

**FILED: June 12, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

ROLLAND THEODORE BOGGS,  
Defendant-Appellant.

Washington County Circuit Court  
C111739CR

A149837

Rick Knapp, Judge.

Submitted on May 16, 2013.

Peter Gartlan, Chief Defender, and Ernest G. Lannet, Chief Deputy Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Jeremy C. Rice, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

PER CURIAM

Affirmed.

1 PER CURIAM

2 Defendant was convicted of menacing, ORS 163.190, and unlawful use of a  
3 weapon, ORS 166.220. On appeal, defendant argues that the trial court erred when it  
4 declined to give his requested jury instructions. In particular, defendant first proposed an  
5 instruction that "[t]hreatening to use a dangerous weapon is not use of that weapon," and  
6 later proposed an instruction that threatening "to use a dangerous weapon as long as such  
7 does not serve a separate unlawful purpose is not use of that weapon." However, as this  
8 court recently held in *State v. Ziska*, 253 Or App 82, 88-89, 288 P3d 1012 (2012), "'use'  
9 in ORS 166.220(1)(a) describes both the actual use of physical force and the threat of  
10 immediate use of physical force." Thus, defendant's proposed jury instructions were not  
11 a correct statement of the law, and the trial court did not err in declining to give them.  
12 *See State v. Barnes*, 329 Or 327, 334, 986 P2d 1160 (1999) (a party is not entitled to an  
13 instruction that incorrectly states the law).

14 Affirmed.