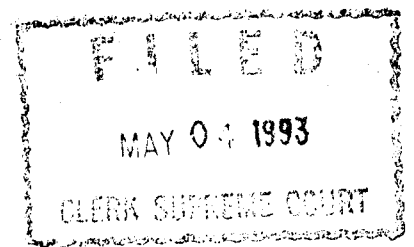


IN THE COURT OF APPEALS OF IOWA

No. 3-125 / 92-720



STATE OF IOWA,

Appellee,

vs.

GARY JEROME STUART,

Appellant.

000879

Appeal from the Iowa District Court for Washington County, James P. Reilly, Judge.

Stuart appeals from his conviction, after a jury trial, of assault with intent to commit sexual abuse causing bodily injury in violation of Iowa Code section 709.11 (1991). **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Sheryl A. Soich, Assistant Attorney General, Gerald N. Partridge, County Attorney, and Barbara Edmondson, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., Habhab, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

000880

PER CURIAM

Defendant, Gary Stuart, was charged by the State with assault with intent to commit sexual abuse causing serious injury. See Iowa Code § 709.11 (1991). The State filed a motion in limine seeking to bar Stuart's cross-examination of the alleged victim, Penny Wilkes, regarding prior conduct which was unrelated to the assault charge. Stuart's counsel filed an application for a hearing pursuant to Iowa Rule of Evidence 104(a) to determine the admissibility of evidence which could be used to impeach Wilkes. The district court granted the State's motion in limine, and denied defendant's request for a rule 104(a) hearing.

At trial, Stuart's attorney did not try to question Wilkes about pending charges against her for allegedly giving false information to police and altering a prescription. The jury convicted Stuart of the lesser-included offense of assault with intent to commit sexual abuse causing bodily injury. The court sentenced Stuart to a prison term not to exceed five years.

Stuart appeals from his conviction. Stuart's sole complaint on appeal is his trial counsel rendered ineffective assistance by failing to try to impeach Wilkes by questioning her about the charges pending against her.

Generally, ineffective assistance of counsel claims are preserved for postconviction proceedings to allow trial counsel an opportunity to defend the charge. State v.

Mulder, 313 N.W.2d 885, 890 (Iowa 1981), cert. denied, 459 U.S. 841 (1982); Foster v. State, 478 N.W.2d 884, 886 (Iowa App. 1991). Defendant is not entitled to perfect representation, but only to that which is within the range of normal competency. Cuevas v. State, 415 N.W.2d 630, 632 (Iowa 1987). Where the record on appeal is not adequate to permit us to resolve the issue, we preserve defendant's claim for postconviction proceedings so the facts may be developed. State v. Koenighain, 356 N.W.2d 237, 238 (Iowa App. 1984) (citing Mulder, 313 N.W.2d at 890, cert. denied, 459 U.S. 841).

We conclude the record is inadequate for us to adjudicate defendant's claim of ineffective assistance of counsel without an explanation concerning strategy and reasons involved in counsel's performance. For us to proceed with such an incomplete record would be patently unfair to either the defendant or his attorney, or both. Stuart's ineffective assistance claim is preserved for possible postconviction proceedings.

AFFIRMED.