

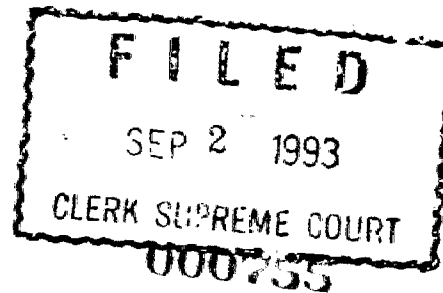
IN THE COURT OF APPEALS OF IOWA

No. 3-293 / 92-429

STATE OF IOWA,
Plaintiff-Appellee,

vs.

AMBROSE COLEMAN, JR.,
Defendant-Appellant.



Appeal from the Iowa District Court for Adair County,
William H. Joy, Judge.

Ambrose Coleman appeals from his conviction, following a jury trial, of burglary in the second degree and theft in the second degree in violation of Iowa Code sections 713.1, 713.5, 714.1(1), and 714.2(2) (1991). **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, and Willard W. Olesen, County Attorney, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett,
JJ.

OXBERGER, C.J. 000756

The State charged Ambrose Coleman and Timothy Sapp with theft and burglary, both in the second degree.

At trial, Michael Owen and Daved Harrison testified Coleman and Sapp broke into cars and removed stereo equipment. The State sought to admit three sales receipts to show the amount paid for the stolen items by Timothy Wolfe, one of the owners of the cars. The district court overruled Coleman's hearsay objection and received the documents into evidence.

Coleman was found guilty and sentenced to a term not to exceed five years on the theft charge and a term not to exceed ten years on the burglary charge, to run concurrently.

Coleman appeals.

We review for an abuse of discretion. We reverse the trial court's determination on the issue of admissibility of evidence only when we find a clear abuse of discretion. State v. Roth, 403 N.W.2d 762, 765 (Iowa 1987).

Discussion

Coleman contends the trial court erred in allowing in evidence inadmissible hearsay in the form of sales receipts. He argues the State failed to present any testimony of a qualified witness to prove the sales receipts were records kept in the regular course of

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business. Also, he contends that if the receipts were used to refresh Wolfe's memory they should not have been received as an exhibit because they were not offered by Coleman or Sapp.

Iowa Rule of Evidence 802 prohibits the admission of hearsay testimony "except as provided by the Constitution of the State of Iowa, by statute, by these rules, or by other rules of the Iowa Supreme Court." Hearsay is an out-of-court statement offered to prove the truth of its contents. State v. Horn, 282 N.W.2d 717, 724 (Iowa 1979). Generally, error in the admission of hearsay is presumed prejudicial unless the contrary is affirmatively established. State v. McKettrick, 480 N.W.2d 52, 60 (Iowa 1992). However, admission of hearsay evidence is not prejudicial if substantially the same evidence exists in the record. Id.

In this case, the value of the items was testified to, without objection, prior to the introduction of the sales receipts. The value of the items testified to and the value shown by the introduction of the sales receipts were substantially similar. The slight variation in the value testified to and the value shown by the sales receipts had no impact on the outcome of the case.

Coleman next argues his trial counsel failed to obtain the testimony of Steve Hauf who would have supported his alibi. Coleman also asserts that trial counsel may have shared office space with the attorney who represented

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Harrison, a State's witness against him. Coleman requests these issues be preserved for postconviction relief.

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.

AFFIRMED.