

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-1527

Matthew M. Tensley,

Appellant,

v.

Herb Maschner,

Appellee.

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* Appeal from the United States
* District Court for the
* Southern District of Iowa.
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* [UNPUBLISHED]
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Submitted: April 12, 2001
Filed: April 20, 2001

Before HANSEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

An Iowa jury found Matthew M. Tensley guilty of eight burglary offenses and one assault based on a series of residential burglaries committed in Davenport in the summer of 1992. After the Iowa courts affirmed Tensley's convictions and denied him postconviction relief, he initiated this 28 U.S.C. § 2254 habeas petition. As relevant to this appeal, he claimed that his trial counsel rendered ineffective assistance by failing

to object to, and to have recorded, the prosecutor's allegedly improper closing argument. The district court¹ denied relief, Tensley appeals, and we affirm.

Following careful review, see Forest v. Delo, 52 F.3d 716, 721 (8th Cir. 1995), we agree with the district court that Tensley's claim of ineffective assistance fails because he did not demonstrate he was prejudiced by counsel's alleged deficient performance, see Strickland v. Washington, 466 U.S. 668, 693-94 (1984). The trial evidence of Tensley's guilt was strong, and the jury was properly instructed after the alleged prosecutorial misconduct occurred. See Kellogg v. Skon, 176 F.3d 447, 451-52 (8th Cir. 1999) (during closing argument, prosecutor misstated law by saying presumption of innocence had been "removed," and improperly made personal expressions concerning defendant's culpability; nevertheless, remarks did not make entire trial fundamentally unfair, jury was properly instructed, and weight of evidence was heavy; ineffectiveness claim based on failure to object to prosecutor's improper comments failed for lack of demonstrable prejudice); Roberts v. Bowersox, 137 F.3d 1062, 1066 (8th Cir. 1998) (prosecutorial misconduct does not warrant federal habeas relief unless misconduct infected trial with enough unfairness to render conviction a denial of due process), cert. denied, 525 U.S. 1073 (1999).

Accordingly, we affirm the judgment of the district court.

¹The Honorable Ross A. Walters, United States Magistrate Judge for the Southern District of Iowa, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636(c).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.