

IN THE COURT OF APPEALS OF IOWA

No. 7-073 / 06-0575
Filed August 22, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHUJUN YANG,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,
Judge.

The defendant appeals from his conviction of domestic abuse assault
while displaying a dangerous weapon. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, J. Patrick White, County Attorney, and Victoria Cole, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Shujun Yang appeals his conviction, following a trial to the court, for domestic abuse assault while displaying a dangerous weapon. Yang contends his trial counsel was ineffective for failing to ensure that his waiver of jury trial was knowing, voluntary and intelligent. He also claims there is not sufficient evidence to support his conviction.

BACKGROUND FACTS AND PROCEEDINGS.

On December 12, 2005, Yang was charged with domestic abuse assault while displaying a dangerous weapon, in violation of Iowa Code sections 708.1, 708.2(3), 708.2A(2)(c), and 236.2 (2005). On March 3, 2006, Yang signed a written waiver of jury trial and was questioned by the court about the waiver. The waiver indicated he understood that by waiving the jury trial: (1) he gave up the right to be tried by a jury of twelve members of the community; (2) he would no longer help in the jury selection, since there would be no jury; (3) the conviction would not be based on a unanimous verdict of twelve persons; (4) his case would be decided solely by the court; and (5) he would not be rewarded either by the court or the prosecution for waiving his right to a jury trial. The court specifically asked the defendant about each of the items listed above.

Trial to the court was held on March 6, 2006. At the end of the trial, the court found Yang guilty as charged. Yang was sentenced to a prison term not to exceed two years and assessed a fine of \$500 plus surcharge. Yang appeals.

An opinion was issued by this court on March 14, 2007 reversing and remanding the matter based on the failure of the trial court to conduct a colloquy

with the defendant regarding his waiver of a jury. After further review was granted by the supreme court, appellate counsel for the defendant filed a transcript of the pretrial conference on March 3, 2006 which included such a colloquy. By order dated July 17, 2007, the supreme court vacated the earlier opinion of this court and remanded the case for issuance of a new opinion.

INEFFECTIVE ASSISTANCE OF COUNSEL.

We review claims of ineffective assistance of counsel de novo. *State v. McBride*, 625 N.W.2d 372, 373 (Iowa Ct. App. 2001). Generally, ineffective claims are preserved for postconviction relief. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). However, claims can be resolved on direct appeal when the record adequately presents the issue. *Id.* The record in this case is adequate to decide this issue on direct appeal. To succeed with a claim of ineffective assistance of counsel, a defendant typically must prove the following two elements: (1) counsel failed to perform an essential duty, and (2) defendant was prejudiced by counsel's error. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984).

Iowa Rule of Criminal Procedure 2.17(1) states, “[c]ases required to be tried by jury shall be so tried unless the defendant voluntarily and intelligently waives a jury trial in writing and on the record.” The Iowa Supreme Court construed this provision in *State v. Liddell*, 672 N.W.2d 805 (Iowa 2003). It held the “on the record” language in this provision required some in-court colloquy or personal contact between the court and the defendant in order to ensure the defendant's waiver is knowing, voluntary, and intelligent. *Id.* at 812. *Liddell* also

suggested a five-part inquiry the in-court colloquy may involve. *Id.* at 814. The court clarified that this five-part inquiry is not “black-letter rules nor a ‘checklist’ by which all jury-trial waivers must be strictly judged.” *Id.* Substantial compliance with this five-part inquiry is acceptable. *Id.* The written waiver of jury trial combined with the colloquy conducted on March 3, 2006 meets the requirements of *Liddell* and therefore counsel did not breach any duty.

SUFFICIENCY OF THE EVIDENCE.

We review for correction of errors of law. *State v. Beunaventura*, 660 N.W.2d 38, 48 (Iowa 2003). The trial court’s findings of guilt are binding on appeal if supported by substantial evidence. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997).

Testimony was only heard from Yang’s wife, Li Zhang, the victim. Photographs of Li Zhang and a hammer were admitted into evidence. The trial court at the close of the evidence found:

[B]eyond a reasonable doubt that the defendant, Shujun Yang, did commit an Assault with a Dangerous Weapon; that on or about September 18th, 2005, in Johnson County, Iowa, he did hit his wife on multiple occasions with a hammer, causing her to sustain injury. Further I am finding by evidence beyond a reasonable doubt that the hammer as used in this manner was capable of causing death or serious injury.

Substantial evidence, despite minor inconsistencies in Li Zhang’s testimony, supports these findings.

AFFIRMED.