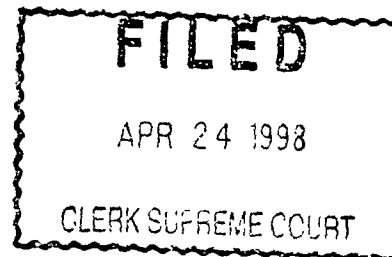


IN THE COURT OF APPEALS OF IOWA

No. 8-140 / 97-0340

Filed April 24, 1998

**STATE OF IOWA,**

Appellee,

vs.

JIMMY ROGER HUTSON,

Appellant.

Appeal from the Iowa District Court for Polk County, Linda Reade, Judge.

Jimmy Hutson appeals from his conviction, following a jury trial, for assault without intent to inflict serious injury but causing bodily injury in violation of Iowa Code sections 708.1(1) and 708.2(2) (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Huitink and Vogel, JJ. Streit, J., takes no part.

HUITINK, J.

Jimmy Roger Hutson appeals his conviction for assault without intent to inflict bodily injury but causing bodily injury.

I. Background Facts and Proceedings.

Hutson was charged with assault following an altercation with Catina Courtney. At trial Courtney testified Hutson grabbed her and threw her to the ground during an argument. The State called two additional witnesses who testified they saw Hutson grab Courtney and throw her to the ground.

Hutson denied Courtney's allegations. According to Hutson, Courtney initiated the altercation because she was angry at him for seeing another woman. Hutson testified Courtney fell when she grabbed him and he tried to push her away. Hutson's companion at the time of the altercation testified Courtney grabbed Hutson and fell when he tried to escape her grasp. On cross-examination, Hutson also denied any recent sexual relationship with Courtney.

Hutson was also asked the following questions on cross-examination:

Q. Do you recognize the name Jimmy Castelano?

A. No, I don't.

Q. You never used that name before?

A. No, I have not.

Q. Did you ever tell Catina Courtney that you were related to the Castelano crime family?

A. No, I haven't.

Q. -- in Chicago?

A. No, I haven't. I'm not from Chicago, I'm from New York City originally.

- Q. Did you ever tell her that you'd been convicted of a crime in federal court?
- A. I've never been convicted.
- Q. Well, that's not what I asked you.
- A. No, I have never told her that.

Although Hutson's attorney objected to these questions, the objection was overruled as untimely.

The State called Courtney as a rebuttal witness. She testified, over Hutson's objection, to a sexual relationship with Hutson on August 5, 1996.

On appeal, Hutson challenges the district court's ruling on his objection to Courtney's rebuttal testimony. He also claims he was denied effective assistance of counsel, citing counsel's failure to lodge a timely objection to questions concerning a prior criminal conviction and his alleged relationship to a crime family.

II. Impeachment Evidence.

On evidentiary issues, we review for an abuse of discretion. *State v. Halstead*, 362 N.W.2d 504, 506 (Iowa 1985). In order to show an abuse of discretion, one must generally show the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 326 A.2d 138, 140 (Vt. 1974)).

The limitations on the use of impeachment evidence are well settled. In *State v. Roth*, 403 N.W.2d 762 (Iowa 1987), the court stated:

Ordinarily a party may contradict and discredit an adverse witness by presenting evidence showing the facts were other than as indicated by the testimony of the witness

The offer of impeachment evidence, however, is not without limits. To be admissible, impeachment evidence must have been admissible for some proper purpose independent of the contradiction. Otherwise the impeachment evidence goes only to a collateral issue and is inadmissible. Evidence of two types is admissible independent of contradiction. First, the evidence may be admitted if relevant to some legitimate issue in the case. Second, the evidence is admissible if it is relevant to establishing or undermining the general credibility of the witness being impeached.

Evidence offered for the latter purpose is “limited to matters which bear on bias, peculiar skills, or relevant knowledge or which go to a specific testimonial quality.” *State v. Turecek*, 456 N.W.2d 219, 224 (Iowa 1990) (citing *State v. Gilmore*, 259 N.W.2d 846, 853) (Iowa 1977)).

The simplicity timing and focus of the State’s sex questions belie the substantial purposes upon which the State now relies as justification for its inquiry. We fail to see the relevancy of the State’s scorned woman explanation for Courtney’s confrontational behavior. Moreover, Courtney’s belief that Hutson’s sexual interest in her was exclusive had no bearing on Hutson’s bias, peculiar skills, or relevant knowledge. The record fails to disclose any proper purpose, independent of contradiction, justifying the State’s impeachment inquiry. Hutson’s sexual experience with Courtney was a collateral issue. His objections to the State’s impeachment inquiry should have been sustained.

Our consideration of this issue does not end with this determination. To establish reversible error, Hutson must show he was prejudiced by the district court’s erroneous evidentiary ruling. *State v. Ellis*, 350 N.W.2d 178, 181 (Iowa 1984).

“When a trial court error is not of constitutional magnitude, the test of prejudice is whether it sufficiently appears that the rights of the complaining party have been injuriously affected or that the party has suffered a miscarriage of justice.” *State v. Massey*, 275 N.W.2d 436, 439 (Iowa 1979) (citations omitted).

As noted earlier, the State’s case was fortified by the testimony of two eye witnesses. Their testimonial version was consistent with Courtney’s allegation that Hutson grabbed her and threw her to the ground. The probative force of their testimony was substantially enhanced by the absence of any circumstance indicating any hostile motive behind their testimony. Under these circumstances, we conclude any error resulting from the district court’s ruling was harmless. We affirm on this issue.

III. Ineffective Assistance of Counsel.

Our ultimate concern in claims of ineffective assistance is with the “fundamental fairness of the proceeding whose result is being challenged.” *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984)). We review de novo the totality of the circumstances relating to counsel’s conduct, keeping in mind the presumption that counsel performed competently. *Risdal*, 404 N.W.2d at 131. The burden is on the defendant to prove by a preponderance of the evidence that: (1) counsel failed to perform an essential duty; and (2) prejudice resulted. *Id.* at 131-32.

In proving the first prong of this test, appellant must overcome the strong presumption counsel's actions were reasonable under the circumstances and fell within the normal range of professional competency. *State v. Hildebrant*, 405 N.W.2d 839, 841 (Iowa 1987). To prove the second prong of this test appellant must show a “reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698 (1984). We may dispose of an ineffective assistance of counsel claim if defendant fails to meet either the breach of duty or the prejudice prong. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997).

We, for the same reasons cited above, fail to find the prejudice necessary to sustain Huston's ineffective assistance of counsel claim. Although the State's questions about Hutson's claims of prior criminal activity were objectionable, the resulting record is of little probative consequence. There is no reasonable probability of a different result even if a timely objection to the State's questions would have been sustained.

The judgment of the district court is affirmed.

AFFIRMED.