

IN THE COURT OF APPEALS OF IOWA

No. 9-319 / 08-0532
Filed May 29, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES ALEXANDER EVANS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,
Judge.

Defendant claims that trial counsel was ineffective for failing to challenge submission of a jury instruction that included assault with intent to cause serious injury 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, Thomas Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank Severino, Assistant County Attorney, for appellee.

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

VAITHESWARAN, P.J.

The State charged James Alexander Evans with several crimes, including attempted murder, in connection with a robbery at a Des Moines store and a later series of shots directed towards the store manager. See Iowa Code § 707.11 (2007). At trial, the jury was instructed on the elements of attempted murder and the elements of assault with intent to inflict serious injury, a lesser-included offense of attempted murder. The jury found Evans guilty of the lesser offense of assault with intent to inflict serious injury.¹

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

Evans faces a significant hurdle because, long before his trial, Iowa courts held that assault with intent to inflict serious injury is a lesser-included offense of attempt to commit murder. *Blanford v. State*, 340 N.W.2d 796, 797 (Iowa Ct. App. 1983); see *State v. Lockett*, 387 N.W.2d 298, 299 (Iowa 1986); *State v. Powers*, 278 N.W.2d 26, 28 (Iowa 1978). 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 Evans 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

¹ The remaining crimes are not at issue on appeal.

N.W.2d 735, 740 (Iowa 1995) (stating counsel did not breach an essential duty by failing to “predict” or “foresee future changes” in the law). Accordingly, Evans’s ineffective-assistance-of-counsel claim fails.

We affirm Evans’s judgment and sentence.

AFFIRMED.