

IN THE COURT OF APPEALS OF IOWA

No. 2-442 / 91-1121

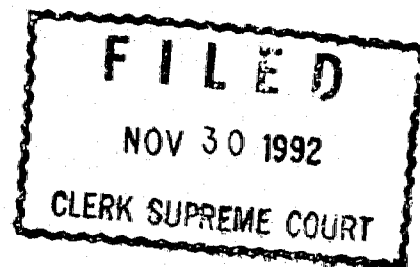
STATE OF IOWA,

Appellee,

vs.

ROGER DUANE PEGRAM,

Appellant.



Appeal from the Iowa District Court for Polk County,
Ray Hanrahan, Judge.

Roger Pegram appeals from his conviction, following a
jury trial, of first-degree murder. **AFFIRMED.**

Peter W. Berger, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, Thomas S. Tauber,
Assistant Attorney General, John P. Sarcone, County
Attorney, and Nan Horvat, Assistant County Attorney, for
appellee.

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

OXBERGER, C.J.

The State charged Roger Pegram with first-degree murder for allegedly beating his girlfriend, Maria Schuler, to death. Prior to trial, Pegram filed a motion in limine seeking to prevent Bobbie Pike from testifying that she observed bruises on the victim during the period of the victim's cohabitation with him. Pegram also sought to ensure that the victim's daughters would not be allowed to testify that they would not visit their mother when he was present. The district court sustained some aspects of Pegram's motion.

At trial, however, the district court allowed Bobbie Pike to testify about the bruises and allowed Schuler's daughters to testify about their refusal to visit when Pegram was present. Other witnesses testified about specific instances of apparent domestic abuse perpetrated by Pegram upon the victim.

The jury found Pegram to be guilty as charged, and the district court entered judgment and imposed a life sentence.

Pegram appeals.

Discussion

The admissibility of evidence lies within the sound discretion of the trial court. State v. Plaster, 424 N.W.2d 226, 229 (Iowa 1988). We review for an abuse of discretion. Id.

Pegram first contends the district court erred in allowing a coworker of the victim to testify she had seen numerous bruises on the victim after she began cohabiting with Pegram. He claims the State failed to prove by clear proof the bruises had been caused by Pegram.

Iowa Rule of Evidence 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The list of exceptions noted in Iowa Rule of Evidence 404(b) is not all-inclusive; evidence of other bad acts may be admissible when it is relevant to establish some legitimate issue in the case. State v. Barnett, 401 N.W.2d 184, 187 (Iowa 1987).

Evidence of a prior violent relationship between the defendant and the victim has been held admissible in numerous cases, frequently to show the prior relationship between the defendant and the victim and to establish the mental state of the defendant. See e.g. Emerson, 375 N.W.2d at 259-60. While the State must provide clear proof that the defendant committed the prior acts, State v. Jones, 464 N.W.2d 241, 243 (Iowa 1990), proof beyond reasonable doubt is not required. State v. Spargo, 364 N.W.2d 203, 209 (Iowa 1985).

Substantial evidence was presented at trial to indicate Pegram had caused numerous injuries to Schuler on prior

occasions. Both friends and police officers had observed Schuler bruised, swollen and bloody from Pegram's conduct. In fact, Pegram threatened to kill Schuler in the presence of police officers and friends on prior occasions. The evidence, taken together, is such that the district court did not abuse its discretion in finding clear proof that the bruises seen on Schuler by her coworker were caused by Pegram. Accordingly, we affirm the district court's ruling allowing the complained of testimony.

Pegram next contends the district court erred in allowing Schuler's teen-age daughters to testify they would not visit their mother at her apartment when Pegram was present. The State argues Pegram failed to preserve error. We agree with the State.

Pegram relies on his motion in limine to preserve error. However, the motion in limine and the trial court's ruling were directed to the exclusion of hearsay testimony and testimony concerning violent acts of Pegram directed toward persons other than Schuler. Neither Ann nor Teresa Schuler testified to hearsay or to Pegram's violent acts directed towards them or others. Their testimony was admitted without objection.

We hold Pegram failed to preserve error on this issue and accordingly we hold the issue is waived.

Finally, Pegram contends his trial counsel was ineffective. Where the record on direct appeal is not adequate to permit us to resolve the issue, 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 defense claim without counsel's explanation for his conduct. We therefore preserve defendant's ineffective assistance of counsel claim for a later proceeding.

AFFIRMED.