IN THE COURT OF APPEALS OF IOWA

No. 3-706 / 12-0956
Filed August 21, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHAD MICHAEL LEE WELSH,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

Defendant appeals from his conviction for nonconsensual termination of a human pregnancy. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, Michael J. Walton, County Attorney, and Amy Devine, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Chad Michael Lee Welsh was convicted of nonconsensual termination of a human pregnancy in violation of Iowa Code section 707.8(1) (2007). On appeal, he argues he received ineffective assistance from his trial attorney. Specifically, he contends that counsel was ineffective for failing to move for a judgment of acquittal on the basis there was insufficient evidence that he "recklessly" terminated the pregnancy. Because counsel invited the district court's error and had no duty to predict the existence of the issue at the time of counsel's motion for judgment of acquittal, we affirm.

A defendant may raise an ineffective assistance claim on direct appeal if he has reasonable grounds to believe the record is adequate for us to address the claim on direct appeal. *State v. Straw*, 709 N.W. 2d 128, 133 (Iowa 2006). If we determine the record is adequate, we may decide the claim. *Id*. We review claims for ineffective assistance of counsel de novo. *Id*.

In this case, the record is adequate for us to address Welsh's claims. Although trial counsel did make a motion for judgment of acquittal, he never identified the State's failure to meet its burden regarding the element of "recklessness." However, as Welsh admits, the "[nonconsensual termination] statute on its face does not explicitly require recklessness in the commission of the criminal act." The statute provides, "A person who terminates a human pregnancy without the consent of the pregnant person during the commission of a forcible felony is guilty of a class 'B' felony." Iowa Code § 707.8(1). In this case, the jury instructions included "reckless" as one of the elements only

because the defendant requested it be included. The request was not made until after his motion for judgment of acquittal had been heard and denied. Thus, at the time counsel moved for judgment of acquittal, there was no reason for him to identify the State's failure to prove Welsh's conduct was reckless. Our supreme court has stated, "We have never held counsel to a duty of clairvoyance." *Morgan v State*, 469 N.W.2d 419, 427 (Iowa 1991). Although the jury instructions established the law of the case, counsel had no duty to raise an issue before the issue otherwise existed.

Moreover, "[a] party to a criminal proceeding . . . as a general rule, will not be permitted to allege an error in which he himself acquiesced, or which was committed or invited by him, or was the natural consequence of his own actions." *State v. Sage*, 162 N.W.2d 502, 504 (Iowa 1968). Because Welsh is precluded from alleging an error that was the natural consequence of his own actions, we decline to decide the merits of his argument and affirm without further opinion.

AFFIRMED.