

IN THE COURT OF APPEALS OF IOWA

No. 9-624 / 08-0865
Filed September 2, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYRONE DAVIS SMITH SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

Tyrone Davis Smith Sr. appeals following conviction and sentence for willful injury causing serious injury, criminal mischief in the second degree, interference with official acts, and leaving the scene of an accident. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David A. Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and James Katcher, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

HUITINK, S.J.

Tyrone Davis Smith Sr. appeals following conviction and sentence for willful injury causing serious injury, criminal mischief in the second degree, interference with official acts, and leaving the scene of an accident. Smith argues his counsel was ineffective in failing to (1) move to dismiss for violation of speedy trial, (2) move for judgment of acquittal on the charge of leaving the scene of an accident, and (3) object to the jury instruction defining “accident.” Smith further contends the district court erred in denying his motion in arrest of judgment when his right to a speedy trial had been violated. We affirm.

I. Background Facts and Proceedings.

In the afternoon of June 17, 2007, Tyrone Davis Smith Sr. and a friend were driving around Waterloo in Smith’s white Suburban SUV. They stopped at a convenience store where Smith’s son worked, just as the store had closed. Smith saw Roxanne Coffey, a woman he had known for years, outside the store and began “macking,” or paying her compliments. Smith stated he was not afraid of Antonio Bruce, the father of Coffey’s child. Smith told Coffey, “I hope you got some life insurance out on the nigger ’cause I’m going to kill him”

Shortly thereafter, Smith spotted Bruce on his Honda scooter with Bruce and Coffey’s daughter riding on the back. Smith cut Bruce off and began yelling and threatening him. Bruce managed to get his daughter safely back to Coffey, and then drove off on his scooter to avoid a confrontation with Smith. Smith followed directly behind Bruce and chased him at more than fifty miles per hour through Waterloo. When Bruce arrived at Highway 63, he swerved onto a sidewalk to avoid a busy intersection. Smith followed and hit Bruce who lost

control of his scooter. Several people witnessed the incident. Bruce suffered numerous injuries, including a collapsed lung, three broken ribs, and severe and extensive abrasions from the road.

After hitting Bruce, Smith's speed propelled him onto Highway 63 where he struck the side of a van. He reversed direction and drove off. Soon, the front left tire of Smith's Suburban shredded, and he was forced to stop. Smith heard police sirens in the area and took off on foot. A police officer chased Smith for several blocks and eventually got Smith to stop by threatening that Smith would be "tazed."

Smith was charged by trial information filed on June 28, 2007. Smith pleaded not guilty and waived his right to speedy trial. However, on September 21, 2007, Smith filed a pro se motion to withdraw his waiver of speedy trial. This motion was not served on the State or Smith's counsel. Over the next three months, the court granted several continuances for delays attributable to Smith. On December 31, 2007, for the first time since Smith filed his motion to withdraw his speedy trial waiver, the court and parties addressed the motion. As a result of that hearing, the court ordered that Smith had reasserted his right to a speedy trial, effective as of December 31, 2007.

Trial took place on February 6, 2008, and the jury returned the verdicts finding Smith guilty of willful injury causing serious injury, criminal mischief in the second degree, interference with official acts, and leaving the scene of an accident resulting in serious injury. On March 27, 2008, Smith—through new counsel—filed a motion in arrest of judgment, claiming his speedy trial rights had been violated and that charges against him should have been dismissed before

trial. After a hearing on April 7, 2008, the district court determined that no violation to Smith's right to speedy trial had occurred and denied his motion. Smith now appeals.

II. Ineffective Assistance of Counsel.

We conduct a de novo review of ineffective assistance of counsel claims. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *Id.* Ordinarily, we preserve ineffective assistance of counsel claims for postconviction proceedings to allow the facts to be developed and give the allegedly ineffective attorney an opportunity to explain his or her conduct, strategies, and tactical decisions. See *State v. Bearse*, 748 N.W.2d 211, 214 (Iowa 2008).

A. Failure to Move to Dismiss.

Smith argues his counsel was ineffective in failing to file a motion to dismiss for violation of his speedy trial rights. He contends the court (and counsels) ignored his *pro se* withdrawal of his waiver of speedy trial, and his counsel breached an essential duty in failing to make any attempt to secure Smith's speedy trial rights. We conclude the record is inadequate to address this issue, and we therefore preserve Smith's claim for possible postconviction relief proceedings.

B. Failure to Move for Judgment of Acquittal.

Smith next contends his counsel was ineffective in failing to file a motion for judgment of acquittal on Count V, the charge of leaving the scene of an

accident. Smith argues that an intentional act is not an “accident,” and therefore, because the State charged him for intentionally running over Bruce, he cannot also be charged with leaving the scene of an accident. Essentially, Smith argues there was insufficient evidence to prove an “accident” and counsel therefore breached an essential duty by failing to move for judgment of acquittal on that charge.

A claim based on counsel’s failure to challenge the sufficiency of the evidence supporting a conviction can ordinarily be resolved on direct appeal. See *State v. Scalise*, 660 N.W.2d 58, 62 (Iowa 2003). If the record in this case fails to reveal substantial evidence to support the conviction, counsel was ineffective for failing to properly raise the issue and prejudice resulted. See, e.g., *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). However, if the record reveals substantial evidence, counsel’s failure to challenge the sufficiency of the evidence and move for judgment of acquittal could not have been prejudicial. *Id.*

To convict Smith of Count V (leaving the scene of an accident resulting in serious injury), the State had to prove the following elements:

1. On or about the 17th day of June, 2007, the Defendant was the driver of a vehicle involved in an accident.
2. The accident resulted in an injury to Antonio Bruce.
3. The Defendant failed to immediately stop the vehicle at the scene of the accident or as close as possible and failed to remain at the scene to provide driver information.
4. Antonio Bruce suffered a serious injury.

Iowa Criminal Jury Instruction No. 34; see also Iowa Code § 321.261(3) (2007).

Iowa Code chapter 321 does not define “accident,” and there is no Iowa Uniform Jury Instruction defining the word. In evaluating a charge under section 321.261, our supreme court has used the dictionary definition of “accident” as a

“sudden event or change occurring without intent or volition through carelessness, unawareness, ignorance, or a combination of causes and producing an unfortunate result.” *State v. Carpenter*, 334 N.W.2d 137, 140 (Iowa 1983) (quoting Webster’s Third New International Dictionary 11 (1976)). In this case, the court adopted the State’s proposed Jury Instruction No. 35, which stated as follows: “An accident is defined as any motor vehicle collision or striking of another object, including but not limited to a person or vehicle.”

Smith argues the court should have adopted the meaning of “accident” that Iowa courts have used in the past, particularly with regard to insurance cases. Smith contends the term should be defined as something “happening by chance” that is “sudden, unexpected, and not intended or designed by any person.” See *Austin v. CUNA Mut. Life Ins. Co.*, 603 N.W.2d 577, 578 (Iowa 1999); *Lickleider v. Iowa St. Traveling Men’s Ass’n*, 151 N.W. 479, 480 (Iowa 1915).

We find Smith’s argument to be without merit. We cannot interpret section 321.261 to include *only* motor vehicle accidents that are caused unintentionally. See *Carpenter*, 334 N.W.2d at 139-40. Such a distinction could not have been what the legislature intended. The record indicates Smith sought out Bruce on the afternoon of June 17, 2007, with the intention to harm him. Earlier that day, Smith told Coffey (the mother of Bruce’s child) that he was not afraid of Bruce and that he hoped she had “some life insurance out on the nigger” because he was “going to kill him.” Smith found Bruce and chased him through Waterloo at speeds over fifty miles per hour. Smith eventually hit Bruce when Bruce lost control of the scooter he was driving. After he hit Bruce, Smith ran into a van,

and fled the scene. He continued fleeing on foot when his tire shredded and forced him to stop the Suburban he was driving. This is precisely the type of situation section 321.261 was designed to address.

Upon our de novo review, we find substantial evidence supported submission of Count V to the jury.¹ Under the circumstances in this case, we find the district court was correct in interpreting the term “accident” to include both intentional as well as unintentional acts on the part of the motor vehicle driver. Smith’s counsel did not breach an essential duty in failing to move for judgment of acquittal.

C. Failure to Object to Jury Instruction.

Smith argues his counsel was ineffective in failing to object to Jury Instruction No. 35, which defined the term “accident.” We determined above that the district court correctly allowed Jury Instruction No. 35, and therefore Smith’s counsel had no duty to object to it. We find this claim of ineffective assistance of counsel to be without merit.

III. Motion in Arrest of Judgment.

We review the district court’s grant or denial of a motion in arrest of judgment for abuse of discretion. *State v. Smith*, 753 N.W.2d 562, 564 (Iowa 2008). An abuse of discretion occurs when the trial court exercises its discretion “on grounds or for reasons clearly untenable or to an extent clearly

¹ Even if we determined section 321.261 should apply only to unintentional motor vehicle accidents, there is substantial (albeit conflicting) evidence in the record to indicate Smith did not fully intend to collide with Bruce. Smith repeatedly acknowledged at trial that he had “left the scene of an *accident*” and maintained that his collision with Bruce was accidental. Smith testified he tried to stop before hitting Bruce, but was unable to do so. He even called a defense witness to support this contention.

unreasonable.” *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008). A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law. *Id.*

Smith argues the district court erred in denying his motion in arrest of judgment. He claims judgment should not have been entered when his right to speedy trial had been violated.² A trial court may grant a motion in arrest of judgment when “upon the whole record no legal judgment can be pronounced.” Iowa R. Crim. P. 2.24(3)(a). In its order denying Smith’s motion, the district court stated in part:

As indicated by counsel at the time of hearing, the Motion in Arrest of Judgment is primarily a motion to dismiss based upon the alleged violation of the right of the Defendant to be tried within ninety (90) days. However, the record does not support such a claim. As the State has set forth in great detail in its Resistance to motion in Arrest of Judgment, the Defendant waived his right to a speedy trial on September 19, 2007. Thereafter, he filed a pro se Motion to Withdraw Waiver of Speedy Trial. However, no service of this document was ever effectuated upon counsel, and no hearing was ever conducted on this pro se motion. The additional pleadings in the court file reveal numerous additional requests by counsel for the Defendant that the trial be continued in order to perform additional discovery and depositions. All of these delays were attributable to the Defendant.

As the pleadings also reveal, on December 31, 2007, the State did file its initial Motion to Continue Trial due to information which was obtained in depositions which had recently been completed. A hearing was conducted on the record with all counsel and the undersigned. At that time the Court did grant the State’s Motion to Continue Trial over the objection of counsel for the Defendant. As revealed by the transcript of that proceeding, the undersigned noted that there was a written Waiver of Speedy Trial filed on September 19, 2007, and then a Motion to Withdraw

² The State contends Smith failed to preserve error because he did not file a motion to dismiss on this issue, which the State contends is the correct motion to claim a violation of the right to speedy trial. It appears the district court treated Smith’s motion in part as a motion to dismiss; therefore, we address Smith’s argument on appeal assuming that he has properly preserved error on this issue.

Waiver of Speedy Trial, which had never been ruled on as of December 31, 2007. As a result of that hearing, the Court did note that it would grant the Defendant's motion to reassert his right to a speedy trial effective December 31, 2007. This is reflected in the Court's Order dated December 31, 2007, in which the Court acknowledges that "the Defendant hereby reasserts his right to a speedy trial." Trial was conducted within ninety (90) days of the Defendant's reassertion of his right to a speedy trial.

Under the facts and circumstances of this case, there is overwhelming evidence to support the conviction of the Defendant on each and every essential element of the crimes for which he was convicted. The verdicts were consistent with the testimony of the numerous witnesses who testified on behalf of the State, and with the physical evidence obtained at the scene. For all of these reasons, the Court concludes that the weight of the evidence supports the conclusion of the jury and the verdicts which it reached. Likewise, there is no evidence of additional errors committed by the Court which would have deprived this Defendant of a fair and impartial trial warranting this Court to set aside the judgments rendered by the jury, or to grant the Motion for New Trial.

Upon our review, we find no error in the district court's denial of Smith's motion in arrest of judgment. The court did not abuse its discretion in denying the motion, and we therefore affirm as to this issue.

IV. Conclusion.

We affirm Smith's conviction and sentence and preserve his claim of ineffective assistance of counsel for a possible postconviction proceeding.

AFFIRMED.