JAN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed January 30, 1981
vs.)
TIMOTHY DALE CRANE,) 0-320
Defendant-Appellant.) 63980

Appeal from Polk District Court - Ray A. Fenton, Judge.

Defendant appeals conviction for false use of financial instrument in violation of section 715.6, Supplement to the Code 1977, alleging that he was denied effective assistance of counsel. Affirmed.

Martha Shepard of the Polk County-Des Moines Offender Advocate Office, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, Lona Hansen, Assistant Attorney General, and Dan Johnston, Polk County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant Timothy Crane appeals from his conviction for false use of a financial instrument in violation of section 715.6, Supplement to the Code 1977, alleging that he was deprived of effective assistance of counsel. We affirm.

I.

In May of 1978, defendant was convicted by jury for false use of a financial instrument and was ultimately sentenced to a prison term not to exceed ten years. The parties' joint application for a remand to hold an evidentiary hearing on the issue of trial counsel's effectiveness was denied by order of Justice Rees of the Iowa Supreme Court.

The essence of trial testimony given by the State's witnesses was that the defendant had purchased a used car by signing Greg Marquart's name to one of Greg Marquart's checks. Marquart testified that the defendant had acted without his authority or permission in executing the check in his name. An employee of the used car lot identified defendant as the person who had purchased the car with a bad check to which he had signed Marquart's name. Defendant presented no witnesses in his defense.

The State's witnesses were cross-examined in a manner that defendant alleges was repetitive, confusing, irrelevant, argumentative, and ultimately damaging to the defendant's case. During these cross-examinations, some unfavorable information was revealed concerning defendant's signing Marquart's name to other checks, admissions allegedly made by the defendant, and the possibility that the defendant at one time had had access to Marquart's checkbook. In addition, defense counsel failed to object to the direct examination of a police officer who testified that the defendant had refused to answer a question in the exercise of his Miranda rights.

II.

Defendant now contends that his conviction should be reversed because various acts and omissions of his trial court counsel deprived him of effective assistance of counsel. Specifically, he contends that he was denied effective assistance of counsel because his attorney failed to engage in pretrial discovery, failed to object to a police officer's testimony regarding defendant's assertion of his Miranda rights, and elicited unfavorable information during cross-examination of State witnesses. We find no merit in the defendant's contentions.

Because defendant alleges violation of a basic constitutional safeguard, see Gideon v. Wainwright, 372 U.S. 335, 342-43, 83 S. Ct. 792, 795-96, 9 L. Ed. 2d 799, 804 (1963), we will evaluate the totality of relevant circumstances shown by the entire record. Webster County Board of Supervisors v. Flattery, 268 N.W.2d 869, 872 (Iowa 1978); Snyder v. State, 262 N.W.2d 574, 576 (Iowa 1978); Long v. Brewer, 253 N.W.2d 549, 552 (Iowa 1977). Iowa has adopted the "range of normal competency" standard in reviewing allegations of this nature. State v. Hicks, 277 N.W.2d 889, 896 (Iowa 1979); State v. Veverka, 271 N.W.2d 744, 750 (Iowa 1978) (quoting State v. Rand, 268 N.W.2d 642, 648 (Iowa 1978)). We must have an affirmative factual basis demonstrating counsel's inadequacy of representation, Cloesen v. State, 258 N.W.2d 330, 332 (Iowa 1977), and the burden of proof is on the party raising allegations of ineffective assistance of counsel. Not every mistake in strategy or trial tactics qualifies as ineffective assistance of counsel, Long, 253 N.W.2d at 588, and, in reviewing professional performance, we bear in mind that trial preparation frequently involves extensive time pressures. Kellogg v. State, 288 N.W.2d 561, 566 (Iowa 1980). Applying these criteria to the instant case, we fail to see that the record supports defendant's claim.

We deal first with defendant's complaint that trial counsel failed to object to testimony regarding exercise of his Miranda rights. The record shows that counsel did not object to the officer's testimony that the defendant refused to answer questions about the particular check with which he bought the car. However, counsel did object immediately thereafter when the officer appeared ready to relate the defendant's response to a question about whether he had written other checks in Marquart's name. Although it is difficult to determine trial counsel's strategy from this record, it would appear that his main concern may have been to avoid the officer's testimony that the defendant had written other such checks. Counsel's failure to object to evidence that defendant exercised his Miranda rights when questioned about this particular check may have been due to counsel's judgment that it would be harmful to emphasize defendant's refusal to answer the officer's questions. At any rate, counsel's failure to object raises questions of judgment and trial strategy and while the defendant may argue that counsel poorly judged the situation, we acknowledge that improvident trial strategy, mistakes in judgment, or miscalculated tactics do not necessarily amount to ineffective assistance of counsel. Hinkle v. State, 290 N.W.2d 28, 34 (Iowa 1980); State v. Killpack, 276 N.W.2d 368, 372 (Iowa 1979). The same observation might be said to apply to

defendant's contention that cross-examination of the State's witnesses was repetitive and ultimately damaging to his case, since counsel's method of cross-examination may appropriately be regarded as involving tactical judgment. Finally, as to defendant's countention that he was denied effective assistance because his counsel did not conduct formal pretrial discovery, we note that the use of such methods is not absolutely required in every case and that the method to be used is left to the discretion of counsel. Kellogg, 288 N.W.2d at 563-64. The record does not reveal that counsel failed to conduct pretrial discovery of any kind and we decline to find ineffective assistance of counsel on the basis of this particular contention.

Because the defendant has alleged violation of a constitutional right, we have very carefully reviewed the evidence in light of his contentions. However, we are unable to conclude on the basis of the record on this appeal that defendant was denied effective assistance of counsel.

AFFIRMED.