

IN THE COURT OF APPEALS OF IOWA

No. 3-1095 / 12-2317
Filed December 18, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EVERETT RICHARD EWOLDT,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes,
Judge.

Defendant appeals his convictions claiming he received ineffective
assistance at trial. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis Hendrickson,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney
General, Michael J. Walton, County Attorney, and Kim Shepherd, Assistant
County Attorney, for appellee.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

DANILSON, C.J.

Everett Ewoldt appeals his convictions following a jury's verdicts finding him guilty of going armed with intent, pursuant to Iowa Code section 708.8 (2011), and willful injury causing serious injury, pursuant to Iowa Code section 708.4(1). On appeal, he maintains he received ineffective assistance of counsel at trial. In support of his contention, he claims counsel failed to pursue an intoxication defense even though his inebriation was undisputed. He asserts there is a reasonable probability that, absent counsel's breach of duty, the jury "would have had a reasonable doubt respecting guilt." See *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001) (citing *Strickland v. Washington*, 466 U.S. 668, 695 (1984)).

We generally preserve ineffective-assistance-of-counsel claims for postconviction-relief proceedings. *State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011).¹ "Only in rare cases will the trial record alone be sufficient to resolve the claim on direct appeal." *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). We prefer to reserve such claims for development of the record and to allow trial counsel to defend against the charge. *Id.* If the record is inadequate to address the claim on direct appeal, we must preserve the claim for a postconviction-relief proceeding, regardless of the potential viability of the claim. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010).

¹ See also Iowa Code § 814.7(3), which provides, "If an ineffective assistance of counsel claim is raised on direct appeal from the criminal proceedings, the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination under chapter 822."

Here, both crimes require specific intent, and the defense of intoxication would have been available to negate the intent element of the crimes. However, we conclude the record on this appeal is inadequate to address Ewoldt's claims, as we do not know the reasons counsel may have had for not pursuing an intoxication defense. Accordingly, the issue of whether trial counsel was ineffective is reserved for possible future postconviction-relief proceedings. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997) (“[C]laims of ineffective assistance of counsel raised on direct appeal are ordinarily preserved for postconviction proceedings to allow full development of the facts surrounding counsel’s conduct.”).

Because we reserve Ewoldt's claims for full development of the facts in postconviction proceedings, his convictions are otherwise affirmed without opinion. See Iowa R. App. P. 6.1203(a), (d).

AFFIRMED.