**IN THE COURT OF APPEALS OF IOWA**

No. 7-493 / 06-1657
Filed August 8, 2007

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

**vs.**

**QUINNETTA TRACHEL DAVIS,**
Defendant-Appellant.

---

Appeal from the Iowa District Court for Black Hawk County, Leonard D. Lybbert, Judge.

Quinnetta Trachel Davis appeals her conviction and sentence for willful injury. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Thomas Andrews, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Fangman, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

**MAHAN, P.J.**

Quinnetta Trachel Davis appeals her conviction and sentence for willful injury in violation of Iowa Code sections 708.4 and 902.7 (2005). She argues her counsel rendered ineffective assistance when he failed to object to a jury instruction. We affirm her conviction and sentence and preserve her ineffective assistance claim for possible postconviction relief proceedings.

**I. Background Facts and Proceedings**

Davis and Jerrod Hickey were romantically involved. On the morning of December 4, 2005, Hickey went to Davis's apartment and found her former fiancé and roommate, Lee Hood, there. When Hickey questioned Davis, she told him Hood had been drinking the night before and she did not want him to drive. She also told Hickey nothing happened between herself and Hood. Hood left the apartment, and Hickey continued to question Davis. He hit her with his baseball cap, used his finger to point and touch her forehead, and, at one point during their altercation, pinned her to her bed. Davis eventually locked herself in the bathroom. Hickey left.

After he left, Davis called Hickey repeatedly on his cell phone. Hickey visited a few stores and a friend, and then returned to Davis's apartment. He continued pointing and touching her forehead and hitting her with his cap. At some point, Hickey hit Davis with either his hat or his hand and her head hit a door. Davis then picked up a knife and stabbed Hickey in the chest.

At trial, Davis testified the stabbing was an accident. Both Hickey and Davis testified extensively regarding their altercations both early that morning

and just before the stabbing. After the conclusion of evidence, the State objected to all jury instructions on self-defense. The court overruled the objection stating,

> Well, I'm going to overrule the state's objections to what has been stated as the self-defense theory, I think it is actually justification is the proper term, and submit that issue to the jury.

Davis now appeals based on one of those instructions. The district court used Uniform Criminal Jury Instruction No. 400.10 as follows:

> Concerning element number 2 of Instruction No. 24, if a defendant is confronted with the use of unlawful force against her, she is required to avoid the confrontation by seeking an alternative course of action before she is justified in repelling the force used against her. However, there is an exception.
>
> If the defendant was in her own home which she was legally occupying and the alternative course of action was such that she reasonably believed she had to retreat or leave her position to avoid the confrontation, then she was not required to do so and she could repel force with reasonable force.
>
> If the alternative course of action involved a risk to her life or safety and she reasonably believed that, then she was not required to take or use the alternative course of action to avoid the confrontation and she could repel the force with reasonable force.

Davis claims her attorney should have objected to the instruction because it does not make it clear there are two exceptions to the rule of seeking an alternative course of action.

**II. Standard of Review**

We review claims of ineffective assistance of counsel de novo. *State v. Martin*, 704 N.W.2d 665, 668 (Iowa 2005).

**III. Merits**

In order to establish ineffective assistance of counsel, Davis must show both that her counsel breached a duty and that the breach prejudiced her defense. *Strickland v. Washington*, 433 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80

L. Ed. 2d 674, 693 (1984). Generally, we preserve ineffective assistance of counsel claims for postconviction relief actions. *State v. Tate*, 710 N.W.2d 237, 240-41 (Iowa 2006). This practice ensures both that an adequate record of the claim is developed and that the attorney charged with ineffectiveness has an opportunity to respond. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002). We conclude the record here is inadequate to address Davis's claims. Because Davis makes no other challenge to her conviction and sentence, we affirm and preserve her ineffective assistance claim for possible postconviction relief proceedings.

**AFFIRMED.**