

IN THE COURT OF APPEALS OF IOWA

No. 6-163 / 95-513

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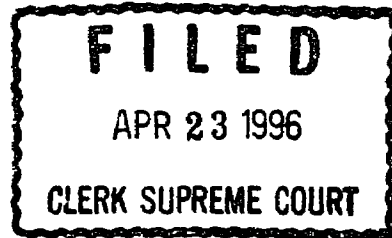
STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHN NELSON WHITE,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Defendant appeals from judgment and sentence, following jury trial, entered upon his conviction of vehicular homicide in violation of Iowa Code section 707.6A (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, John P. Sarcone, County Attorney, and Odell McGhee, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Habhab and Streit, JJ.

HABHAB, J.

John White's wife, Julie, died as a result of a car crash during which White was driving. White's blood alcohol content after the collision was .135; Julie's blood alcohol content was .166. White was charged with vehicular homicide.

At trial, the State presented evidence White was driving a truck between forty-five miles per hour and sixty miles per hour as he drove through a red light at the intersection of Sixty-Third and Grand Avenue in Des Moines. The accident investigator testified Julie was thrown from the truck after the truck was struck by another vehicle. The investigator also testified the passenger door was not forced open and it was likely the door was opened from the inside, either intentionally or unintentionally. The investigator speculated Julie grabbed the handle to brace herself during the collision.

White testified he and Julie were arguing prior to the collision and he had stopped the truck twice before the accident to let Julie out. He stated the door had been opened on both occasions when he had stopped and the truck door did not "latch good." White testified Julie bit him under the arm at the time they were driving through the intersection and he saw Julie thrown from the truck. A doctor testified White was brought to the emergency room by police and White was treated for a human bite under his right arm. White's nephew testified he saw a red, painful-looking wound on White after White was released.

The jury was instructed on proximate, intervening, and superseding causation. At issue in this case are two questions sent out by the jury during deliberations. They are: (1) can a door latch coming open for unspecified reasons be considered an intervening cause; and (2) can not wearing a seat belt be considered an intervening *cause* or considered *prevention*. Without objection, the district court answered both questions, "No." White was convicted as charged.

White appeals.

On appeal, White contends his trial counsel was ineffective for failing to object to the district court's answer to the jury question regarding whether a door latch coming open for unspecified reasons can be considered an intervening cause.¹ In reviewing claims of ineffective assistance of counsel, we review de novo the totality of relevant circumstances. *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987). The burden of proof in such claims rests with the defendant. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

A claim of ineffective assistance of counsel requires a showing that: (1) counsel's performance fell outside the normal range of competency; and (2) the deficient performance so prejudiced the defendant as to give rise to a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). In order to

¹ White does not dispute the district court's answer to the jury question concerning the wearing of a seat belt.

meet the first prong, defendant must overcome the strong presumption that counsel's actions were reasonable under the circumstances and fell within the normal range of competency. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). To succeed on the second prong, the defendant must show that counsel's failure worked to the defendant's actual and substantial disadvantage so that, but for counsel's error, the result of the proceeding would have been different. *Id.*

Claims of ineffective assistance of counsel are usually not adjudicated on direct appeal because the attorney charged with ineffectiveness has not had an opportunity to respond to the allegations. *McKettrick*, 480 N.W.2d at 56. Such claims may be decided on direct appeal, however, if the defendant fails to show one of the two prongs. *State v. O'Donnell*, 533 N.W.2d 576, 579 (Iowa App. 1995).

White argues the district court improperly took the intervening and superseding cause away from the jury when it answered the jury's door latch question. We disagree. The jury asked, "Can (door latch) coming open *for unspecified reasons* be considered an interven[ing] cause?" (Emphasis added.) The question is simple in that it does not refer to any specific cause or force; rather, it refers to unspecified reasons. As a result, we conclude the jury received an entirely correct answer to the particular question they asked. Contrary to arguments of counsel, there is nothing in the question or the answer that precluded the jury from considering those specified reasons advanced on the issue of intervening and superseding cause.

Since the district court's answer was both appropriate and correct, White's trial counsel did not fail to perform an essential duty in failing to object. Thus, White's claim of ineffective assistance of counsel must fail on direct appeal. We affirm White's conviction.

AFFIRMED.