

IN THE COURT OF APPEALS OF IOWA

No. 2-467 / 91-995

FILED

NOV 30 1992

CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

GARY L. CARBERRY,

Defendant-Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge.

Carberry appeals from his convictions, following a jury trial, of first-degree murder and attempt to commit murder. **AFFIRMED BY OPERATION OF LAW.**

Linda Del Gallo, State Appellate Defender, and B. John Burns, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Thomas S. Tauber, Assistant Attorney General, Richard Crawl, County Attorney, and Charles Stolz, Assistant County Attorney, for appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ., but decided en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1991).

AFFIRMED.

For affirmance: Donielson, Hayden and Habhab, JJ.

For reversal: Oxberger, C.J., and Schlegel and Sackett, JJ.