

IN THE COURT OF APPEALS OF IOWA

No. 9-317 / 08-0446
Filed May 29, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FREDERICK BRAGGS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson,
Judge.

Defendant claims that trial counsel was ineffective for failing to challenge
submission of a jury instruction that included assault as a lesser offense to the
crime of attempt to commit murder. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney
General, John P. Sarcone, County Attorney, and James Ward, Assistant County
Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

A man entered a Des Moines apartment without permission and repeatedly stabbed a woman. The State subsequently charged Frederick Braggs with several crimes including attempted murder in violation of Iowa Code section 707.11 (2007). At trial, the jury was instructed on the elements of attempted murder and the elements of assault as a lesser-included offense of attempted murder. The jury found Braggs guilty of the lesser offense of assault.¹

On appeal, Braggs contends “trial counsel was ineffective for not objecting to the inclusion of assault as a lesser-included offense to the offense attempt to commit murder.” He maintains that, absent the instruction on this lesser-included offense, the jury simply would have found him not guilty of attempted murder.

Braggs faces a significant hurdle because, long before his trial, Iowa courts held that assault is a lesser-included offense of attempt to commit murder. See *State v. Lockett*, 387 N.W.2d 298, 299 (Iowa 1986); *State v. Powers*, 278 N.W.2d 26, 28 (Iowa 1979); *Blanford v. State*, 340 N.W.2d 796, 797 (Iowa Ct. App. 1983). As the issue was well-settled, trial counsel had no duty to raise it. See *Millam v. State*, 745 N.W.2d 719, 721–22 (Iowa 2008). For the same reason, counsel also did not have an obligation to parse the cited case law and question its validity, as Braggs maintains. See *id.* at 722 (“We do not expect counsel to anticipate changes in the law, and counsel will not be found ineffective for a lack of ‘clairvoyance.’”); *State v. Hepperle*, 530 N.W.2d 735, 740 (Iowa 1995) (stating counsel did not breach an essential duty by failing to “predict” or

¹ The remaining crimes are not at issue on appeal.

“foresee future changes” in the law). Accordingly, Braggs’s ineffective-assistance-of-counsel claim fails.

We affirm Braggs’s judgment and sentence.

AFFIRMED.