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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed August 30, 1983

vs.)

JERRY WAYNE KLEISS,) 3-132/68286

Defendant-Appellant.)

Appeal from Lee District Court - William S. Cahill, Judge.

Defendant appeals his conviction for second-degree burglary in violation of Iowa Code §§ 713.1 and 713.3 (1981). AFFIRMED.

Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Teresa Baustian, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

DONIELSON, J.

Defendant appeals his conviction for second-degree burglary in violation of Iowa Code §§ 713.1 and 713.3 (1981). He claims there was insufficient evidence to support the jury's guilty verdict and that he was given ineffective assistance of counsel at trial. We affirm.

Defendant was charged by trial information with second-degree burglary in connection with an incident during the early morning hours of October 14, 1981, in which a tool shed owned by Daniel Haeffner was broken into and several tools were taken. Defendant filed a number of pretrial motions including a motion to suppress his oral statements admitting his guilt. He also filed a notice of alibi defense. After trial to a jury, defendant was found guilty of the offense charged and, on the basis of past convictions, was later sentenced as a habitual offender. He filed motions in arrest of judgment and for a new trial, alleging newly-discovered evidence and the ineffectiveness of his trial counsel, David Sallen (defendant was now being represented by Christine Marshall). An extensive hearing was held on these motions, most of which dealt with the claims of ineffective assistance of counsel. In its ruling dated March 24, 1982, the court overruled defendant's motions and found that Sallen's representation was within the normal range of competency. This appeal followed.

I.

Defendant first claims that there was insufficient evidence in the record to support a guilty verdict. In determining claims of evidentiary insufficiency, we examine all of the evidence in the light most favorable to the State. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). Sheriff Don Arnold testified that defendant admitted he committed the Haeffner burglary. Such an out-of-court confession, of course, is not enough to support a conviction unless it is accompanied by other evidence showing defendant's guilt. Iowa R. Crim. P. 20(4).

The required corroborative evidence "need not be strong nor need it go to the whole of the case so long as it confirms some material fact connecting the defendant with the crime." State v. White, 319 N.W.2d 213, 214 (Iowa 1982).

We believe the record contains sufficient corroborative evidence. Shortly after the burglary, which occurred at approximately 12:30 a.m., Deputy Henshaw saw defendant approaching the latter's car which was parked by a cemetery near the Haeffner farm. When ordered to stop, defendant got in his car and sped away. After he was later arrested for resisting arrest, defendant's boots were taken and compared with, and were found to be very similar to, footprints found near Haeffner's tool shed. Under the standards enunciated in White, these factors are sufficiently corroborative to connect defendant with this crime and therefore to enable defendant's oral confession to Sheriff Arnold to support the jury's guilty verdict. Under these circumstances, we find the record contains sufficient evidence to prove his guilt.

II.

Defendant also complains that he was given ineffective assistance of counsel at trial by his attorney at that time, David Sallen. Normally, the record on direct appeal is inadequate to make a reasoned determination of such a claim. In this case, however, the hearing on defendant's post-trial motions consisted largely of testimony on the question of Sallen's effectiveness at defendant's trial. Since we have an adequate record here, we reach the merits of defendant's claim.

The principles governing our review of a claim of ineffective assistance of counsel were stated as follows:

> In a postconviction proceeding the petitioner has the burden of proof to establish by a preponderance of the evidence a claim of ineffective assistance of counsel. The petitioner must overcome a presumption that counsel is competent. The ultimate test is whether under the entire record and totality of the circumstances counsel's performance was within the range of normal competency. When

> the claim of ineffective assistance of counsel is premised on the failure of counsel to take some action, the petitioner must demonstrate that (1) counsel failed to perform an essential duty, and (2) prejudice resulted.

Henderson v. Scurr, 313 N.W.2d 522, 524 (Iowa 1981)(citations omitted). In reviewing a lawyer's trial performance, we must resist the temptation to "Monday morning quarterback" his decisions. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980).

> Effective assistance of counsel does not mean successful. Rather, it denotes conscientious, meaningful legal representation wherein the accused is advised of his rights and honest, learned and able counsel is accorded reasonable opportunity to perform his assigned task. Improvident trial strategy, miscalculated tactics, mistake, carelessness or inexperience do not necessarily amount to ineffective counsel.

Id., quoting Parsons v. Brewer, 202 N.W.2d 49, 54 (Iowa 1972).

Defendant raises a whole host of specifications of Sallen's alleged ineffectiveness. To discuss each one individually would unduly lengthen this opinion. It is enough to say that we have considered all of defendant's claims and that we agree with the trial court that Sallen's performance on defendant's behalf was well within the range of normal competence. Defendant's numerous allegations can be summarized by stating he was displeased that Sallen refused to follow defendant's every request and demand as it related to the factual investigation of the case, the filing of pretrial motions on various grounds, and the examination and cross-examination of witnesses at trial. We adopt the trial court's response to this claim of ineffective assistance of counsel:

> The Court believes in this case the defendant misconceives the role of an attorney in the presentation of a criminal case. From his testimony it is apparent that he sees an attorney's role as being that of a "rubber stamp" who has a duty to simply ask every question the defendant desires and read to the Court all documents which he has, himself, prepared for his case. Certainly an attorney has a duty to sit down with his client and consider every suggestion which is made, and the testimony is clear here that Sallen

> did that; however, the defendant is not entitled to have an attorney who will simply carry out his every demand.

We are satisfied that Sallen effectively exercised his professional judgment to accept the suggestions made by defendant that would have significantly helped his case and to reject those that would not. Although at least some of the issues defendant wanted Sallen to pursue were nonfrivolous, Sallen was under no absolute constitutional duty to advance all of them. See Jones v. Barnes, 51 U.S.L.W. 5151, 5153-54 (U.S. July 5, 1983) reversing 665 F.2d 427 (2d Cir. 1981)(duty of appellate counsel). This issue is without merit.

Finding no reversible error, we affirm defendant's conviction and sentence.

AFFIRMED.