IN THE COURT OF APPEALS OF IOWA

No. 3-185 / 12-1149
Filed March 27, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT RAY PAIGE,
Defendant-Appellant.

Appeal from the Iowa District Court for Delaware County, Kellyann M. Lekar, Judge.

Robert Paige appeals after pleading guilty to tampering with a witness. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, and John Bernau, County Attorney, for appellee.

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

POTTERFIELD, J.

Jennie Stiefel filed a complaint of harassment with the Manchester Police Department against her father, Robert Paige, in April 2012, which resulted in a harassment charge being filed against Paige and a protective order being issued prohibiting Paige from contacting Jennie. Paige was ordered to turn over all of his weapons to law enforcement. However, Jennie did not believe he had done so.

On May 6, 2012, Paige called Howard Stiefel, Jennie's father-in-law, and asked him to relay a message to Jennie. Paige's message via Howard Stiefel was "that he would sue [Jennie] and her two sisters and brother-in-law and he would take all of their houses from them for their wrong-doings against him," but "would drop all of his charges" against Jennie if she would drop the harassment charge against him. Howard relayed the message to Jennie, who then contacted the Manchester Police Department.

Paige was then charged with a violation of Iowa Code section 720.4 (2011), which states:

> A person who offers any bribe to any person *who the offeror believes has been or may be summoned as a witness* or juror in any judicial or arbitration proceeding, or any legislative hearing, or who makes any threats toward such person or who forcibly or fraudulently detains or restrains such person, *with the intent to improperly influence such witness* or juror *with respect to the witness'* or juror's testimony or *decision in such case*, or to prevent such person from testifying or serving in such case, or who, in retaliation for anything lawfully done by any witness or juror in any case, harasses such witness or juror, commits an aggravated misdemeanor.

(Emphasis added.)

Paige entered a written plea of guilty to the charge but now appeals, contending trial counsel was ineffective in allowing him to plead guilty where there was no factual basis for the plea. We review such claims de novo. *State v*. *Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999).

"Two elements must be established to show the ineffectiveness of defense counsel: (1) trial counsel failed to perform an essential duty; and (2) this omission resulted in prejudice. A defendant's inability to prove either element is fatal." *State v*. *Graves*, 668 N.W.2d 860, 869 (Iowa 2003) (citations omitted). The district court may not accept a guilty plea without first determining the plea has a factual basis. *Schminkey*, 597 N.W.2d at 788. "Where a factual basis for a charge does not exist, and trial counsel allows the defendant to plead guilty anyway, counsel has failed to perform an essential duty." *Id.*

Paige cannot prevail on his ineffectiveness claim because there is a factual basis to support his plea. Section 720.4 "provides three separate methods of committing the offense: (1) offering a bribe, (2) making threats or forcibly or fraudulently detaining or restraining, or (3) harassing in retaliation." *State v*. *LaPointe*, 418 N.W.2d 49, 51 (Iowa 1988). The minutes of testimony provide a factual basis for the elements that Paige threatened a witness in order to influence her testimony.

Jennie was a person "who may be summoned as a witness" in the pending charge against Paige for criminal harassment. *See State v*. *Welborn*, 443 N.W.2d 72, 74 (Iowa Ct. App. 1989) ("Welborn's behavior in returning to the scene of the crime, identifying the witness and calling her by name, as well as his threats of harm towards her if she '[said] anything,' support the reasonable

inference that Welborn intended to inflict harm on a person *he believed to be a potential witness*." (emphasis added)). Section 720.4 prohibits threats "to any person who the offeror believes has been or may be summoned as a witness . . . in any judicial or arbitration proceeding." As noted in the *Welborn* case, the statute does not require that a potential witness "must actually have been summoned." *Id.* ("Defendant's argument essentially urges us to read an additional requirement into the threat alternative of this statute, that a criminal charge must exist for which a witness must actually have been summoned, in order for a defendant to be convicted under this section of the statute. We disagree.").

In stating he would sue and take their houses unless Jennie dropped her harassment charge, Paige made a "threat." *State v*. *Bartilson*, 382 N.W.2d 479, 481 (Iowa Ct. App. 1985) (concluding a "threat" is an expression of an intention to inflict evil, injury, or damage on another).

And in coupling the threat with the demand to drop charges, there is a sufficient factual basis for a finding that Paige intended to improperly influence Jennie's testimony. *See id.*

Relying on *LaPointe*, Paige asserts the record does not support a finding of an intent to improperly influence a witness' *testimony*. In *LaPointe*, our supreme court stated:

> Section 720.4 requires proof of an intent to improperly influence a witness' testimony. Proof that money was offered with the *intent to deter a victim from signing a complaint or causing a criminal complaint to be filed does not satisfy section 720*.*4*. While offering money to deter a victim from pursuing criminal charges may, in some instances be improper, it simply is not prohibited by the express terms of section 720.4. Consequently, *the trial court*

> *erred in considering an intent to deter the victim from pressing charges as an alternative to an intent to influence a witness' testimony*.
>
> We conclude that under a proper understanding of the statute the evidence is not sufficient to prove that the February 22 offer of money was made with an intent to improperly influence R.N.'s testimony. In addition, the evidence is not sufficient to prove that *at the time of this offer* defendant believed that R.N. had been or was going to be called as a witness against him, even though charges were subsequently filed and R.N. was later called to testify before a grand jury.

418 N.W.2d at 52 (emphasis added). *LaPointe* is not controlling because Paige was not attempting to deter Jennie from signing a criminal complaint—she already had. A harassment charge was already filed, and a protective order was in place. Jennie was no longer able unilaterally to drop the charges. Paige's stated intent was to influence Jennie to cause the harassment charge to be withdrawn, which we conclude is sufficient to show that his threat was "with the intent to improperly influence such witness," by influencing her testimony as was the case in *Bartilson*, 382 N.W.2d at 481.

AFFIRMED.