IN THE COURT OF APPEALS OF IOWA

No. 2-656 / 91-1839

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

WILLIAM JAMES MOORE,

Appellant.

Appeal from the Iowa District Court for Washington County, Richard J. Vogel, Judge.

The defendant appeals his convictions for burglary in the first degree and arson in the second degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia J. Cone-Fisher, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Thomas S. Tauber, Assistant Attorney General; Gerald N. Partridge, County Attorney; and Barbara A. Edmondson, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

HABHAB, J.

The defendant, William James Moore, appeals his convictions for burglary in the first degree and arson in the second degree. Moore contends his trial counsel provided ineffective assistance of counsel by failing to object to testimony relating to prior out-of-court statements. Moore also contends the district court erred by overruling his relevancy objection and admitting photographs of another car for demonstrative purposes.

On July 8, 1991, the State filed a trial information charging William Moore with burglary in the first degree in violation of Iowa Code section 713.1 and arson in the second degree in violation of Iowa Code sections 712.1 and 712.4 (1991). The State alleged that Moore broke into a car owned by Shane Manley and started a fire in the car.

At trial during Sergeant Klien's testimony, the State sought to admit photographs of a car which was the same make, model, and year as Manley's car. The State offered the photographs to show structural features which existed on Manley's car before it was damaged. Moore objected on the grounds the evidence was not relevant because no showing had been made that Manley's car doors were in substantially the same condition as those of the photographed car. The trial court overruled the objection stating that the photographs were being used for demonstrative purposes only.

A jury found Moore guilty of the charges. Subsequently, Moore filed a motion in arrest of judgment and a motion for new trial. The State filed a resistance. The district court overruled the motions following a hearing. On October 28, 1991, the district court entered judgment on the conviction and sentenced Moore to twenty-five years for burglary in the first degree and ten years for arson in the second degree. The sentences run concurrently. Moore appeals.

Moore contends the trial court erred by overruling his relevancy objection and allowing the State to admit into evidence photographs of another car. The State responds that trial court did not abuse its discretion in admitting the evidence since there was some evidence that the two cars were in substantially the same condition.

Decisions concerning the relevancy of evidence are within the discretion of the district court. State v. Ludvigson, 482 N.W.2d 419, 424 (Iowa 1992). In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting Weeks v. Burnor, 326 A.2d 138, 140 (Vt. 1974)).

We are unable to conclude the district court abused its discretion in admitting, for demonstrative purposes,

photographs of a car similar in make, model, and year to Manley's car. We affirm the district court on this issue.

Moore also contends his trial counsel provided ineffective assistance by failing to object during Sergeant Hansen's testimony to hearsay evidence. Sergeant Hansen, a police officer who investigated the fire, testified that he interviewed Brian Knerr three times. Knerr claimed to have witnessed the fire but gave three different accounts. On redirect, the State asked Sergeant Hansen if there was something consistent about all of Knerr's accounts of the fire. The Sergeant responded that on all three occasions Knerr told him that Moore started the fire. Moore argues the jury heard Knerr's assertions that Moore started the fire without Moore having an opportunity to cross-examine Knerr about the statement. Moore contends he was prejudiced by the testimony because it was the only testimony involving a claim of direct knowledge about who set the fire. The State responds that Moore failed to prove prejudice.

Where the record on direct appeal is not adequate to permit us to resolve the issue, we preserve the defendant's claim for postconviction proceedings so the facts may be so developed. State v. Koenighain, 356 N.W.2d 237, 238 (Iowa App. 1984). This also gives the allegedly-ineffective attorney the opportunity to explain his or her conduct. State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). We conclude there is an inadequate record for us to adjudicate

defendant's claim without counsel's explanation for his/her conduct. We therefore preserve defendant's ineffective assistance of counsel claim for a later proceeding.

After considering all issues presented, we affirm the defendant's convictions and sentences.

Cost of this appeal are taxed to the appellant.

AFFIRMED.