

IN THE COURT OF APPEALS OF IOWA

No. 6-823 / 05-1805
Filed November 30, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES LLOYD HOUSTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Davis County, Michael R. Mullins,
Judge.

Defendant appeals from his convictions, following a jury trial, for third-degree sexual abuse, lascivious acts with a child, and indecent contact with a child. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, and Rick L. Lynch, County Attorney, for appellee.

Considered by Huitink, P.J., Vogel, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

HUITINK, P.J.

James Lloyd Houston appeals from his convictions, following a jury trial, for third-degree sexual abuse, lascivious acts with a child, and indecent contact with a child. We affirm.

I. Background Facts and Proceedings

S.L., the twelve-year-old step-granddaughter of Houston, told one of her teachers that something bad had happened to her. She later spoke to a police officer at the school. Further investigation led the police to ask Houston to come to the law enforcement center for questioning, which he agreed to do. During the interview, Houston admitted touching S.L.'s breasts and placing her hand on his penis on one occasion. He also admitted to placing his hand on her breast and inserting his finger into her vagina on a separate occasion. Houston wrote out and signed a statement admitting to these acts.

The State filed a trial information charging Houston with third-degree sexual abuse, lascivious acts with a child, and indecent contact with a child. At trial, S.L. identified Houston as the man who had molested her on two occasions and described the two separate instances in detail. Houston testified in his defense that he had been "drinking quite a bit" on the dates in question and therefore did not remember touching S.L. The jury found Houston guilty, he was sentenced, and this appeal followed.

On appeal, Houston argues his trial counsel was ineffective for failing to file a notice of defense of intoxication and for failing to request jury instructions

regarding intoxication and corroboration.¹ We review his claims de novo. *State v. Philo*, 697 N.W.2d 481, 485 (Iowa 2005).

II. Discussion

To establish a claim of ineffective assistance of counsel, a defendant must prove by a preponderance of the evidence that (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003); *State v. Ceaser*, 585 N.W.2d 192, 195 (Iowa 1998). Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002). We prefer to leave such claims for postconviction relief proceedings, “where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant’s claims.” *Id.* Counsel’s failure to request certain jury instructions and failure to give notice of an intoxication defense are typically “matters more suited to postconviction relief.” *State v. Slayton*, 417 N.W.2d 432, 436 (Iowa 1987).

We conclude the record before us is inadequate to address the ineffective-assistance-of-counsel claims Houston makes on direct appeal, with one exception. Houston argues his trial counsel was ineffective for failing to request a jury instruction on corroboration of his confession. See Iowa R. Crim. P.

¹ Houston also argues the district court erred in failing to give corroboration and intoxication instructions to the jury. Houston, however, failed to preserve error by requesting these instructions at trial. *State v. Rouse*, 290 N.W.2d 911, 914 (Iowa 1980), *superseded on other grounds by Ryan v. Arneson*, 422 N.W.2d 491 (Iowa 1988). Therefore, we may consider his claims only under an ineffective-assistance-of-counsel analysis.

2.21(4) (requiring an out-of-court confession be corroborated by other proof the defendant committed the offense); *State v. Polly*, 657 N.W.2d 462, 466 (Iowa 2003). “Corroboration need not be strong nor need it go to the whole case so long as it confirms some material fact connecting the defendant with the crime.” *Polly*, 657 N.W.2d at 467 (citations omitted). We conclude S.L.’s testimony provided substantial “other proof” that Houston committed the offenses to which he confessed. Therefore, Houston cannot prove the prejudice prong of his ineffective assistance of counsel claim for his attorney’s failure to request a corroboration instruction, and his claim must fail. *Id.* at 468.

We affirm Houston’s convictions. We preserve for possible postconviction proceedings Houston’s claims that trial counsel was ineffective for failing to file a notice of defense of intoxication and for failing to request a jury instruction regarding intoxication.

AFFIRMED.