

IN THE COURT OF APPEALS OF IOWA

No. 3-743 / 12-1162
Filed October 2, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

HECTOR CAMACHO,
Defendant-Appellant.

Appeal from the Iowa District Court for Madison County, Sherman W. Phipps, Judge.

Defendant appeals his convictions for burglary in the third degree.

AFFIRMED.

Unes J. Booth of Booth Law Firm, Osceola, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, and Julie Forsyth, County Attorney, for appellee.

Considered by Potterfield, P.J., Bower, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

SACKETT, S.J.

Hector Camacho appeals his conviction for burglary in the third degree. He claims he received ineffective assistance from defense counsel on several different grounds. We determine his claims cannot be addressed on the present record and preserve his claims of ineffective assistance of counsel. We affirm the conviction for third-degree burglary.

I. Background Facts & Proceedings

The following evidence was presented during the criminal trial in this case. On October 4, 2011, Christine Roseberry left her home in Cumming, Iowa, at about 10:20 to 10:30 a.m. to perform an errand. She had an appointment to meet Everett Kenoyer at her home at 11:30 a.m., and she returned at that time. As she drove up to her house she saw the garage door was up and a white sports utility vehicle (SUV) was backed into her garage. She then also noticed the front door of the home had been broken open. The white SUV drove out past her and she saw the driver.

Roseberry saw that Kenoyer was in his vehicle at the end of her driveway, and she yelled that the person in the white SUV had broken into her home. Kenoyer saw the driver as he passed by him. Kenoyer followed the vehicle, which he stated was a GMC Suburban or Chevrolet Tahoe. The white SUV turned around and passed Kenoyer going the opposite direction. Kenoyer stated he got a good look at the driver. He noticed the license plate number, damage to the left front bumper, and that the vehicle had tinted windows.

Kenoyer called the police and told them the license plate number of the white SUV. Officers determined a white Tahoe with that license plate number was registered to Lourdes Muchuca de Camacho, who lived in Des Moines. Lourdes stated the vehicle was kept at the home of her son, Camacho. Camacho's wife, Karla Camacho, their child, and Camacho's twin brother, Francisco Camacho, also lived in Camacho's home.

On October 5, 2011, officers went to Camacho's home and found a 1996 white Tahoe without license plates parked next to the house. The vehicle had some damage to the left front bumper and a tinted rear window. From the Vehicle Identification Number (VIN) the officers determined it was the vehicle registered to Lourdes. Camacho told the officers the license plates had been stolen from the vehicle and he had reported the matter to the police a few days earlier. A check with the Des Moines Police Department did not show that any such report had been made. Camacho stated different license plates had been placed on the vehicle on that morning. He told the officers the vehicle would not run, but they were able to start it right away.

Several items had been taken from Roseberry's home, including a television and jewelry. Roseberry was shown a photographic lineup. She picked out the picture of Camacho, but stated she thought the person had lighter hair. She also mentioned it could have been another person in the photographic lineup. Kenoyer picked out the picture of Camacho from a photographic lineup. Both Roseberry and Kenoyer identified Camacho in the courtroom.

Camacho presented an alibi defense. Mindy Williams, the director of the Center for Behavioral Health (clinic), testified Camacho came in almost every day for treatment for opiate addiction. The clinic's records showed he had been in on October 4, 2011, and Williams stated it definitely had not been before 10:00 a.m. On cross-examination, however, she agreed it could have been as early as 9:30 a.m. The clinic was only open from 5:00 a.m. until 12:30 p.m.

Karla testified she and Camacho only had one vehicle, so he would take her to work in the morning. She stated she also received treatment at the clinic. She stated she normally went with Camacho between 11:00 a.m. and noon, during her lunch time. Camacho testified that on October 4, 2011, he took his wife to work in the morning and when his wife got off of work for lunch, they went together to the clinic to get their medicine.¹ He stated she usually had her lunch around 11:00 or 11:30 a.m. On cross-examination Camacho stated he might have gone to the clinic at 9:30 a.m. to get his medicine, but he returned later that day to take Karla during her lunch time.

The jury found Camacho guilty of third-degree burglary. He was acquitted of a charge of assault with intent to inflict serious injury. Camacho was sentenced to term of imprisonment not to exceed five years. This sentence was suspended, and he was placed on probation for three years. Camacho now appeals his conviction for third-degree burglary.

¹ On the day after the offense, Camacho gave a slightly different account of his actions. Camacho told officers that on October 4, 2011, he had taken his wife to work at about 8:50 a.m., then drove to his mother's house to drop off his child. He stated that at about 9:30 a.m. he went to a clinic, which was near his mother's house, to get his medication. He stated he returned home at about 11:00 a.m. and remained there until he went to work at 3:00 p.m.

II. Ineffective Assistance

Camacho contends he received ineffective assistance of counsel on several different grounds. He claims his defense counsel (1) improperly introduced evidence he was receiving treatment for opiate addiction, (2) improperly introduced evidence he had a prior conviction for operating while intoxicated, (3) failed to object to hearsay testimony that Francisco was at work at the time of the offense,² (4) abandoned the alibi defense during closing arguments,³ (5) should have presented evidence of the time Karla went to lunch on October 4, 2011, (6) should have investigated further Camacho's claim that he reported the stolen license plates to the police, and (7) should have raised a specific objection to the court's ruling prohibiting him from presenting evidence of habit or routine.

We review claims of ineffective assistance of counsel de novo. *Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied applicant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008). "In determining whether an attorney failed in performance of an essential duty, we avoid second-guessing reasonable trial strategy." *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). In order to show prejudice, a defendant must show that, but for counsel's

² Defense counsel raised an argument that the crime could have been committed by Francisco. Defense counsel did not object to testimony by an officer that he had called Francisco's employer to determine whether he had been at work on October 4, 2011.

³ In addition to the alibi defense, during closing arguments defense counsel pointed out that Camacho and Francisco were twins, and asserted the police did not sufficiently investigate whether Francisco could have committed the crime.

unprofessional errors, the result of the proceeding would have been different. *State v. Madsen*, 813 N.W.2d 714, 727 (Iowa 2012).

We decide claims of ineffective assistance of counsel on direct appeal only where the record is sufficient to address the issue. *State v. Oberhart*, 789 N.W.2d 161, 163 (Iowa 2010). Where the record is inadequate to address a claim of ineffective assistance of counsel, we preserve the issue for a possible postconviction relief action. *State v. Feregrino*, 756 N.W.2d 700, 708 (Iowa 2008). “Generally, ineffective-assistance claims are preserved for postconviction relief proceedings to afford the defendant an evidentiary hearing and thereby permit the development of a more complete record.” *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003).

Preserving a claim of ineffective assistance gives defense counsel an opportunity to explain his or her actions. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). “Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned.” *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). “Counsel may, indeed, have had good reason for each step he took or failed to take.” *Id.*

We determine the record in this case is inadequate to resolve Camacho’s claims of ineffective assistance of counsel on direct appeal. His defense counsel should have the opportunity to address the claims in an evidentiary hearing. See *State v. Martinez*, 679 N.W.2d 620, 626 (Iowa 2004). We preserve defendant’s claims of ineffective assistance of counsel for a possible postconviction relief action.

We affirm defendant's conviction for third-degree burglary.

AFFIRMED.