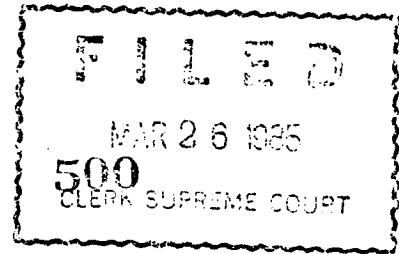


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

Filed March 26, 1985

vs.)

STEVE ALLEN VIGNOVICH,)

5-40
84-723

Defendant-Appellant.)

Appeal from the Iowa District Court for Polk County - Thomas S. Bown,
Judge.

Defendant appeals his conviction of theft in the second degree.
AFFIRMED.

Lee P. Hook of McMurry & Hook, Ankeny, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Marcia Mason, Assistant
Attorney General, for plaintiff-appellee.

Heard by Donielson, P.J., Snell, and Schlegel, JJ.

Defendant, Steve Allen Vignovich, appeals his conviction of theft in the second degree. He argues that: (1) there was insufficient evidence to support his conviction; (2) improper evidence was admitted at trial; (3) the jury was not instructed properly; and (4) he was denied effective assistance of counsel because his counsel failed to object to the above alleged errors. We affirm.

Vignovich's residence was searched by members of the Polk County Sheriff's Department twice in November, 1983. Those searches resulted in the seizure of a Remington model 1100 shotgun, a 13" Hitachi color t.v., a McCulloch chain saw, and a Remington model 870 shotgun. Vignovich was charged with theft by exercising control over those items, knowing them to be stolen, in violation of Iowa Code section 714.1(4) (1983).

Vignovich was tried before a jury. The prosecution showed, by use of serial numbers, that each item had been stolen. Vignovich's defense was that he did not exercise control over some of the items, and that he did not know the other items were stolen. The jury found him guilty of theft in the second degree. See Iowa Code § 714.2(2) (value of stolen property in excess of \$500, but less than \$5,000). Vignovich appeals that conviction.

I. Sufficiency of the Evidence. Vignovich's first argument is that there was insufficient evidence that he exercised control over the property in question, or that he knew the property was stolen. Our review of this issue is not de novo. See Iowa R. App. P. 4. A jury verdict is binding on this court and will be upheld unless the record lacks substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Blair, 347 N.W.2d 416, 419 (Iowa 1984). The evidence should be viewed in the light most favorable to the State, including all legitimate inferences that may fairly and reasonably be deduced from the evidence in the record. Id. at 418-19.

Applying the above standard of review, we must reject Vignovich's argument. Vignovich admitted exercising control over the model 1100 shotgun and the color t.v. The other shotgun was found in the same gun rack in which the model 1100 was found. The chainsaw was also found in the same house as the other three items. Although Vignovich stated he only lived in the house "off and on," the sheriff's officers testified that the bedroom which Vignovich would use had clothes strewn about and appeared "lived-in" at the time of the searches. This evidence was sufficient to find that Vignovich exercised control over all four items.

The evidence was also sufficient to support a finding of knowledge that the items were stolen. Iowa Code section 714.1(4) states a jury may infer knowledge when the items have been "stolen from two or more persons on separate occasions." In this case the evidence showed the items had been stolen from three people on three separate occasions.

II. Ineffective Assistance of Counsel. None of the rest of the alleged errors were objected to at the time of trial. Thus, error was not preserved for appellate review. State v. Hansen, 286 N.W.2d 163, 165-66 (Iowa 1979). We can only review those issues to the extent necessary to determine whether Vignovich was denied effective assistance of counsel by the failure to object.

"A claim of ineffective assistance of counsel is a constitutional claim. Hence, we make an independent evaluation of the totality of the circumstances." Sallis v. Rhoads, 325 N.W.2d 121, 122 (Iowa 1982) (citations omitted).

When a defendant relies on a specific act or omission to prove ineffective assistance, he must show that: (1) counsel failed to perform an essential duty; and (2) prejudice resulted therefrom. State v. Miles, 344 N.W.2d 231, 233-34 (Iowa 1984). However, we need not "approach the inquiry in the same order or even address both components of the inquiry if the defendant makes an insufficient

showing on one. . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed." Strickland v. Washington, ___ U.S. ___, ___, 104 S. Ct. 2052, 2069-70, 80 L. Ed. 2d 674, 699 (1984).

The test for prejudice was established by the United States Supreme Court in Strickland as follows:

The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Id. at ___, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. The Court further stated that "[w]hen a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." Id. at ___, 104 S. Ct. at 2069, 80 L. Ed. 2d at 698.

We address each of the alleged errors separately. In each case, however, we find that there is an insufficient showing of prejudice to support a conclusion that Vignovich was denied effective assistance of counsel.

A. Improper Evidence. The prosecution, at trial, introduced evidence that Vignovich exercised control over a stolen .30-.30 rifle on the date of the first search. In addition, there was testimony about the value of the rifle. No limiting instruction was given to the jury regarding the purposes for which the evidence concerning the rifle was to be considered.

Evidence that the rifle was found in Vignovich's home would have been admissible under Iowa Rule of Evidence 404(b) to show knowledge. Nonetheless, there was a possibility that the failure to give a limiting instruction would result in prejudice if the jury convicted Vignovich for exercising control over the rifle, a crime for which he was not charged. Our examination of the totality of the circumstances, however, convinces us that even had a proper limiting instruction

been given, the factfinder would have convicted Vignovich of the crime as charged.

The admission of evidence of the value of rifle, even though irrelevant in this case, did not so prejudice Vignovich that a reversal is in order. The testimony was that the rifle had a value of \$100. Considering the testimony of value of the other stolen items, there is no combination of stolen items in which the addition of the rifle's value would have changed the jury's finding of the degree of crime, whether or not the jury believe some, all, or none of Vignovich's proffered defense.

Vignovich has also complained about the failure of his counsel to object to the testimony of the value of the other stolen items. That argument has no merit. "Value testimony is liberally received, with its weight to be determined by the jury." State v. Savage, 288 N.W.2d 502, 504 (Iowa 1980).

B. Jury Instruction. As an aid in determining the degree of the crime, the jury was given an interrogatory to complete if it found Vignovich guilty. The interrogatory asked the jury to "find the value of the property possessed by defendant." Vignovich argues that his counsel should have objected to the wording of the interrogatory. He asserts that the language used allowed the jury to include the value of goods that were not stolen. Based on our review of the totality of the circumstances, and without ruling whether the interrogatory should have been worded differently, we cannot conclude that Vignovich has made the requisite showing of prejudice. The use of the interrogatory does not undermine our confidence in the outcome of this case.

AFFIRMED.