

IN THE COURT OF APPEALS OF IOWA

6-596 / 95-1539

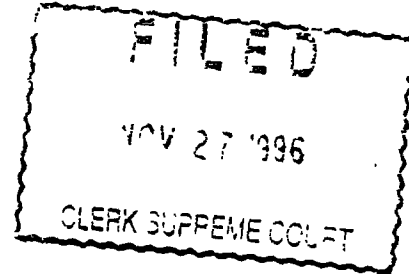
STATE OF IOWA,

Plaintiff-Appellee,

vs.

SAMMY ARNOLD MENDENHALL,

Defendant-Appellant.



Appeal from the Iowa District Court for Emmet County, Charles H. Barlow,
Judge.

Sammy Mendenhall appeals from the judgment and sentence entered,
following a jury trial, for willful injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney
General, Lynn K. Fillenwarth, County Attorney, and Richard J. Meyer, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by a defendant claiming his conviction and sentence for willful injury, in violation of Iowa Code section 708.4, should be overturned. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On May 21, 1994, Joseph Becker was camping at Iowa Lake Campgrounds with his friends. At a nearby campsite, Sammy Mendenhall was drinking with some friends, including Jeffrey Kampert and Jason Zoeller. Kampert and Zoeller were present when Mendenhall kicked Becker in the head, causing him to roll down an embankment. Becker suffered a broken jaw from the incident.

Kampert and Zoeller gave written statements in June 1994 in which they stated Mendenhall's actions were unprovoked. At their depositions and the criminal trial they testified substantially in accordance with their written statements. A jury found Mendenhall guilty of willful injury.

Mendenhall filed a motion in arrest of judgment and motion for new trial. He claimed the prosecutor had engaged in misconduct by intimidating Kampert and Zoeller into testifying in accordance with their written statements and not testifying according to their recollections at the time of the trial. The district court determined the prosecutor had only reminded the witnesses they could be subject to penalties of perjury when the witnesses stated they could not remember the events on the night of May 21, 1994. The witnesses then refreshed their memories by reviewing their written statements. The court denied the post-trial motions. Mendenhall now appeals.

Mendenhall claims the district court should have granted his motion for new trial based on prosecutorial misconduct. A prosecutor may not intimidate or unduly influence a witness. *State v. Peterson*, 532 N.W.2d 813, 822 (Iowa App. 1995). When prejudice results from prosecutorial misconduct, a defendant is deprived of his right to due process and reversal is necessary. *State v. Fox*, 491 N.W.2d 527, 532 (Iowa 1992).

We do not find the prosecutor intimidated or unduly influenced Kampert or Zoeller. The witnesses admitted they were friends of Mendenhall and did not want to testify. Prior to the trial, each told the prosecutor he did not remember the events in question. The prosecutor asked the witnesses to examine their written statements and reminded them of the penalties for perjury. The witnesses stated their testimony at trial was truthful. Furthermore, we do not find Mendenhall was prejudiced by the prosecutor's actions.

We affirm Mendenhall's conviction for willful injury. Costs of this appeal are assessed to Mendenhall.

AFFIRMED.