IN THE COURT OF APPEALS OF IOWA

No. 3-635 / 92-1777

FILED
FEB 25 1994
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

WILLIAM IRVIN DAVIS, JR.,

Appellant.

Appeal from the Iowa District Court for Wayne County County, Thomas S. Bown, Judge.

William Irwin Davis, Jr., appeals from his conviction, following a jury trial, for possession of burglar's tools in violation of Iowa Code section 713.7 (1991). **AFFIRMED BY OPERATION OF LAW IN PART, AND AFFIRMED IN PART.**

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

Bonnie J. Campbell, Attorney General, Richard J. Bennett, Assistant Attorney General, and Alan M. Wilson, County Attorney, for appellee.

Heard by Oxberger, C.J., Sackett, J., and Critelli, S.J.,* but decided by Oxberger, C.J., and Donielson, Schlegel, Hayden, Sackett, and Habhab, JJ.

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

PER CURIAM

Defendant William Irwin Davis, Jr. appeals his conviction, following a jury trial, for possession of burglar's tools in violation of Iowa Code section 713.7 (1991).

I. Motion for Acquittal. Davis contends the district court erred in failing to grant a directed verdict for acquittal. Defendant claims the State failed to produce sufficient evidence to sustain a conviction for possession of burglar's tools. The court being equally divided on this issue, the conviction of defendant is affirmed by operation of law. Iowa Code § 602.5106(1) (1993).

AFFIRMED.

For affirmance: Donielson, Hayden, and Habhab, JJ.

For reversal: Oxberger, C.J., and Schlegel and Sackett, JJ.

II. Motion to Suppress. Defendant argues the district court erred in failing to grant a motion to suppress evidence obtained as a result of Officer Shelley's stop of the vehicle which defendant was driving. Davis contends the officer lacked reasonable cause to stop the vehicle. Officer Shelley testified he observed before stopping the vehicle the occupants were not wearing seat belts. The stop was lawful when the officer observed a traffic offense--however minor--he has probable cause to stop the vehicle. State v. Cummins, 920 F.2d 498, 500 (8th Cir.

1990), cert. denied, --- U.S. ---, 112 S. Ct. 428, 116 L. Ed. 2d 448 (1991) (citations omitted). We determine this investigatory stop was based upon reasonable grounds. The trial court properly overruled the motion to suppress. We unanimously affirm on this issue.

III. Ineffective Assistance. Davis claims his trial counsel rendered ineffective assistance by failing to object to a jury instruction. Davis contends Instruction 13 failed to inform the jury that to convict defendant it had to find the principal possessed the specific intent to use the burglar's tools and that defendant knew of that specific intent.

To prevail on an ineffectiveness claim Davis must prove by a preponderance of the evidence his trial counsel failed to prove an essential duty and defendant was prejudiced by the breach. Taylor v. State, 352 N.W.2d 683, 684-85 (Iowa 1984) (citation omitted). We may address the prejudice component of the ineffectiveness claim without determining whether counsel breached an essential duty. Id. (citing Strickland v. Washington, 466 U.S. 668, 697, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699-700 (1984)).

The failure of defendant's counsel to object to the jury instruction did not prejudice defendant because the offense of aiding and abetting in the possession of burglar's tools does not involve specific intent. The intent required under Iowa Code section 713.7, possession of burglar's tools, is a general, not specific, burglarious

intent, purpose, plan, or design of the possessor of the tools having such tools. State v. Hobbs, 252 Iowa 432, 435-36, 107 N.W.2d 238, 240 (1961) (citing State v. Hefflin, 89 S.W.2d 938, 945 (Mo. 1935)); see Mahar v. Lainson, 247 Iowa 297, 299-300, 72 N.W.2d 516, 518 (1955), cert. denied, 350 U.S. 972 (1956).

Davis has failed to satisfy the prejudice component of an ineffectiveness claim. We unanimously determine Davis's trial counsel did not render ineffective assistance.

AFFIRMED.