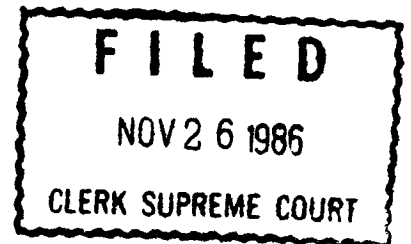


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed November 26, 1986
vs.	)	250
ROGER MARTIN BECKER,	)	<u>6-392</u>
Defendant-Appellant.	)	86-60

Appeal from the Iowa District Court for Fayette County (No. 40665) -
William P. Evans, District Associate Judge.

Defendant appeals from his conviction for assault causing bodily injury.

AFFIRMED.

Charles L. Harrington, Appellate Defender, and Deborah A. Goins, Assistant
Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Pamela Greenman Dahl, Assistant
Attorney General; and J. G. Johnson, Assistant County Attorney, for plaintiff-
appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

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On May 15, 1985, defendant and claimant were involved in a fight which arose out of claimant honking at defendant, whose van was blocking an alley in Oelwein. There was considerable disagreement as to who was the aggressor and the actual action involved in the fight. Defendant maintained a position of self-defense. The jury trial was held on September 12, 1985, and on the next day the jury entered a verdict finding defendant guilty of assault with bodily injury.

On October 31, 1985, defendant filed a motion for new trial and a motion in arrest of judgment. A hearing was conducted on both motions on January 6, 1986. Through these motions, defense counsel first raised the issue of prosecutorial misconduct. This alleged misconduct arose during unreported closing arguments the prosecutor referred to defendant as a "thug" and indicated that he must have been trained in the martial arts. The motions also raised the issue of juror misconduct based on the allegation that a juror had conversed with the victim. Neither the juror nor the victim was called as a witness at the hearing. The trial court overruled these motions on the merits.

Defendant asserts: (1) he was denied effective assistance by trial counsel's failure to timely object to comments of the prosecutor made during closing arguments and failure to make a record of the statement and (2) an issue concerning juror misconduct should be preserved for purposes of postconviction relief.

Our review of criminal proceedings is at law for correction of errors only. Iowa R. App. P. 4.

When examining a claim of ineffective assistance of counsel, we must consider the totality of the circumstances and determine whether counsel's performance was within the normal range of competence. Meier v. State, 337 N.W.2d 204, 206 (Iowa 1983). The record before this court is not adequate for

making this determination. We are hesitant to make what would amount to an ex parte decision. An ineffective assistance of counsel issue ordinarily requires an evidentiary, adversary hearing. State v. Steltzer, 288 N.W.2d 557, 560 (Iowa 1980). Defendant's counsel's competence is more properly presented on an application for postconviction relief. State v. Poyner, 306 N.W.2d 716, 719 (1981). Such a proceeding would allow opportunity to more fully develop the record to show all circumstances, including any not in the record, concerning strategy and reasons involved in counsel's performance. State v. Williams, 285 N.W.2d 248, 271 (Iowa 1979), cert. denied, 446 U.S. 921, 64 L. Ed. 2d 277, 100 S. Ct. 1854 (1980).

The record is insufficient for this court to entertain an ineffective assistance claim. We affirm and preserve the issue for postconviction relief proceedings.

AFFIRMED.