

IN THE COURT OF APPEALS OF IOWA

No. 1-356 / 10-1533
Filed July 13, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTHONY FURNILE JACKSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

A defendant appeals his conviction for intimidation with a dangerous
weapon in violation of Iowa Code section 708.6 (2009). **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant
Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.* Tabor, J.,
takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

Anthony Jackson was convicted of (Count I) intimidation with a dangerous weapon in violation of Iowa Code section 708.6 (2009); (Count II) going armed with intent in violation of Iowa Code section 708.8; (Count III) carrying weapons in violation of Iowa Code section 724.4(1); and (Count IV) possession of a firearm as a felon in violation of Iowa Code section 724.26. On appeal, Jackson only challenges his conviction for intimidation with a dangerous weapon. He argues his trial counsel was ineffective for failing to move for a judgment of acquittal because there was insufficient evidence (1) he fired his handgun into an assembly of people, and (2) the victims experienced fear of serious injury and the fear was reasonable under the existing circumstances.¹

Our review is de novo. See *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). To establish an ineffective-assistance-of-counsel claim, a defendant must demonstrate (1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice. *Id.*

A claim of ineffective assistance of trial counsel based on the failure of counsel to raise a claim of insufficient evidence to support a conviction is a matter that normally can be decided on direct appeal. Clearly, if the record in this case fails to reveal substantial

¹ Jackson's brief has two argument sections. In the first section, he argues that there was insufficient evidence (1) he fired his gun into an assembly of people, and (2) the victims experienced fear of serious injury and the fear was reasonable under the existing circumstances. However, he acknowledges and the State argues that error was not preserved on this claim. These specific grounds were not raised before the district court and therefore are not preserved for appeal. See *State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004) ("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 at trial that identifies the specific grounds raised on appeal.").

In the second section, Jackson argues that counsel was ineffective for failing to properly articulate his motion for judgment of acquittal based upon the sufficiency-of-the-evidence grounds raised in the first section. Therefore, we analyze Jackson's claim under an ineffective-assistance-of-counsel rubric.

evidence to support the convictions, counsel was ineffective for failing to properly raise the issue and prejudice resulted. On the other hand, if the record reveals substantial evidence, counsel's failure to raise the claim of error could not be prejudicial.

State v. Truesdell, 679 N.W.2d 611, 616 (Iowa 2004). We find the record is sufficient to address Jackson's claim.

The testimony demonstrated that three or four people were gathered on the porch of a house. Jackson stopped the car he was driving near the house and fired a handgun toward the group of people. Jackson first asserts "there is no proof that defendant discharged a handgun into an occupied building or an assembly." We find this argument is without merit. Several witnesses testified as to the circumstances surrounding the shooting, including that three or four people were standing on the porch when Jackson stopped and began shooting. See *State v. Bush*, 518 N.W.2d 778, 780 (Iowa 1994) (defining "within an assembly of people" as "into or through two or more persons at the same place"). Jackson himself testified that at one time he intended "to go there and shoot" and he did shoot at the group of people, although he claimed it was in self defense.

Next Jackson argues the evidence failed to show any victim actually experienced fear of serious injury and the fear was reasonable under the existing circumstances. A witness who was on the porch when the shooting occurred testified that she saw Jackson's vehicle stop, heard shots come from the direction of the vehicle, and ran into the house. Jackson argues that because she "wasn't looking at the vehicle when she heard the shots[, s]he could not have possibly have been a victim while being unaware of the origin of the shots." Again, we find this argument without merit. There is no requirement in the

statute that someone being shot at actually see the shots being fired in order to be considered a victim. After the shooting began, she was aware of where the shooting was coming from and ran into the house where she found her sister was calling the police. See *id.* (explaining that the defendant shot at an assembly of people, “thereby subjecting them to the obvious risk of severe injury or even death”). We find Jackson’s conviction was supported by sufficient evidence. Consequently, Jackson’s trial counsel had no duty to make a motion arguing otherwise and Jackson’s ineffective-assistance-of-counsel claim must fail. We affirm.

AFFIRMED.