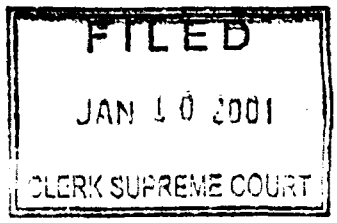
IN THE COURT OF APPEALS OF IOWA

No. 0-718 / 99-1924
Filed January 10, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL DEZAY JACKSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge.

Defendant appeals from the judgment and sentence entered upon jury verdicts finding him guilty of criminal trespass in violation of Iowa Code section 716.8(1) (1999), assault in violation of section 708.2(4), and second-offense domestic abuse assault in violation of sections 708.2A(1) and 708.2A(3)(b). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, William E. Davis, County Attorney, and Don Frank, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Mahan, J., and C. Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

MAHAN, J.

Defendant appeals from the judgment and sentence entered upon jury verdicts finding him guilty of criminal trespass in violation of Iowa Code section 716.8(1) (1999), assault in violation of section 708.2(4), and second-offense domestic abuse assault in violation of sections 708.2A(1) and 708.2A(3)(b). Specifically, he appeals the domestic abuse assault judgment and sentence, contending: (1) the district court erred in denying his motion for judgment of acquittal based on insufficiency of the evidence, and (2) trial counsel was ineffective for eliciting inculpatory testimony from the victim on the offense of domestic abuse assault. We affirm.

Background Facts and Proceedings. On June 30, 1999, Davenport police officers were called to investigate a disturbance. An officer found Jackson and Erica Newton standing outside upon his arrival at the scene. Jackson informed the officer Newton was "moving out." The officers observed red marks and scratches on Newton's back and arms. The apartment was in disarray. Officers observed a broken end table, which had been used as a weapon against Newton.

Jackson was charged with count I, burglary in the second degree as a habitual offender, in violation of Iowa Code sections 713.1, 713.5 and pursuant to sections 902.8 and 902.9; and counts II and III, domestic abuse assault second offense, in violation of Iowa Code sections 708.2A(1) and 708.2A(3)(b). The State amended count II of the trial information prior to trial, from domestic abuse assault to simple assault. A jury returned guilty verdicts on the lesser-included

offense of criminal trespass, simple assault, and domestic abuse assault. The court sentenced Jackson to an indeterminate term not to exceed two years on the domestic assault charge and thirty days each on the criminal trespass and simple assault charges. The court ordered the sentences be served concurrently. Jackson appeals.

Sufficiency of the Evidence. We review Jackson's challenge to the sufficiency of the evidence for errors at law. Iowa R. App. P. 4. The standards governing a challenge to the sufficiency of the evidence are well established:

> When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the state, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational factfinder [sic] that the defendant is guilty beyond a reasonable doubt.

State v. Mills, 458 N.W.2d 395, 397 (Iowa App. 1990) (quoting *State v. Wheeler*, 403 N.W.2d 58, 60 (Iowa App. 1987)).

The jury instructions required the State prove the following elements of domestic abuse assault beyond a reasonable doubt:

> 1. On or about the 30th day of June 1999, the defendant did an act which was meant to cause pain or injury, result in physical contact which was insulting or offensive, or place Erica Newton in fear of immediate physical contact which would have been painful, injurious, insulting or offensive to Erica Newton.
> 2. The defendant had the apparent ability to do the act.
> 3. The act occurred between family or household members who resided together at the time of the incident.

The instructions defined "family or household members" for the jury as follows:

> The law defines "family or household members" as persons cohabiting with each other.
>
> "Cohabiting" does not require a sexual relationship, but does require more than dwelling or living together in the same place. To determine if the defendant and Erica Newton were cohabiting at the time of the alleged offense, you may consider whether they had sexual relations while sharing the same living quarters; they shared income or expenses; they jointly used or owned property together; they held themselves out as husband and wife; the continuity and length of their relationship; and any other facts shown by the evidence bearing on their relationship with each other.

Jackson contends the State failed to prove the elements of domestic abuse assault beyond a reasonable doubt. Specifically, Jackson argues the State's evidence did not prove he committed an assault or he and Newton were "family or household members" pursuant to the jury instructions. We disagree.

The State, in its case-in-chief, presented the testimony of Newton's father. He testified Jackson and his daughter were in a dating relationship for over a year. He described the relationship between his daughter and Jackson as "basically, just boyfriend/girlfriend." He indicated the relationship existed around the time of the assault. In addition, on the night of the incident, officers observed Newton gathering her possessions inside the residence and taking them outside. She told the officers she was "in the process of moving out." The jury could infer from the State's circumstantial evidence Jackson and Newton were cohabiting at the time of the assault. *See State v. Torres*, 506 N.W.2d 470, 472 (Iowa App. 1993) (a jury verdict of guilty can rest on circumstantial evidence alone).

Officers observed red marks and scratches on Newton's back and arms the night of the incident. The apartment in which Newton and Jackson lived was

in "total disarray" when officers arrived. Newton told officers what had occurred that night. As a result of her conversation with the officers and the investigation of what had occurred, Jackson was arrested for domestic abuse assault. The jury could reasonably conclude, based on the officers' observations, Newton's physical injuries, and her statements to the police, that Jackson assaulted Newton. Sufficient evidence supports the jury verdict, and we affirm the trial court on this issue.

Ineffective Assistance of Counsel. We review claims of ineffective assistance of counsel de novo. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996).

Ordinarily we reserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). "Even a lawyer is entitled to his day in court, especially when professional reputation is impugned." *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). We will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

The defendant bears the burden of demonstrating ineffective assistance of counsel. *State v. Morgan*, 559 N.W.2d 603, 612 (Iowa 1997); *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994); *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996). A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results. *Strickland v.*

Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). An ineffective assistance of counsel claim may be disposed of if the defendant fails to prove either prong. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997).

Jackson claims his counsel was ineffective for eliciting the inculpatory testimony of Erica Newton regarding the domestic abuse assault charge. Newton testified during Jackson's case-in-chief. Jackson contends without the elicitation of Newton's testimony by his attorney, the jury would not have been able to conclude Jackson and Newton qualified as "family or household members," there was substantial "continuity" to the relationship, or Jackson caused Newton's injuries.

We conclude the record in this case is insufficient for us to address Jackson's claim of ineffective assistance of counsel in this direct appeal. Therefore, we preserve the ineffective assistance of counsel claim for possible postconviction relief action, so the facts can be further developed.

AFFIRMED.