

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 18-1119
)
 JAMES L. MATHIAS,)
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
HONORABLE NANCY S. TABOR AND
HONORABLE HENRY W. LATHAM II, JUDGES

APPELLANT'S BRIEF AND ARGUMENT

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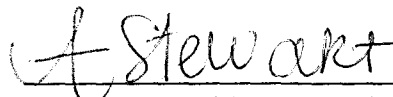
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CERTIFICATE OF SERVICE

On the 28th day of February, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to James L. Mathias, 1736 W. 48th Street, Davenport, IA 52806.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THAT THE BRADY STREET STADIUM AND PARKING LOT WERE “GROUNDS OF A SCHOOL” AS REQUIRED BY IOWA CODE § 724.4B?

Authorities

State v. Truesdell, 679 N.W. 2d 611, 615 (Iowa 2004)

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Iowa R. App. P. 14(f)(14)

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Iowa Code § 692A.113

**II. WHETHER THE DISTRICT COURT ERRED BY
SUBMITTING AN INCORRECT JURY INSTRUCTION THAT
PROVIDED AN IMPROPER DEFINITION OF “GROUNDS OF A
SCHOOL” WHICH RESULTED IN MISDIRECTING THE JURY
ON A MATERIAL MATTER OF LAW?**

Authorities

State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983)

Alicia v. Marriot International, Inc., 880 N.W.2d 699, 707
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State v. Ambrose, 861 N.W. 2d 550, 554 (Iowa 2015)

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Iowa R. Crim. P. 18 (5)(f) (2015)

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State v. Hoffer, 383 N.W.2d 543, 548 (Iowa 1986)

Metier v. Cooper Transportation Co. Inc., 378 N.W.2d 90, 93 (Iowa 1985)

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issue raised involves a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(c).

STATEMENT OF THE CASE

Nature of Case

This is an appeal from Defendant-Appellant James L. Mathias (hereafter “Mathias”) from his conviction and sentence for Carrying Weapons, a class “D” felony, in violation of Iowa Code § 724.4B entered following a jury trial.

Course of Proceeding and Disposition in District Court

On February 19, 2018, the State filed a trial information charging Mathias with carrying, going armed with, or transporting a firearm, to wit: a handgun while on school grounds in violation of Iowa Code § 724.4B. (Tr. Info. p. 1) (App. p. 4). Mathias pled not guilty on February 21, 2018. (Written Arraignment and Plea of Not Guilty) (App. pp. 7-8).

On February 23, 2018, Mathias filed a motion to dismiss arguing that the Brady Street Stadium, where he was located at the time he was allegedly carrying a handgun, should not be considered the “grounds of a school”. (02/23/ 2018 M. to Dis., p. 1-5) (App. pp. 9-13). On April 2, 2018, Mathias filed a motion to suppress stating his Fourth Amendment rights under the United States Constitution and article I, § 10 of the Iowa Constitution were violated. (04/02/2018 M. to Supp. p. 1-5) (App. pp. 14-18). Both Mathias’ motions were denied. (04/18/2018 Ruling on M. to Dis. and Supp. p.1-12) (App. pp. 19-30).

Mathias’ jury trial began on May 7, 2018. (Tr. Tran. p.1). Mathias was found guilty as charged on May 9, 2018. (Tr. Tran. p. 330, L1- p. 331, L23; 06/28/2018 Order of Disp. p. 1-3) (App. pp. 34-36). On June 28, 2018, Mathias was sentenced to the custody of the Iowa Department of Corrections for a period not to exceed five years and a \$750.00 fine was imposed. The Court suspended the sentence and Mathias was placed on probation under the supervision of the Seventh

Judicial District Department of Correctional Services for a period of three years. (Sent. Tran. p. 9, L19- p. 10, L5; Order of Disp. p. 1-3) (App. pp. 34-36).

Mathias filed a timely notice of appeal on June 28, 2018. (Notice) (App. p. 37).

Facts

On September 22, 2017, Mathias' was at the west end of the Brady Street Stadium, in a parking lot placing flyers on vehicles parked in the lot. (Tr. Tran. p. 264, L1-2; p. 266, L21-25; Ex. 7) (Ex. App. p. 14). On the same evening, Officer Jamie Brown, (hereafter "Officer Brown") a captain with the Davenport Police Department, was working, off-duty and in uniform, at Brady Street Stadium. (Tr. Tran. p. 261, L9-20; p. 263, L6-7, L13-16). Officer Brown was near the south end of the stadium, near the ticket booth, when he was approached by an unidentified, female patron. The unidentified patron handed Officer Brown a flyer and told him a man was distributing them on cars. (Tr. Tran. p. 266, L3-6).

Officer Brown decided to find Mathias and investigate. (Tr. Tran. p. 266, L17-20). Officer Brown located Mathias in west end of the stadium in the back of the parking lot, close to Brady Street. (Tr. Tran. p. 266, L25- p. 267, L1-2).

Officer Brown approached Mathias, who was standing next to a vehicle, putting a flyer on it, and asked Mathias what he was doing. Mathias responded by stating “freedom of speech.” (Tr. Tran. p. 267, L20-25). Officer Brown requested Mathias’ identification and Mathias complied. While Mathias was reaching for identification, his shirt rose up and Officer Brown saw a “bulge” on Mathias’ side. Officer Brown asked Mathias if he had a firearm. Mathias answered in the affirmative stated that he had a permit and presented his permit to Officer Brown. (Tr. Tran. p. 268, L1-7).

Officer Brown then performed a “wanted check” on Mathias and after the “information came back”, Officer Brown ordered Mathias off the property. (Tr. Tran. p. 268, L 15-21). Officer Brown did not arrest Mathias that night. (Tr. Tran. p. 271, L2-3).

Sometime after September 22, 2017 and his encounter with Mathias, Officer Brown met with the Scott County Attorney to determine if Brady Street Stadium applied as a “school” for purposes of carrying a weapon on the “grounds of a school” under the applicable law. (Tr. Tran. p. 272, L2-15).

Additional facts relevant to specific legal issues will be discussed below as necessary.

Argument

I. THE DISTRICT COURT ERRED IN DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THAT THE BRADY STREET STADIUM AND PARKING LOT WERE “GROUNDS OF A SCHOOL” AS REQUIRED BY IOWA CODE §724.4B.

A. Preservation of Error: To preserve error on a claim of insufficient evidence for appellate review in a criminal case, the defendant must make a motion for judgment of acquittal that identifies the specific grounds raised on appeal. State v. Truesdell, 679 N.W. 2d 611, 615 (Iowa 2004).

At the close of the State’s evidence, Mathias moved for a judgment of acquittal based on the State’s failure to establish

that Mathias was carrying a weapon on the grounds of a school. Mathias argued that the State failed to prove that the Brady Street Stadium or its parking lot are the “grounds of a school” encompassed by Iowa Code § 724.4B. The motion was denied. (Tr. p. 285, L22 - p. 287, L1-7; p. 289, L6- p. 290, L17).

Mathias moved for a judgment of acquittal at the conclusion of the trial for the same reasons and it was similarly denied. (Tr. p. 290, L20- p. 291, L9). Therefore, error was preserved.

To the extent this Court concludes that error was not properly preserved for any reason, Mathias requests that the issue be considered under the Court’s familiar ineffective assistance of counsel framework. State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983).

B. Standard of Review: Claims of insufficiency of the evidence are reviewed for correction of errors of law. State v. Sanford, 814 N.W.2d 611, 615 (Iowa 2012). Claims reviewed under the ineffective assistance of counsel rubric are review de novo. Taylor v. State, 352 N.W.2d 683, 684 (Iowa 1984).

C. Discussion: “In reviewing challenges to the sufficiency of the evidence supporting a guilty verdict, courts consider all the record evidence viewed in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence.” Sanford, 814 N.W.2d at 615 (quoting State v. Keopasaeth, 645 N.W.2d 637, 639-40 (Iowa 2002)). The Court should uphold the verdict only if it is supported by substantial evidence in the record as a whole. Sanford at 615. “Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.” State v. Kemp, 688 N.W.2d 785 (Iowa 2004)(citing State v. Webb, 648 N.W.2d 72, 75 (Iowa 2002)). However, consideration must be given to all of the evidence, not just the evidence supporting the verdict. State v. Petithory, 702 N.W.2d 854, 856-57 (Iowa 2005)(citation omitted). “The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.” Webb, 648, N.W.2d at 76 (citing State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981)).

The State has the burden of proving “every fact necessary to constitute the crime with which the defendant is charged.” State v. Webb, 648 N.W.2d 72, 76 (Iowa 2002)(citing State v. Gibbs, 239 N.W.2d 866, 867 (Iowa 1976). See also State v. Limbrecht, 600 N.W.2d 316, 317 (Iowa 1999)(citing State v. Harrison, 325 N.W.2d 770, 772-73 (Iowa Ct. App. 1982)(“that the record must show that the State produced substantial evidence on each of the essential elements of the crime.”).

For the State to prove its case, it must show that:

1. On or about the 22nd of September 2017, the Defendant did go armed with carry, or transport a firearm.
2. The Defendant did so while on the grounds of a school.

If the State proved both of these elements beyond a reasonable doubt, the defendant is guilty of Carrying Weapons. If the State has failed to prove that either element 1 or 2 beyond a reasonable doubt, the Defendant is not guilty.

(Jury Instruction No. 16)(App. p. 32). The State failed to establish that Mathias violated the second element: “while on school grounds”.

In order to determine if the state proved that Mathias was carrying a weapon on the “grounds of a school” this Court must look at statutory construction.

“The goal of statutory construction is to determine legislative intent.” State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006)(quoting State v. Gonzalez, 718 N.W.2d 304, 307 (Iowa 2006)).

[The Court] determine[s] legislative intent from the words chosen by the legislature, not what it should or might have said. Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary and common meaning by considering the context within which they are used. Under the guise of construction, an interpreting body may not extend, enlarge, or otherwise change the meaning of a statute.

State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006)(quoting State v. Gonzalez, 718 N.W.2d 304, 307 (Iowa 2006)).

[The Court] look[s] at a statute in its entirety and [it] avoid[s] interpreting a statute in such a way that portions of it become redundant or irrelevant. [The Court] search[es] for an interpretation that is reasonable, best achieves the statute’s purpose, and avoids absurd results. [The Court] construe[s] criminal statutes strictly with doubts resolved in favor of the accused. If a standard of conduct can be reasonably ascertained by referring to prior judicial decisions, similar statutes, the dictionary or common generally accepted usage, the statute meets the requirements of due process.

State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006)(internal citations omitted).

Mathias was charged with carrying a firearm on the “grounds of a school” in violation of Iowa Code § 724.4B. Iowa Code § 724.4B, the statute defining carrying firearms on school grounds, provides in relevant part:

1. A person who goes arms with, carries, or transports a firearm of any kind, whether concealed or not, on the grounds of a school commits a class “D” felony. For the purposes of this section, “school” means a public or nonpublic school as defined in section 280.2.

Iowa Code § 724.4B (2017).

Specifically at issue here, is whether Brady Street Stadium and its parking lot meet the definition of “grounds of a school.” This Court must first interpret the meaning of the statute. The legislature defined the difference between non-public and public in Iowa Code § 280.2, which states:

As used in this chapter, unless context otherwise requires:

1. Nonpublic school” means any school other than a public school, which is accredited pursuant to Section 256.11.
2. “Public school” means any school directly supported in whole or in part by taxation.

Iowa Code § 280.2 (2017).

Because the legislature has not given further statutory definitions of a school and the court has not established a meaning, the word is given its ordinary and common meaning by considering the context within which they are used. State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006).

School is generally defined as “an institution for the instruction of children or people under college age.” *The American Heritage Dictionary*, 289 (3rd Ed. 1993). *Black’s Law Dictionary* (10th Ed. 2014) defines a school as an institution of learning and education especially for children.

Further, because the legislature has not given a statutory definition of grounds and the court has not established a meaning, the word is also given its ordinary and common meaning. Bower, 725 N.W.2d 435, 442 (Iowa 2006).

In the dictionary, ground is defined as the land surrounding or forming part of a house or another building. Often use in the plural. *The American Heritage Dictionary*, 289 (3rd Ed. 1993).

If the legislature would have wanted to include athletic stadiums, parks, or other non-institutions of learning or instruction within this statute, it surely would have done so. Iowa R. App. P. 14(f)(14) (court looks to what the legislature actually said and not what it should or might have said). See State v. Muhlenbruch, 728 N.W. 2d 212, 214 (Iowa 2007) (Statutory interpretation may express the legislative intent by omission as well as inclusion.). See also Iowa Code § 692A.113 (specifically banning sex offenders from being present of within 300 hundred feet of the premises of any place intended primarily for the use of minors.).

Within the context of the carrying weapons on the “grounds of school” as described in the statute and based on the common meaning in the dictionary definition of the language, school means a place of instruction and learning not the Brady Street stadium. Additionally, when taken in context and in consideration of the definition of grounds, “grounds of a school” should be taken to mean the separate land on which an

institution for instruction is built upon not land on which a football stadium and parking lot are erected.

D. Conclusion: Because Brady Street Stadium should not have been considered to be a “school” or “grounds of a school” there was insufficient evidence to prove that Mathias violated element two: carrying a weapon on the “grounds of school” under the Iowa Code § 724.4B. Mathias’ conviction should be reversed and the case dismissed.

II. THE DISTRICT COURT ERRED BY SUBMITTING AN INCORRECT JURY INSTRUCTION THAT PROVIDED AN IMPROPER DEFINITION OF “GROUNDS OF A SCHOOL” WHICH RESULTED IN MISDIRECTING THE JURY ON A MATERIAL MATTER OF LAW.

A. Preservation of Error: Error was preserved by Mathias’ objection to proposed jury instruction number 18, defining “grounds of school.” Mathias objection was based on the “idea of providing a definition when there is no case law and no definition provided by the statute.” (Tr. p. 297, L10-23; Jury Instruction No. 18) (App. p. 33). The state resisted the objection and the Court overruled the objection. (Tr. p.297, L24-p.299 L9). Therefore, error was preserved.

To the extent this Court concludes that error was not properly preserved for any reason, Mathias requests that the issue be considered under the Court's familiar ineffective assistance of counsel framework. State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983).

B. Standard of Review: Alleged errors in the submission or refusal to submit jury instructions are reviewed for corrections of law. Alicia v. Marriot International, Inc., 880 N.W.2d 699, 707 (Iowa 2016). Errors in jury instructions are presumed prejudicial unless "a lack of prejudice is shown beyond a reasonable doubt." State v. Ambrose, 861 N.W. 2d 550, 554 (Iowa 2015). This Court reviews jury instructions as a whole to determine whether the jury instruction correctly stated the law. State v. Hines, 790 N.W.2d 545 (Iowa 2010).

C. Discussion: The trial court is required to instruct the jury on the applicable law. Iowa R. Crim. P. 18 (5)(f) (2015). Jury instructions should thoroughly and fully present and explain the issues and applicable law to enable the jury to apply the facts to the law in reaching the verdict. State v. Bennett,

503 N.W.2d 42, 45 (Iowa Ct. App. 1993)(citing State v. Freeman, 267 N.W.2d 69, 71 (Iowa 1989). To this end, the trial court must see to it that the jury has a clear understanding of what exactly it is to decide. However, the instructions must be read together and not piecemeal. If an instruction is incorrect, misleading, or fails to convey the applicable law, it is erroneous. Bennett at 45 (citations omitted).

In a criminal trial, the trial court is required to instruct the jury by defining the crime. State v. Virgil, 895 N.W.2d 873, 882 (Iowa 2017)(citing State v. Hoffer, 383 N.W.2d 543, 548 (Iowa 1986). Words of ordinary usage and that are generally understood need not to be defined. State v. Kellogg, 542 N.W.2d 514, 516 (Iowa 1996).

However, technical terms or words of art with technical, legal meaning, in contrast to those with an ordinary meaning, should be defined. State v. Hoffer, 383 N.W.2d 543, 548 (Iowa 1986). This is so because the instructions are the only guide the jury has for the correct application of the law to the facts. Gibbs v. Wilmeth, 157 N.W.2d 93, 97-98 (Iowa 1968). The trial

court is not necessarily obligated to express a legal concept in the words chosen by the defendant as long as the concept was properly conveyed to the jury. State v. Carpenter, 334 N.W.2d 137, 141 (Iowa 1983).

Iowa Code § 724.4B provides that:

“A person who goes armed with, carries, or transports a firearm of any kind, whether concealed or not, on the ‘grounds of a school’ commits a Class “D” felony. For the purposes of this section, “school” means a public or non-public school as defined by § 280.2.”

Iowa Code § 724.4B (2017).

Iowa Code § 280.2 provides, in pertinent part, as follows:

As used in this chapter, unless context otherwise requires:

1. “Nonpublic school” means any school other than a public school, which is accredited pursuant to Section 256.11.
2. “Public school” means any school directly supported in whole or in part by taxation.

Iowa Code § 280.2 (2015).

The marshalling instruction provided by the Court was:

“The phrase “grounds of **school** “may include recreational facilities, cultural facilities, or school buildings at which instruction was given.”

(Jury instruction No. 18) (App. p. 33)(emphasis added).

The court submitted an erroneous definition for the term school within “the grounds of school” terminology. The provision of § 280.2 does not extend to cultural facilities or recreational facilities as expressed in the jury instruction. (Jury Instruction No. 18) (App. p. 33).

When a statute's text is plain and its meaning clear, a court will not search for a meaning beyond the statute's express terms. The terms of a statute must be enforced as written. State v. Iowa District Court for Johnson County, 730 N.W.2d 677, 679 (Iowa 2007).

Criminal statutes are inelastic and cannot by construction be made to embrace cases that are plainly beyond the statute's express terms even though within the reason and policy of the law. State v. Muhlenbruch, 728 N.W.2d 212, 214 (Iowa 2007).

A court may not enlarge or otherwise change the terms of statute as adopted by the legislature. A court must reject a proposed interpretation of a statute that would require the court to read something into the law that is not apparent from the words chosen by the legislature. State v. Iowa District

Court for Johnson County, 730 N.W.2d 677, 679 (Iowa 2007).

A court will look at a statute in its entirety and will avoid interpreting a statute in such a way that portions of it become redundant or irrelevant. Bower at 442.

Moreover, if the term “grounds of school” is a term of art, the court should have correctly instructed the jury on the definition within the statute. However, the definition submitted by the district court was erroneous, under any definition, legal or ordinary. See State v. Hoffer, 383 N.W.2d 543, 548 (Iowa 1986).

The court’s definition essentially amounted to a directed verdict for the State once it was determined that Mathias was in possession of a weapon.

D. Conclusion: Iowa Code § 724.4B was not intended to include football fields or other recreational facilities or cultural facilities that are not used for instruction for children. Additionally, the statute did not intend to include buildings, stadiums, or fields that are not attached to a school. Any other conclusion would lead to an impractical abused result. See

Metier v. Cooper Transportation Co. Inc., 378 N.W.2d 90, 93
(Iowa 1985)(statutory construction should avoid impractical
and absurd results). Therefore, Mathias' conviction should be
reversed and remanded for dismissal.

ORAL SUBMISSION

Counsel requests to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of
producing the necessary copies of the foregoing Brief and
Argument was \$2-97, and that amount has been paid in
full by the Office of the Appellate Defender.

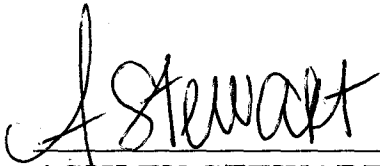
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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION
FOR BRIEFS**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 3,292 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



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