IN THE COURT OF APPEALS OF IOWA

No. 6-581 / 95-1064

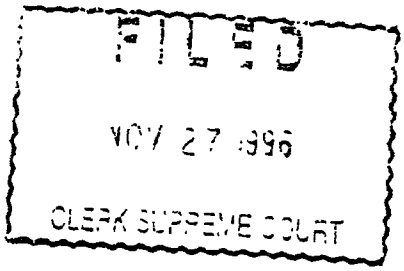
STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHN ANTHONY BOGDAN,

Defendant-Appellant.



Appeal from the Iowa District Court for Pottawattamie County, Leo F. Connolly, Judge.

John Bogdan appeals the judgment and sentence entered upon his conviction of possession of explosive or incendiary materials. **AFFIRMED.**

John Anthony Bogdan, Council Bluffs, pro se.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Richard Crowl, County Attorney, and Timothy O'Grady, Assistant County Attorney, for appellee.

Considered by Habhab, P.J., and Huitink and Vogel, JJ.

PER CURIAM

This is an appeal by a defendant claiming his conviction and sentence for possession of explosive or incendiary materials, in violation of Iowa Code sections 712.1 and 712.6, should be overturned. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On July 12, 1994, John Bogdan came to believe the children of Rogelio Davila had stolen items from his yard. Rogelio and his son, Roger, testified Bogdan placed a plastic bag in the street outside their house, doused it with gasoline, lit it, and then drove away. The resulting explosion broke a window in the Davila home. The fire marshall and police officers believed the plastic bag had been filled with acetylene and oxygen. Bogdan had welding equipment, including acetylene and oxygen, in his garage. He also possessed plastic bags manufactured by the same machine which manufactured the one used in the crime.

Bogdan was charged with possession of explosive or incendiary materials. He testified he had gotten into a fight with Rogelio concerning the thefts from his home. He stated that while they were fighting a mysterious figure, Uncle Pete, had set off an explosive device. A jury found Bogdan guilty of the crime charged. He has filed a pro se appeal.

I. Bogdan asks to have the case remanded to allow him to develop an evidentiary record on the issue of ineffective assistance of counsel. He believes this procedure would be preferable to raising the issue in a postconviction action. The

present appeal has been pending since June 19, 1995, and at this point we do not believe a limited remand would be appropriate.

II. In the alternative, Bogdan raises in this appeal several issues of ineffective assistance of counsel. He claims trial counsel failed to sufficiently investigate the case and failed to impeach several witnesses. We do not believe the present record is sufficient to allow us to address these issues. We determine Bogdan's claims of ineffective assistance should be preserved for possible postconviction proceedings. This would give his counsel the ability to respond in a full evidentiary hearing.

III. Bogdan claims he was denied a fair trial because improper references were made to his prior conviction. Bogdan was asked whether he had told the Davila family he had just gotten out of prison. We determine Bogdan failed to preserve error on this issue because no objection was made to the "prison" references during the trial. *See State v. Cuevas*, 288 N.W.2d 525, 529 (Iowa 1980).

IV. Bogdan contends the district court abused its discretion in sentencing him. He points out no one was hurt in the explosion and the only property damage was one broken window. We find no abuse of discretion in the sentence imposed. The explosion could have posed a serious threat to life and property. The court also looked at Bogdan's prior criminal history and his potential for rehabilitation.

We affirm defendant's conviction and sentence for the crime of possession of an explosive or incendiary device. Costs of this appeal are assessed to defendant.

AFFIRMED.