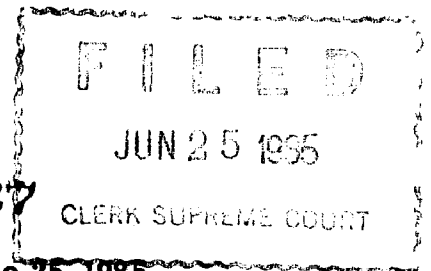


**IN THE COURT OF APPEALS OF IOWA**



**STATE OF IOWA,**

)

**537**

**Plaintiff-Appellee,**

)

**Filed June 25, 1985**

**vs.**

)

**GREGORY ALAN WEGNER,**

)

**5-249**  
**84-1718**

**Defendant-Appellant.**

)

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**Appeal from the Iowa District Court in and for Emmet County - James H. Andreasen, Judge.**

**Defendant appeals from his conviction for third-degree theft in violation of Iowa Code sections 714.1(4) and 714.2(3). AFFIRMED.**

**Charles Harrington, Chief Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.**

**Thomas J. Miller, Attorney General of Iowa, and Steven K. Hansen, Assistant Attorney General, for plaintiff-appellee.**

**Considered by Donielson, P.J., Snell, and Hayden, JJ.**

**HAYDEN, J.**

Defendant appeals from his conviction for third-degree theft in violation of Iowa Code sections 714.1(4) and 714.2(3). He claims that the trial court erred in overruling his motion for mistrial based on the introduction of testimony in alleged violation of the ruling on a pretrial motion in limine. He also alleges ineffective assistance of his trial counsel. We affirm.

In September of 1983, defendant sold for \$75 a motor subsequently identified as having been stolen in August and was charged with theft in the second degree. At trial defendant testified that he had bought the motor from a man he met in a tavern and did not believe that it had been stolen. He denied having told anyone that it had been stolen. The jury found him guilty of third-degree theft. His motion for new trial was overruled, and this appeal followed.

L. Defendant first contends he was entitled to a mistrial based on the State's violation of a sustained motion in limine. The ruling on this pretrial motion prohibited the State from directly or indirectly referring to statements made by witness Jack Smith regarding admissions made to him by defendant without first informing the court and obtaining permission. The following exchange took place during the State's questioning Deputy Larry Lamack:

Q. (Mr. Surfass) Do you have any information within your knowledge that shows or would identify a person who took this motor from the Tonderum farm?

A. Jack Smith.

Q. Why do you have that information?

A. Because during questioning he made a comment that Gregory Wegner had sold a 16 horsepower motor to Steve Meyer that had been a stolen motor.

Q. Other than that you have no other information?

A. No.

Q. I guess what I thought you were saying that you had information that Jack Smith stole this motor.

Defense counsel unsuccessfully moved for a mistrial based upon what was asserted to be a violation of the ruling on the motion in limine.

A trial court has broad discretion in ruling on a motion for mistrial, and we will not overturn a ruling denying such a motion absent a showing that the court abused its discretion in doing so. State v. Washington, 308 N.W.2d 422, 424 (Iowa 1981). We see no reason to disturb the court's ruling in this case because we find no violation of the sustained motion. The ruling prohibited any references to defendant's admissions to Smith, presumably to the effect that he (defendant) knew the motor was stolen. Deputy Lamack, on the other hand, merely testified as to Smith's knowledge that the motor sold by defendant was stolen. Lamack did not testify as to how Smith obtained that information, that defendant made that admission to Smith, or that he even knew that the motor was stolen. Because the challenged testimony was not prohibited by the ruling on the motion in limine, the court did not err in overruling defendant's motion for mistrial.

II. Defendant also contends that he was given ineffective assistance of counsel at trial due to his trial attorney's failure to present obtainable evidence that would have impeached the credibility of the State's rebuttal witness. Because of the absence of a record on this issue in this direct appeal, we are unable to make a determination as to the efficacy of defendant's trial counsel. State v. Kellogg, 263 N.W.2d 539, 544 (Iowa 1978).

Defendant's conviction and sentence are affirmed.

**AFFIRMED.**