IN THE COURT OF APPEALS OF IOWA

No. 1-006 / 99-1656
Filed February 28, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARK EUGENE BOWMAN, SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Mark Eugene Bowman, Sr., appeals his conviction and sentence, following a jury trial, for dominion of a firearm by a felon. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Andrew B. Prosser, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

STREIT, P.J.

Mark Bowman was convicted of possession of a firearm by a felon as a habitual offender. He appeals, claiming his defense attorney was ineffective. We affirm.

I. Background Facts & Proceedings.

Des Moines County law enforcement officers executed a search warrant at a home owned by Bowman's mother, Earlene Costilla. The officers found a .25 caliber Lorcin semi-automatic pistol on the headboard of the bed that was in a bedroom shared by Bowman and his wife. Bowman was charged with dominion and control of a firearm by a felon as a habitual offender.

Bowman called Costilla as one of his defense witness. Costilla testified she owned a Lorcin pistol that she had reported as stolen. She suggested her pistol had actually been misplaced in Bowman's bedroom. After Costilla's direct examination, the State presented evidence proving the Lorcin pistol found in Bowman's bedroom had a different serial number than the Lorcin pistol Costilla owned. Bowman was found guilty as charged. He appeals.

II. The Merits.

Bowman claims his trial counsel was ineffective. Our review of allegations of ineffective assistance of counsel is de novo. *State v. Howes*, 525 N.W.2d 874, 876 (Iowa Ct. App. 1994). To prevail on his claim, Bowman must prove two elements: He must show his attorney's performance fell outside a normal range of competency, and he must show the deficient performance so prejudiced him as to give rise to the reasonable probability that, but for counsel's errors, the

result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). We can dispose of Bowman's claim if he fails to prove either element. *See State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997).

Bowman contends his attorney should not have presented a defense. Bowman focuses particularly on his attorney's decision to call Costilla and elicit testimony from her suggesting she owned the Lorcin pistol officers found in Bowman's bedroom. To the extent Bowman is arguing his attorney should not have presented a defense at all, Bowman has not shown his attorney's performance fell outside a normal range of competency. Following the State's case in chief, Bowman brought a motion for judgment of acquittal. The trial court denied the motion, stating the State had "made a prima facie showing with respect to dominion and control." It was not unreasonable, therefore, for Bowman's attorney to present evidence on his client's behalf. We will not second-guess such reasonable trial strategy. *See State v. Martin*, 587 N.W.2d 606, 609 (Iowa Ct. App. 1998).

To the extent Bowman is arguing his attorney should not have presented a defense that included calling Costilla as a witness, Bowman has not shown he was unduly prejudiced by his attorney's alleged deficient performance. At best Costilla's testimony was she had lost her Lorcin pistol and it inadvertently ended up in Bowman's bedroom. The State produced evidence—different serial numbers for her Lorcin pistol and the Lorcin pistol found in Bowman's bedroom—

proving her story could not be true. Costilla's testimony thus did little to exonerate Bowman or discredit the State's case against him. However, pursuing a defense that proved to be unsuccessful was not, in itself, prejudicial to Bowman. This strategy, in hindsight, merely eliminated one alternative explanation for who was in possession of the Lorcin pistol at issue. Moreover, while Costilla's testimony opened the door to evidence that was consistent with the State's case against Bowman, the State had already presented evidence sufficient to sustain a conviction against Bowman for dominion and control of a firearm by a felon. Bowman has not shown there was a reasonable probability he would not have been convicted had his attorney not called Costilla as a witness.

Bowman also contends his attorney should have addressed the State's alleged discovery violation. Bowman does not clarify how the State violated discovery. More significantly, Bowman does not state "the specific ways in which [his attorney's] performance was inadequate and identify how competent representation probably would have changed the outcome" of his trial. *See State v. Astello*, 602 N.W.2d 190, 198 (Iowa Ct. App. 1999). We do not, therefore, preserve for postconviction proceedings Bowman's ineffective assistance of counsel claim regarding the State's alleged discovery violation. *See id.* at 198-99.

We affirm Bowman's conviction and sentence.

AFFIRMED.