to kill her.

On cross-examination Kuduzovic's attorney sought to discredit Melissa's testimony by questioning her about discrepancies between her trial testimony and her January 3 statement to police officers. Other subjects of inquiry on cross-examination included the reasons why Kuduzovic was angry at Melissa and whether she was the first to make physical contact with Kuduzovic by "blocking him." Neither the prosecution on direct examination nor Kuduzovic's attorney on cross-examination inquired about Melissa's pregnancy in any context.

The following exchange occurred on Melissa's redirect examination by the State:

Q. Mr. Standafer was asking you about your children, and you have two children? A. Yes.

Q. Are you expecting a third? A. Yes.

Q. Who is the father of the third? A. Hasan.

Q. And how far along are you? A. About –

MR. STANDAFER: Object. Relevancy and materiality.

THE COURT: Overruled. You may answer.

Q. How far along are you? A. About four months.

Q. So you were pregnant, then, back in January? A. Yes.

MR. STANDAFER: Object. Beyond the scope of the minutes of testimony. I ask it be stricken.

THE COURT: Overruled. The answer is in.

The jury returned a verdict of guilty on April 14, 2005. Kuduzovic was sentenced to a term of incarceration not to exceed five years with a one-year statutory minimum. On appeal Kuduzovic argues that his trial counsel was ineffective by failing to object to Melissa's testimony that she was pregnant when Kuduzovic abused her by arguing that the probative value of that testimony was substantially outweighed by its danger of unfair prejudice. He also argues counsel should have objected to the testimony because it was beyond the scope of cross-examination.

## ***II. Ineffective Assistance of Counsel.***

Our ultimate concern in claims of ineffective assistance of counsel is with “the fundamental fairness of the proceeding whose result is being challenged.” *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984). Ineffective assistance is measured by whether “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Id.* at 686, 104 S. Ct. at 2064, 80 L. Ed. 2d at 692-93; see *Schertz v. State*, 380 N.W.2d 404, 408 (Iowa 1985). In examining counsel's conduct, we review de novo the totality of

relevant circumstances, *State v. Yaw*, 398 N.W.2d 803, 805 (Iowa 1987), mindful of the presumption that counsel performed competently. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984). Defendant bears the burden of proving by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Kraus*, 397 N.W.2d 671, 673 (Iowa 1987).

Generally ineffective assistance of counsel claims are preserved for postconviction relief to allow trial counsel to respond to the defendant's allegations. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002) (citing *State v. Kinkead*, 570 N.W.2d 97, 102 (Iowa 1997)); *State v. Mulder*, 313 N.W.2d 885, 891 (Iowa 1991); *State v. Nebinger*, 412 N.W.2d 180, 191-92 (Iowa Ct. App. 1987)). Preserving ineffective assistance of counsel claims that can be resolved on direct appeal, however, is a waste of time and resources. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). We will resolve an ineffective assistance of counsel claim on direct appeal when the record is sufficient for that purpose. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

Based on our review of the record, we find it insufficient to resolve Kuduzovic's ineffective assistance of counsel claims. We accordingly preserve Kuduzovic's ineffective assistance of counsel claims for postconviction relief.

The judgment of the district court is affirmed.

**AFFIRMED.**