

IN THE COURT OF APPEALS OF IOWA

No. 1-414 / 90-1160

FILED

NOV 26 1991

CLERK SUPREME COURT

JAMES WILLIAM LANGDEAUX,

Appellant,

vs.

STATE OF IOWA,

Appellee.

407

Appeal from the Iowa District Court for Dickinson
County, James L. McDonald, Judge.

James Langdeaux appeals the district court's dismissal
of his application for postconviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, for
appellant.

Bonnie J. Campbell, Attorney General; Richard J.
Bennett, Assistant Attorney General; and Jon M. Martin,
County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden,
JJ.

HAYDEN, J.

James Langdeaux was charged by trial information with first-degree murder. The information alleged the killing was perpetrated with malice aforethought, either "willfully, deliberately, and with premeditation" or "while participating in a forcible felony." The charge was submitted to the jury under both the premeditated murder theory and the felony murder theory. As to the felony murder theory, the jury was instructed, without objection, the underlying felony was willful injury. The jury returned a general verdict finding Langdeaux guilty of first-degree murder. He was sentenced to a term of life imprisonment.

Langdeaux appealed his conviction. He asserted his trial counsel's failure to object to the felony murder instruction using willful injury as the underlying felony constituted ineffective assistance of counsel. Langdeaux theorized because of merger, willful injury could not serve as the basis for a felony murder conviction. We rejected Langdeaux's theory and affirmed his conviction citing State v. Beeman, 315 N.W.2d 770 (Iowa 1982), which held willful injury may serve as the basis for a felony murder conviction.

Langdeaux then filed a pro se application for postconviction relief. Langdeaux noted the State's failure to specify in the trial information the underlying felony it was relying on in charging defendant with felony

murder. Langdeaux claims trial counsel was ineffective by failing to demand the State reveal the underlying forcible felony which thereby hampered his defense.

The postconviction court notified Langdeaux of its intent to dismiss his application pursuant to Iowa Code section 663A.6. Langdeaux replied to the notice of proposed dismissal. The district court then dismissed Langdeaux's application finding the issue of effectiveness of trial counsel had been fully addressed by this court on Langdeaux's direct appeal and no additional issues were raised in his application or reply.

On appeal Langdeaux claims the issue raised in his application for postconviction relief was not raised or addressed by this court on his direct appeal. We agree. On Langdeaux's direct appeal, we addressed whether trial counsel was ineffective by failing to object to willful injury serving as the basis for a felony murder conviction. In his postconviction application, Langdeaux alleged his trial attorney was ineffective or rendered so by the State's failure to specify the underlying forcible felony it was relying on in charging defendant with felony murder and thus counsel was unable to prepare an effective defense. We determine the present claim is legally different from the claim raised on direct appeal. Nevertheless, we may affirm the trial court if any basis appears in the record even though the trial court relied upon a different ground. Citizens First National Bank v. Hoyt, 297 N.W.2d 329, 332 (Iowa 1980).

A postconviction court may dismiss an application for postconviction relief if the record indicates the applicant is not entitled to relief. Disposition on the pleadings and record is not proper, however, if a material issue of fact exists. Iowa Code § 663A.6 (1991). A material issue of fact exists if reasonable minds could draw different inferences and reach different conclusions from them. Kyle v. State, 322 N.W.2d 299, 302 (Iowa 1982). Langdeaux contends a material issue of fact exists as to the effectiveness of trial counsel in preparing a defense resulting from the State's failure to inform defendant of the underlying felony and counsel's failure to demand the same. We disagree.

The State was under no affirmative obligation to specify in the information the underlying forcible felony. See Kyle v. State, 322 N.W.2d 299, 307 (Iowa 1982). Langdeaux urges trial counsel should have made an independent effort to discover the identity of the underlying forcible felony by requesting a bill of particulars. The purpose of a bill of particulars is to give the defendant information which the information and minutes of testimony do not provide because of their generality. State v. Conner, 241 N.W.2d 447, 452 (Iowa 1976). However, a motion for bill of particulars cannot be used as a device to obtain the State's evidence or theory of the case. Id.

In the present case, the minutes of testimony were unusually detailed. The minutes of testimony and the trial information fully informed defendant of the specific conduct of which he was accused. It is questionable whether trial counsel could have learned the identity of the forcible felony had he requested a bill of particulars. See id.

Furthermore, it is evident on this record trial counsel was aware before trial the State would rely on willful injury as the underlying felony for its felony murder theory. The pleadings filed in the criminal action and the State's trial brief expressly stated the State would rely on willful injury as the underlying felony to prove felony murder. Finally, during his argument for a verdict of acquittal, trial counsel indicated he understood willful injury was the basis for the felony murder theory.

We are satisfied on the basis of the application and the record Langdeaux was not entitled to postconviction relief and no purpose would have been served by further proceedings. The district court properly dismissed Langdeaux's application for postconviction relief.

AFFIRMED.