IN THE COURT OF APPEALS OF IOWA

No. 6-672 / 05-1342
Filed October 11, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONNIE O'NEAL SHIVERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Fredrick E. Breen, District Associate Judge.

Ronnie O'Neal Shivers appeals his conviction and sentence for domestic abuse assault causing bodily injury with enhanced penalty. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann Brenden, Assistant Attorney General, Timothy Schott, County Attorney, and Jonathan Beaty, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

Ronnie O'Neal Shivers appeals his conviction and sentence for domestic abuse assault causing bodily injury with the enhanced penalty in violation of Iowa Code sections 708.2A(1) and 708.2A(3)(b) (2003). We affirm.

Following a jury trial, Shivers was convicted of domestic abuse assault causing bodily injury in violation of Iowa Code sections 708.2A(1) and 708.2A(3)(b). On appeal Shivers contends he was denied effective assistance of trial counsel, citing counsel's failure to request a jury instruction defining specific intent.

Our review of an allegation of ineffective assistance of counsel is de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim for ineffective assistance of counsel, Shivers has the burden to prove (1) counsel failed in an essential duty and (2) prejudice resulted therefrom. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Ledezma*, 626 N.W.2d 134, 142 (Iowa 2001); *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999).

Here, the jury was instructed that in order to find Shivers guilty the State was required to prove:

> 1. The Defendant did an act which was intended to (a) cause pain or injury to Libby Degan or (2) result in contact which was insulting or offensive to her or (3) put her in fear of an immediate contact which would have been painful, injurious, insulting or offensive to her.
>
> 2. The Defendant had the apparent ability to do the act.
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> 3. The Defendant's act caused a bodily injury to Libby Degan.

> 4. The Defendant and Libby Degan were parents of the same minor child or children.

In *State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003), the court said:

> In order for there to be a criminal assault, it must be shown that the act was either "intended to cause pain or injury to, or . . . intended to result in physical contact which will be insulting or offensive to another," or "intended to place another in fear of immediate physical contact, which will be painful, injurious, insulting, or offensive." Iowa Code § 708.1(1), (2). These elements of proof have caused us to describe the basic assault offense, either standing alone, or as the predicate for a more serious felonious assault, as a specific-tent crime. *State v. Heard*, 636 N.W.2d 227, 231 (Iowa 2001)

Because the language used in the foregoing instruction is the same as the supreme court interpreted to mean specific intent, no further clarifying language was needed to inform the jury that the submitted offense was a specific intent crime. Moreover, the challenged instruction tracks the Iowa Uniform Criminal Jury Instructions. We are reluctant to disapprove uniform jury instructions. *State v. Beets*, 528 N.W.2d 521, 523 (Iowa 1995). Under these circumstances, trial counsel had no duty to make a meritless objection to the court's proposed jury instructions. *See State v. Hockins*, 586 N.W.2d 707, 709 (Iowa 1998).

AFFIRMED.