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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

DENNIS V. KREMER,)

Defendant-Appellant.)

Filed April 20, 1988

244

8-35
87-216

Appeal from the Iowa District Court for Jackson County (No. 5286) - John A. Nahra, Judge.

Defendant appeals from his conviction of theft in the third degree in violation of Iowa Code sections 714.1(4) and 714.2(3). **AFFIRMED IN PART; SENTENCE VACATED; REMANDED FOR RESENTENCING.**

Charles Harrington, Appellate Defender, and Michael J. Laughlin, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Roxann M. Ryan, Assistant Attorney General; and Michael Kane, County Attorney, for plaintiff-appellee.

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

HAYDEN, J. 215

Defendant, Dennis Kremer, appeals his conviction of theft in the third degree in violation of Iowa Code sections 714.1(4) and 714.2(3). He asserts the trial court erred by admitting evidence of his alleged prior criminal acts. In the alternative, Kremer asserts his trial counsel was ineffective since his questioning of Kremer regarding these alleged acts permitted the State to introduce this evidence. Kremer also asserts the sentencing court erred by failing to articulate the reasons for the sentence imposed on him.

Kremer, a self-employed mechanic, was charged with theft after he allegedly stole two motors from a farm near Maquoketa, Iowa and sold them to a Maquoketa repair shop. At trial Kremer contended he had found the motors in a nearby cemetery. The State, however, attempted to introduce evidence Kremer had previously stolen a motor from a local farmer and sold it to another individual, although Kremer had never been charged with this alleged crime. Upon objection, the trial court ruled this evidence inadmissible, but warned Kremer's trial counsel questioning of Kremer along this line could "open the door" for the State to impeach such testimony with this evidence.

Kremer's trial counsel nonetheless took the opportunity on direct examination to ask Kremer about these alleged prior acts, as follows:

> [Counsel:] Did you take anything else from any farmers —
>
> [Kremer:] No, I haven't.
>
> [Counsel:] Are you saying that just because you'd like to get out of this charge or because it's the truth?
>
> [Kremer:] Because it's the truth.
>
> [Counsel:] You realize you're under oath?
>
> [[Kremer:] Yes, I do.
>
> [Counsel:] Why do you suppose that the deputy or other people would be accusing you of these things?

> [Kremer:] Jim Streets [deputy sheriff of Jackson County] and me don't get along at all, period, which goes back to six or seven years ago when we both lived in Andrew.
>
> [Counsel:] So you didn't steal any motors from anybody?
>
> [Kremer:] No, I didn't steal any from anybody.

The trial court thereupon allowed the State to introduce evidence of the alleged prior crime for purposes of impeachment.

The general rule is that evidence to show the commission of crimes other than that for which the defendant is presently on trial is inadmissible. State v. Finchum, 364 N.W.2d 222, 225 (Iowa 1985); State v. Wright, 191 N.W.2d 638, 639 (Iowa 1971). Exclusion of this evidence is based on the view it is ordinarily not relevant and its probative value does not outweigh its prejudicial effect. State v. Mendiola, 360 N.W.2d 780, 782 (Iowa 1985); see also State v. Connor, 314 N.W.2d 427, 429 (Iowa 1982).

However, we are convinced this general rule of exclusion does not apply where, as here, the defendant has raised the issue of his good character by testifying he did not commit the alleged prior criminal act. Cf. United States v. Wilford, 710 F.2d 439, 449 (8th Cir. 1983), cert. denied 464 U.S. 1039, 104 S.Ct. 701, 79 L.Ed.2d 166 (1984) (defendants raised as a material issue their intent in committing the acts charged, thereby allowing the government to introduce evidence of prior similar acts to show that defendants were aware their acts were unlawful and they intended to commit such unlawful acts); State v. Scalf, 254 Iowa 983, 990, 119 N.W.2d 868, 872 (1963) (testimony by defendant's witnesses that defendant's reputation was very good opened the door for controverting testimony in rebuttal). Certainly the State could challenge Kremer's veracity by the presentation of evidence revealing material facts are other than as he stated, so long as the subject of the allegedly inaccurate statement

was material and not collateral to the facts of the case. See State v. Fowler, 248 N.W.2d 511, 520 (Iowa 1976).

We conclude Kremer made the subject of the prior criminal act at issue material to the case by asserting his innocence of that act and by implying his arrest was the result of a feud with the county's deputy sheriff. The trial court did not abuse its discretion by admitting evidence impeaching this testimony of good character.

Nor are we persuaded by Kremer's alternative defense, viz., that his trial counsel was ineffective by pursuing the line of questioning which allowed the State to introduce evidence of the prior criminal act. A claim of ineffectiveness of counsel must be premised on more than simply questionable or unsuccessful trial tactics. Kyle v. State, 364 N.W.2d 558, 565 (Iowa 1985). Trial counsel had clearly adopted a strategy of having Kremer vigorously assert his innocence of the offense charged and all similar acts, and instead suggest Kremer's problems were the result of long-standing acrimony between himself and the county's deputy sheriff. Whether this strategy in hindsight was wise or unwise, we do not believe it was outside the range of reasonable professional competence. See State v. Risdal, 404 N.W.2d 130, 133 (Iowa 1987); see also State v. Newman, 326 N.W.2d 788, 795 (Iowa 1982).

We agree with Kremer, however, that the sentencing court erred by failing to articulate the reasons for the sentence imposed on him as required by Iowa Rule of Criminal Procedure 22(3)(d). A statement of a reason or reasons is necessary to allow the reviewing court to determine whether the sentence imposed constituted an abuse of the sentencing court's discretion. State v. Washington, 356 N.W.2d 192, 196 (Iowa 1984); State v. Luedtke, 279 N.W.2d 7, 8 (Iowa 1979).

In this case, the court provided no reasons for the six-month sentence imposed. The State contends the court's reference to the presentence investigation report was sufficient to provide a basis for our review. We disagree. The sentencing court merely asked Kremer's counsel, "Have you had an opportunity to review the Presentence Investigation?" and "For the record, I believe you were in receipt of that investigation yesterday?" These inquiries hardly constitute articulated reasons for the sentence imposed, nor do they allow us to infer any unarticulated reasons. We therefore vacate the sentence and remand for resentencing. We express no opinion as to what the sentence upon remand should be or how the sentencing court's discretion should be exercised.

AFFIRMED IN PART; SENTENCE VACATED; REMANDED FOR RESENTENCING.