

**IN THE COURT OF APPEALS OF IOWA**

No. 8-059 / 06-2026  
Filed February 27, 2008

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

**vs.**

**RICKY LEE CASHATT,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Butler County, John C. Mackey,  
Judge.

Defendant appeals from his convictions following a jury trial for false  
imprisonment and assault causing bodily injury. **AFFIRMED.**

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney  
General, Gregory M. Lievens, County Attorney, and Kasey Wadding, Special  
Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

**ZIMMER, J.**

Ricky Lee Cashatt appeals from his convictions following a jury trial for false imprisonment in violation of Iowa Code section 710.7 (2005) and assault causing bodily injury in violation of sections 708.1 and 708.2(2). He claims (1) there was insufficient evidence to support his convictions; (2) the district court “failed to properly dismiss Count I and Count II of the trial information upon motion”; (3) the court erred in overruling his objections to certain jury instructions; and (4) his trial counsel was ineffective in several respects. We affirm.

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

The jury could have reasonably found the following facts from the evidence presented in this case: Cashatt had a “falling out” with his long-time acquaintance, Clay Schrage, over money he claimed Schrage owed him. On September 5, 2005, Cashatt confronted Schrage at a golf course in Parkersburg, Iowa, and threatened to kill him. He told Schrage’s father, Allen, who was also at the golf course, that “Clay owes him \$600, and if he didn’t get his money . . . he was going to beat his head in.” Allen called the police, and Cashatt drove off.<sup>1</sup>

On September 14, 2005, Schrage called his friend, Dustin Chyma, and made arrangements to meet with him. Chyma lived in Cedar Falls and worked for a company selling windows. Schrage wanted to take Chyma around Parkersburg “to help him, show him the houses of the people that [he] knew that might possibly be interested in windows.”

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<sup>1</sup> The police eventually located Cashatt and charged him with operating while intoxicated and assault on a peace officer. He was convicted of those offenses following a jury trial. We affirmed his convictions and sentence on appeal. *State v. Cashatt*, No. 07-0345 (Iowa Ct. App. Jan. 30, 2008).

Chyma did not have a valid driver's license, so he had his friend, Justin Kreisel, drive him to Parkersburg. Once they got into town, Chyma was going to call Schrage for directions to his house, but Kreisel "knew exactly where he lived after [he] mentioned Clay's name." Chyma and Kreisel picked Schrage up at around 4:30 or 5:00 in the afternoon. Schrage did not recognize Kreisel when he got into the back seat of the car, but he was not surprised to see someone else driving because he knew Chyma did not have a license.

Kreisel drove to a gas station after leaving Schrage's residence. Schrage stayed in the car while either Kreisel or Chyma pumped and paid for the gas. Kreisel used Chyma's cell phone when they were at the gas station and made two or three calls. At one point, Schrage heard Kreisel ask, "[D]id you get my message?" The records for the cell phone used by Kreisel showed that three short phone calls were made to Cashatt's phone numbers between 4:44 p.m. and 4:46 p.m. on September 14.

Schrage told Kreisel to turn right when they left the gas station because there was a house close by that he wanted to show Chyma. Instead, Kreisel turned left, away from town, and told Schrage that he "got somebody in trouble a week before and they're going to pay [him] a visit." Schrage asked Kreisel to "just take me home, stop or let me out," but he "kept going and pulled into Rick Cashatt's residence." Cashatt was coming out of his house when they pulled in behind his garage.

Kreisel told Schrage to get out of the car, but he refused. Kreisel then came around to the passenger side of the vehicle and said "get out or I'm going to drag you out." Schrage got out of the car, and Kreisel punched him in the

back of his head. Schrage “kept saying can’t we talk about this,” but he “kept getting hit” by both Kreisel and Cashatt. He tried to get away, but they cut him off, pushed him into a barbed wire fence, and tackled him to the ground. Cashatt held him down and punched him in the back of his head while Kreisel kicked him in the face.

Chyma got out of the car as soon as it stopped and walked away because he “didn’t really want to have anything to do with the situation that was going on.” He turned his back on the fight, but he heard someone say, “you owe me some money, where is my money,” and in response he heard Schrage state “you don’t have to do this, I can pay you, I have a job, let’s just talk.” Chyma heard “slaps or punches kind of randomly for awhile until later. That’s when I really heard some . . . fat, bad physical blows, grunts, groans.” He turned around and saw Kreisel kick Schrage in the face while he was on the ground. Cashatt was standing close by. Chyma told Schrage to run, and he “took off up the driveway to the highway.”

Chyma got into his vehicle and picked Schrage up at the end of the driveway. He had to help Schrage into the car because he was “pretty disoriented” and “bleeding pretty profusely out of his forehead.” He drove Clay Schrage to the home of Scott Schrage, his brother. Scott is a police officer for the city of Parkersburg. Chyma left after he dropped Schrage off because he did not want to get in trouble for driving without a license.

Sergeant Schrage called the city’s chief of police, Christopher Luhring, to report the incident. Chief Luhring told him to call the county sheriff’s department because the incident occurred outside of the city limits. City and county law

enforcement officials then met at Sergeant Schrage's house and discussed the situation. They decided to obtain a search warrant for Cashatt's residence. Sergeant Schrage was asked to assist in the execution of the search warrant and handle "officer safety issues." He also helped "log and bag evidence." The police seized three items of blood-stained clothing from Cashatt's residence, and they found a blood trail leading from the backyard down to the driveway.

The State filed a trial information accusing Cashatt of third-degree kidnapping in violation of Iowa Code sections 710.1(3) and 710.4 and willful injury in violation of section 708.4(2). Cashatt filed a motion to dismiss the trial information, arguing the facts alleged by the State did not support the confinement element of the kidnapping charge. The district court denied his motion.

The case proceeded to a jury trial. Cashatt moved for a judgment of acquittal both at the close of the State's case in chief and at the close of all evidence. The district court denied the motions. The jury found Cashatt guilty of the lesser-included offenses of false imprisonment and assault causing bodily injury. He was sentenced to thirty days in jail with all thirty days suspended on the false imprisonment conviction, 180 days in jail with all but ninety days suspended on the assault conviction, assessed suspended fines, and placed on supervised probation for two years.

Cashatt appeals. He claims there was insufficient evidence to support his convictions. He also claims the district court "failed to properly dismiss Count I and Count II of the trial information upon motion by defendant and failed to

properly cast/organize the jury instructions.”<sup>2</sup> Finally, he claims his trial counsel provided ineffective assistance by (1) encouraging him “not to testify although [he] desired to testify” and (2) “fail[ing] to properly impeach witnesses.”

## ***II. Scope and Standards of Review.***

We review sufficiency of the evidence claims for the correction of errors at law. *State v. Smith*, 739 N.W.2d 289, 293 (Iowa 2007). A claim of ineffective assistance of counsel, on the other hand, is reviewed de novo because the claim is derived from the Sixth Amendment of the United States Constitution. *State v. Kress*, 636 N.W.2d 12, 19 (Iowa 2001).

## ***III. Discussion.***

### ***A. Sufficiency of the Evidence.***

Cashatt initially argues there was insufficient evidence supporting his convictions due to inconsistencies in the testimony of witnesses for the State and due to the “appearance of impropriety/conflict of interest” created by Sergeant Schrage’s involvement in the case. We do not agree.

We will uphold a guilty verdict if it is supported by substantial evidence. *Smith*, 739 N.W.2d at 293. Evidence is substantial if it would “convince a rational jury of a defendant’s guilt beyond a reasonable doubt.” *State v. Smitherman*, 733 N.W.2d 341, 345 (Iowa 2007). When we determine the sufficiency of the

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<sup>2</sup> It is not clear from the brief whether in this assignment of error Cashatt is claiming the district court erred in denying his pretrial motion to dismiss or whether he is simply reasserting the insufficient evidence claim. He does not cite or argue any authority supporting a claim that the court erred in denying his motion to dismiss the kidnapping charge. See Iowa R. App. P. 6.14(1)(c) (“Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.”). We therefore deem such a claim waived. He also does not cite or argue any authority in support of his claim that the court “failed to properly cast/organize the jury instructions.” See *id.* We likewise deem this issue waived.

evidence supporting a conviction, we consider all the evidence in the record, not just the evidence supporting the defendant's guilt. *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005). However, when we make this determination, we consider the evidence in the light most favorable to the State, and we include legitimate inferences and presumptions that may reasonably be deduced from the record. *Id.*

"Normally, it is for the jury to determine the credibility of witnesses." *State v. Smith*, 508 N.W.2d 101, 102 (Iowa Ct. App. 1993). "There are, however, limitations upon the application of the rule." *State v. Mitchell*, 568 N.W.2d 493, 503 (Iowa 1997). For example, a witness's testimony may be "so impossible, absurd, and self-contradictory that the court should deem it a nullity." *Id.* Thus,

[t]he rule that it is for the jury to reconcile the conflicting testimony of a witness does not apply where the only evidence in support of a *controlling fact* is that of a witness who so contradicts himself as to render finding of facts thereon a mere guess.

*Id.* (citation omitted) (emphasis added).

Cashatt argues there were discrepancies in Schrage's and Chyma's testimony regarding who pumped and paid for the gas and why they decided to meet with each other on September 14, 2005. He also argues Chyma's testimony regarding the length of time that he stayed at Sergeant Schrage's residence after dropping Schrage off was inconsistent with Sergeant Schrage's testimony. We do not believe, however, that these inconsistencies render any of these witnesses' testimony "so impossible and absurd and self-contradictory that it should be deemed a nullity by the court." *Smith*, 508 N.W.2d at 103 (citation omitted) (reversing defendant's conviction for sexual abuse where victims'

testimony, which was the only evidence against defendant, regarding details of the abuse was “inconsistent, self-contradictory, lacking in experiential detail, and, at times, border[ed] on the absurd”). Furthermore, none of the contradictions concerned the operative facts of the kidnapping and assault charges. See *Mitchell*, 568 N.W.2d at 503-04 (rejecting defendant’s claim that victim’s testimony should be disregarded where her account of the abuse, which was corroborated by other evidence, was not inconsistent as to the operative fact of the charge against defendant).

We also reject Cashatt’s argument that Sergeant Schrage’s testimony should be disregarded simply because he was Schrage’s brother. Aside from the aforementioned testimony regarding the length of time Chyma stayed at Sergeant Schrage’s residence after dropping Schrage off, Cashatt does not identify any other inconsistencies or contradictions in the sergeant’s testimony. Furthermore, his testimony was corroborated by the testimony of other law enforcement officials involved in the investigation.

The jury was free to believe or disbelieve any of the testimony and to give weight to the evidence as in its judgment such evidence should receive. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). We decline Cashatt’s invitation to invade the “very function of the jury . . . to sort out the evidence presented and place credibility where it belongs.” *State v. Blair*, 347 N.W.2d 416, 420 (Iowa 1984).

Cashatt next argues there was no “showing by the State that a conversation actually took place between Justin Kreisel and [himself] to show any kind of conspiracy or knowledge that [he] aided or abetted in the kidnapping

or false imprisonment of Clay Schrage.” He further argues the State did not “show any intent to detain the victim in this case.” We conclude otherwise.

In Iowa, a person who aids and abets is charged, tried, and punished as a principal. *State v. Doss*, 355 N.W.2d 874, 877 (Iowa 1984). The jury was thus instructed,

All persons involved in the commission of a crime, whether they directly commit the crime or knowingly “aid and abet” its commission, shall be treated in the same way.

“Aid and abet” means to knowingly approve and agree to the commission of a crime, either by active participation in it or by knowingly advising or encouraging the act in some way before or when it is committed. . . . Mere nearness to, or presence at, the scene of the crime, without more evidence, is not “aiding and abetting.” Likewise, mere knowledge of the crime is not enough to prove “aiding and abetting.”

*See also id.* at 877-78.

In order to find Cashatt guilty of false imprisonment on a theory of aiding and abetting, the jury was further instructed the State would have to prove:

1. On or about the 14th day of September, 2005, the defendant intentionally confined Clay Schrage.
2. Clay Schrage was confined against his will.
3. The defendant did not have a reasonable belief that he had a right or authority to confine Clay Schrage.

*See also* Iowa Code § 710.7. A person is confined for the purposes of false imprisonment “when the person’s freedom to move about is substantially restricted by force, threat, or deception.” *Id.*

When a defendant is accused of aiding and abetting in the commission of a crime in which intent is an element, as here, there must be substantial evidence in the record to support a finding that the defendant either participated with the intent himself or with the knowledge that the principal had the required

intent. *State v. Salkil*, 441 N.W.2d 386, 387 (Iowa Ct. App. 1989). “The element of intent is rarely capable of direct proof and may be shown by circumstantial evidence.” *Id.* A defendant’s participation in the crime as an aider and abettor likewise may be proven by circumstantial evidence. *Doss*, 355 N.W.2d at 878. “For purposes of proving guilt beyond a reasonable doubt, circumstantial evidence is as probative as direct evidence.” *Id.* In this case, there was considerable circumstantial evidence from which the jury could have found Cashatt actively participated in or encouraged Kreisel’s false imprisonment of Schrage with the requisite intent.

Approximately a week prior to the events at issue in this case, Cashatt threatened to kill Schrage. Schrage testified that he saw Kreisel make two or three calls from Chyma’s cell phone before they went to Cashatt’s residence and heard him ask, “[D]id you get my message?” Chyma confirmed that he let Kreisel use his phone at the gas station. The cell phone records for the phone used by Kreisel show there were several short calls made to Cashatt’s phone numbers shortly before the assault. On the way to Cashatt’s house, Schrage asked to be let out of the vehicle after Kreisel told him that he “got somebody in trouble a week before and they’re going to pay [him] a visit.” Both Chyma and Schrage testified Cashatt was coming out of his house as they pulled in behind his garage. We conclude, after viewing the evidence in the light most favorable to the State and affording the State the legitimate inferences that may reasonably be deduced from the record, there was substantial evidence from which the jury could find Cashatt aided and abetted Kreisel in the false imprisonment of Schrage.

We likewise conclude substantial evidence supports Cashatt's conviction for assault causing bodily injury.<sup>3</sup> Cashatt argues there was "no physical evidence or testimony linking [him] to victim's injuries," and "[t]here was no evidence and no showing that [he] . . . intended to cause the victim bodily harm." His argument, however, ignores Schrage's testimony that both Kreisel and Cashatt repeatedly hit him. He further testified that at one point, Cashatt held him down and "was on my back punching me in the back of the head and Justin Kreisel's kicking me in the face." Although Chyma did not see Cashatt hit Schrage, he heard "groans, grunts and some bad physical blows." When he turned around, he saw that Cashatt was standing "close by" when Kreisel kicked Schrage. Schrage's injuries included a large "gash on [his] forehead, a lot of swelling over [his] right cheek," cuts on his lips, hands, and shoulder, and bruises on his legs and under his eye. Upon reviewing all of the evidence in the record, we find this evidence could have convinced a rational jury that Cashatt was guilty beyond a reasonable doubt of assault causing bodily injury.

***B. Ineffective Assistance of Counsel.***

Cashatt first claims his trial counsel was ineffective for "fail[ing] to adequately allow [him] the right to testify on his own behalf at trial." He argues his counsel "strong-arm[ed]" him to "not testify at trial."

An accused has a constitutional right to testify. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). Like other constitutional rights, the right to testify

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<sup>3</sup> The jury was instructed the State would have to prove Cashatt "did an act which was meant to cause pain or injury to Clay Schrage" and Schrage "sustained a bodily injury" in order to find him guilty of assault causing bodily injury. See also Iowa Code §§ 708.1 and 708.2(2).

may be waived if done so “voluntarily, knowingly, and intelligently.” *Id.* Although trial strategy plays a large role in whether a defendant testifies, the decision is for the defendant – not defense counsel – to make. *Id.* Trial counsel’s role is simply to provide advice to the defendant to enable him to make a well-informed decision. *Id.* We find the record in this case is not adequate to address Cashatt’s claim in this regard. See *State v. Glaus*, 455 N.W.2d 274, 276 (Iowa Ct. App. 1990) (“Ineffective assistance claims are generally reserved for postconviction hearings, but may be determined on direct appeal when the record adequately presents them.”). We therefore preserve this claim for possible postconviction relief proceedings.

However, we believe Cashatt’s remaining claim that his trial counsel was ineffective for “fail[ing] to properly impeach witnesses” is capable of resolution on direct appeal. Cashatt has the burden to establish by the preponderance of the evidence that his trial counsel was ineffective. *Ledezma v. State*, 626 N.W.2d 134, 145 (Iowa 2001). In order to show his counsel was ineffective, Cashatt must prove his counsel failed to perform an essential duty and prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). “We begin with a presumption that trial counsel acted within the normal range of competency.” *State v. Heuser*, 661 N.W.2d 157, 166 (Iowa 2003). To show prejudice, Cashatt must show that “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* “Failure to prove either of these elements is fatal to a claim of ineffective assistance.” *Id.*

Cashatt argues his counsel should have questioned Chief Luhring and another police officer who testified at trial, Deputy Justin Trees, regarding their involvement in his arrest on September 5, 2005, for operating while intoxicated and assault on a peace officer in order to show “a bias by these individuals against [him].” A defendant, however, is “not entitled to perfect representation, rather, only that which falls within the normal range of competency.” *State v. Rice*, 543 N.W.2d 884, 888 (Iowa 1996). The record demonstrates that defense counsel’s cross-examination of Chief Luhring and Deputy Trees was clearly competent. We cannot say counsel breached any essential duty to Cashatt “by failing to pose specific cross-examination questions defendant would prefer him to ask.” *Id.*

Furthermore, the record reveals tactical reasons for counsel’s decision to avoid questioning Chief Luhring and Deputy Trees about the fact that Cashatt was charged with those offenses a little more than a week prior to his alleged assault of Schrage. “An ineffective assistance of counsel claim generally does not lie for the exercise of judgment.” *Heuser*, 661 N.W.2d at 166. Defense counsel successfully sought and obtained an order in limine precluding the State from introducing evidence of those charges because such evidence would be “highly prejudicial,” “irrelevant,” and “immaterial.” See, e.g., Iowa R. Evid. 5.404(b); *State v. Matlock*, 715 N.W.2d 1, 4-5 (Iowa 2006) (discussing exclusion of other bad-acts evidence). We therefore reject Cashatt’s claim that his counsel breached an essential duty in not asking Chief Luhring and Deputy Trees about the very charges he succeeded in prohibiting the State from introducing into evidence.

Cashatt finally argues his trial counsel was ineffective because he “failed to show the bias that . . . the brother of the victim, Sergeant Scott Schrage, had with [Cashatt].” Defense counsel, however, questioned all of the law enforcement officials, including Sergeant Schrage, on multiple occasions throughout the trial regarding the propriety of the sergeant’s involvement in the case given his familial relationship with Schrage. He further questioned all of the law enforcement officials as to why the city’s police department was involved in the case considering that the incident occurred outside of the city limits. We accordingly reject this claim as well.

#### ***IV. Conclusion.***

There is sufficient evidence in the record when it is viewed in the light most favorable to the State to support Cashatt’s convictions for false imprisonment and assault causing bodily injury. We preserve Cashatt’s claim that his trial counsel provided ineffective assistance regarding his right to testify for possible postconviction relief proceedings. We deny his remaining ineffective-assistance-of-counsel claims and affirm his convictions.

**AFFIRMED.**