

IN THE COURT OF APPEALS OF IOWA

No. 8-867 / 07-1839
Filed December 17, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DETARUS RAYSHOD JEFFERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

Detarus Jefferson appeals following conviction and sentence for intimidation with a dangerous weapon and carrying a weapon. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

Detarus Jefferson appeals following conviction and sentence for intimidation with a dangerous weapon, in violation of Iowa Code section 708.6 (2007), and carrying a weapon, in violation of section 714.4. He asserts his trial counsel was ineffective in failing to object to the marshaling instruction for intimidation with a dangerous weapon. We affirm.

To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Maxwell*, 743 N.W.2d 185, 196 (Iowa 2008). A defendant's failure to prove either element by a preponderance of the evidence is fatal to a claim of ineffective assistance. *State v. Polly*, 657 N.W.2d 462, 465 (Iowa 2003). Ineffective-assistance-of-counsel claims are constitutional in nature, and as such, our review is de novo. *Millam v. State*, 745 N.W.2d 719, 721 (Iowa 2008).

Jefferson asserts his trial counsel was ineffective in failing to object to the marshaling instruction for intimidation with a dangerous weapon. Specifically, Jefferson claims his counsel erred in failing to ensure the instructions correctly defined "within an assembly of people."

To convict Jefferson of intimidation with a dangerous weapon, the State was required to prove the following elements:

1. On or about the 14th day of May, 2007, the Defendant threatened to shoot or discharge a handgun:
 - a. At or into a building which was occupied by Michael Holmes, Tremaine Toles or Jequarius Owens or
 - b. [W]ithin an assembly of people.
2. The handgun was a dangerous weapon, as explained in Instruction No. 21.

3. The Defendant made the threat under circumstances raising a reasonable expectation that the threat would be carried out.
4. The Defendant threatened to shoot or discharge the handgun with the specific intent to injure or cause fear or anger in Michael Holmes, Tremaine Toles or Jequarius Owens or the assembly of people.

Jury Instruction No. 20.

The phrase “within an assembly of people” was defined in Jury Instruction No. 22 as “into or through two or more persons at the same place.”

Jefferson argues that Iowa Code section 708.6 (intimidation with a dangerous weapon) requires the offender be inside and a part of the assembly of people. Because the instruction given did not so require, Jefferson argues counsel was ineffective in failing to object. We find this argument to be without merit.

Our supreme court has previously defined “within an assembly of people” as follows:

Because the legislature did not define “within an assembly of people,” we believe it intended the phrase to have its common and ordinary meaning. *State v. Hennenfent*, 490 N.W.2d 299, 300 (Iowa 1992). In interpreting undefined statutory language, we—as did the jury—give this phrase its common and ordinary meaning. According to Black’s Law Dictionary, “within” means “into” or “through.” Black’s Law Dictionary 1602 (6th ed. 1990). “Assembly” is defined as “[t]he concourse or meeting together of a considerable number of persons at the same place.” *Id.* at 115. Black’s goes on to say that a “considerable” number of persons “does not necessarily mean a very great or any particular number of persons; the term ‘considerable’ being merely relative.” *Id.* at 306.

We believe a reasonable, common, and ordinary definition of “within an assembly of people” under the Black’s interpretation is “into or through two or more persons at the same place.”

State v. Bush, 518 N.W.2d 778, 780 (Iowa 1994) (emphasis added). While the facts presented in *Bush* were such that the shooter was within a ring of people

when he fired the shot, *id.*, *Bush* did not hold that section 708.6 requires the shooter to be inside and a part of the assembly of people as defendant argues.

The act prohibited “thereby places the . . . people in reasonable apprehension of serious injury. . . .” Iowa Code § 708.6; see *Bush*, 518 N.W.2d at 780 (noting that “the jury could also reasonably find that Bobby fired the shot through this ring of people, *thereby subjecting them to the obvious risk of severe injury or even death*”) (emphasis added). The statutory focus is where the shot is directed, not on the location of the shooter. The harm to be avoided is the aiming and firing of a dangerous weapon “into or through two or more persons at the same place.” *Bush*, 518 N.W.2d at 780.

As the State notes, Jefferson’s interpretation of section 708.6 would cover the actions of the defendant in *Bush*, but would not apply to a sniper firing from a rooftop into a cluster of people. Such an interpretation would lead to illogical results, and this court will not so construe the statute. Criminal statutes must be construed reasonably. *State v. Peck*, 539 N.W.2d 170, 173 (Iowa 1995).

Here, Jefferson, while riding in a vehicle, waved a handgun at the group of people on Michael Holmes’s front porch. The jury could easily find that Jefferson threatened to discharge his gun “within an assembly of people.”

The jury instructions given appropriately defined “within an assembly of people.” Counsel was not required to object, and Jefferson’s ineffectiveness claim thus fails. We affirm.

AFFIRMED.