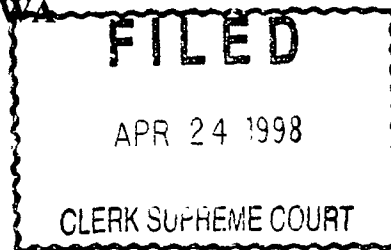


IN THE COURT OF APPEALS OF IOWA

No. 8-090 / 97-0599
Filed April 24, 1998



STATE OF IOWA,
Appellee,

vs.

ANDREW LEE GILLAM,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister,
Judge.

Defendant appeals from his convictions for terrorism with intent and assault
with intent to commit serious injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, and Thomas J. Ferguson, County Attorney, for appellee.

Considered by Cady, C.J., and Huitink and Streit, JJ.

STREIT, J.

This is an appeal by a defendant challenging his convictions for terrorism with intent to injure or provoke fear, in violation of Iowa Code section 708.6, and assault with intent to commit serious injury, in violation of section 708.2(1). We affirm.

On December 24, 1995, Vera Newman went with her sister, Shirley White, to the home of another sister, Patricia Grant. Vera's estranged boyfriend, Andrew Gillam, came to Patricia's home to talk to Vera about getting back together. When Vera and Shirley left to go home, Gillam followed them and shot at their car. The women quickly drove away and were able to attract the attention of police officers. Gillam was later captured at home. He was in possession of a gun which was matched to the bullets found in the car. A jury found Gillam guilty.

Gillam appeals, claiming he received ineffective assistance because his trial counsel failed to file a motion for a mistrial after the judge engaged in judicial misconduct. Gillam believes the district court judge inappropriately interjected himself in the proceedings by raising his own objections to defense counsel questions and by chastising defense counsel in front of the jury.

To establish a claim of ineffective assistance of counsel, Gillam must show: (1) his attorney failed to perform an essential duty; and (2) prejudice resulted to the extent it deprived him a fair trial. *See Bettis v. State*, 547 N.W.2d 635, 637 (Iowa App. 1996). Representation by counsel is presumed competent, and Gillam has the burden to prove by a preponderance of the evidence that counsel was ineffective. *Id.*

A fair trial tribunal is a basic requirement of constitutional due process. *State v. Gentile*, 515 N.W.2d 16, 18 (Iowa 1994). From this it follows that trial judges should not only be fair and impartial, but they should also avoid any conduct from which a jury could infer bias against either party. *Id.* Jurors are particularly sensitive to the presiding judge's views and may be unduly influenced by what they perceive those views to be. *State v. Hardy*, 492 N.W.2d 230, 235 (Iowa App. 1992).

On the other hand, a trial judge has the duty to control and conduct its court in an orderly, dignified, and proper manner. *State v. Cuevas*, 288 N.W.2d 525, 531 (Iowa 1980). A judge may act to prevent unnecessary repetition and to require the proceedings move forward without undue delay. *Id.* Matters relating to the orderly conduct of the trial are committed to the trial judge's discretion. *State v. Harris*, 222 N.W.2d 462, 464 (Iowa 1974).

In the present case, we find the trial judge acted within his discretion to avoid the unnecessary repetition of certain questions. We find the judge acted in order to keep the proceedings moving forward and did so in such a manner so as to not prejudice defendant or to allow the jury to infer bias. We also note Gillam does not allege he was prevented from presenting any evidence. Gillam has not shown any prejudice due to the trial court's actions. We conclude Gillam did not receive ineffective assistance of trial counsel. We affirm defendant's convictions. Costs of this appeal are assessed to defendant.

AFFIRMED.