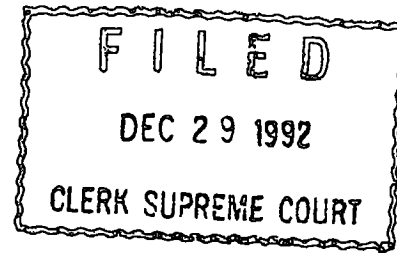


IN THE COURT OF APPEALS OF IOWA

No. 2-594 / 91-1784



STATE OF IOWA,

Appellee,

vs.

JOSE MARIA FIGUEROA-CATANO,

Appellant.

Appeal from the Iowa District Court for Woodbury
County, Terry L. Huitink, Judge.

The defendant appeals his convictions of first-degree
murder and willful injury and sentences. **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General; Sheryl A. Soich,
Assistant Attorney General; Thomas S. Mullin, County
Attorney; Brian E. Buckmeier and James J. Katcher,
Assistant County Attorneys, for appellee.

Heard by Oxberger, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

On the evening of May 26, 1991, the defendant, Jose Maria Figueroa-Catano, stabbed his cousin, Jorge, causing his death. The defendant claimed he drank four forty-ounce bottles of beer and three twelve-ounce cans of beer before the stabbing occurred.

The defendant came to the United States from Mexico four years prior to trial. He does not speak English and he has a sixth-grade education. As a result, after the police arrested the defendant, they used an interpreter to explain his Miranda rights. After the explanation of his Miranda rights, the defendant described in detail the fight he had with his cousin. The police videotaped both the explanation of the Miranda rights and the defendant's description of the fight.

The State charged the defendant by trial information with one count of first-degree murder and one count of willful injury. The defendant filed a motion in limine seeking to exclude, on hearsay grounds, the videotape of his description of the fight. The district court overruled the motion. The matter proceeded to a jury trial.

During trial, the State produced the testimony of Andrea Meza, Jorge's girlfriend. Andrea testified about a child she had given birth to eight days before trial, the fact that the child was Jorge's, and the fact that she and Jorge were thinking of getting married. Also during trial, the State played the tape of the defendant's statement

while an interpreter translated the Spanish statements into English. The defendant's counsel did not object to the admission of this evidence.

During closing arguments, the prosecutor characterized the defendant as an "evil individual" and stated he could not "feel sorry" for the defendant nor could he "excuse" the defendant. The prosecutor also stated the defendant was "attempting the biggest con of his life." The defendant's counsel made no objections to these comments..

The jury returned a verdict of guilty as charged. The district court entered judgment on the verdict and sentenced the defendant to life imprisonment. The defendant appeals on the ground he did not receive effective assistance of counsel at trial.

Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

Viewing the evidence in the light most favorable to the State, we find there is substantial evidence the defendant committed the crimes of first-degree murder and willful injury. We affirm the district court on this issue.

Where the record on direct appeal is not adequate to permit us to resolve the issue of ineffective assistance of counsel, we preserve the defendant's claim for postconviction proceedings so the facts may be so developed. State v. Koenighain, 356 N.W.2d 237, 238 (Iowa App. 1984). This also gives the allegedly-ineffective attorney the opportunity to explain his or her conduct. State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). We conclude there is an inadequate record for us to adjudicate the defendant's ineffective-assistance claim without counsel's explanation for his/her conduct. We therefore preserve the defendant's ineffective assistance of counsel claim if the defendant desires later proceedings.

After considering all issues presented, we affirm the district court.

Costs of this appeal are taxed to the appellant.

AFFIRMED.