

FILED

MAR 31 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed March 31, 1986

vs.

)

6-18-
85-561

STEVEN RALPH MATLOCK,

)

333

Defendant-Appellant.

)

Appeal from the Iowa District Court for Johnson County (No. 15536) -
August F. Honsell, Judge.

Defendant appeals his conviction of third-degree theft. **AFFIRMED.**

Charles Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Valencia Voyd McCown, Assistant Attorney General, and Anne Lahey, Assistant County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Snell, and Sackett, JJ.

SACKETT, J.

Defendant Steven Matlock appeals from his conviction of third-degree theft contending there was insufficient evidence to prove he knowingly possessed stolen property. Defendant ran a boat motor repair shop and rebuilt a boat motor for a customer allegedly using a stolen engine block. Defendant claims his trial counsel rendered ineffective assistance of counsel when he failed to move for an acquittal.

In order to prevail on an ineffective assistance claim, defendant must demonstrate that (1) counsel failed to perform a specific duty and (2) prejudice resulted therefrom. Taylor v. State, 352 N.W.2d 683, 685 (Iowa 1984). The burden is upon the defendant to demonstrate whether under the totality of the circumstances counsel's performance was within the range of normal competency. Fryer v. State, 325 N.W.2d 400, 412 (Iowa 1982). In order to meet the prejudice requirement, defendant must show not only a possibility of prejudice, but that "counsel's failure to perform an essential duty worked to the client's actual and substantial disadvantage and thereby constituted 'a denial of the accused's due process right to a fair trial, a fundamental miscarriage of justice, or an equivalent constitutional deprivation.'" Taylor v. State, 352 N.W.2d at 685 (quoting State v. Miles, 344 N.W.2d 231, 234 (Iowa 1984)). The prejudice must be such "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington 466 U.S. 668, ___, 104 S.Ct. 2052, 2069, 80 L.Ed. 2d 674, 699 (1984).

In determining sufficiency of the evidence, we view the evidence in the light most favorable to the state. State v. Doss, 355 N.W.2d 874, 877 (Iowa 1984). All inferences that are fairly and reasonably deducted from the evidence are accepted and all the evidence, not just that supporting the verdict, is considered. State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984). The jury verdict

will be upheld if supported by substantial evidence, which is evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. Id. at 419. For purposes of proving guilt beyond a reasonable doubt, circumstantial evidence is as probative as direct evidence. State v. Doss, 355 N.W.2d at 878.

In order to find defendant guilty of theft, the state has the burden to establish defendant possessed the stolen property and "actually did believe that the property was stolen." State v. Hutt, 330 N.W.2d 788, 790 (Iowa 1983). It is not enough to show only a knowledge of facts which should cause a reasonable person to believe the property had been stolen. Id. at 789-90.

In viewing the evidence in the light most favorable to the state, the jury could have concluded that defendant actually knew the property was stolen. The record showed defendant listed the boat motor parts as new on the customer's repair bill and from this the jury could have inferred he actually intended to misrepresent these parts as new. The jury could have disbelieved defendant's claim that he purchased an outboard motor power head from a friend, and unaware that it was stolen, used the block to rebuild the customer's motor. The friend had stayed with defendant for a month and left the area two days after the outboard motor was reported stolen. There was sufficient evidence to support the jury's verdict.

We find defendant has not shown the requisite prejudice for ineffective assistance of counsel. The result of the proceedings would not have been any different had defendant's trial counsel moved for an acquittal. We affirm defendant's conviction of third-degree theft.

AFFIRMED.