

**IN THE COURT OF APPEALS OF IOWA**

No. 0-735 / 09-1893  
Filed November 24, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**SHELLEY RENEE HIGGINS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Charles H. Pelton,  
Judge.

Shelley Renee Higgins contends her trial counsel was ineffective in failing  
to challenge territorial jurisdiction with respect to a trafficking-in-stolen-weapons  
conviction. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant  
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**DANILSON, J.**

Shelley Renee Higgins contends her trial counsel was ineffective in failing to challenge territorial jurisdiction with respect to her conviction of trafficking in stolen weapons in violation of Iowa Code sections 703.1 and 724.16A (2007).<sup>1</sup> Because we find the record is adequate on direct appeal to address this issue and there is sufficient evidence to invoke territorial jurisdiction, trial counsel was not ineffective and the conviction is affirmed.

**I. Background Facts and Proceedings.**

Viewing the evidence in light most favorable to the State, and accepting all reasonable inferences to be drawn from that evidence, a rational jury could find: On September 25, 2008, Shelley Higgins called Andromeda Williams and asked about selling some handguns; Williams told Higgins that Ambrose Spires, a drug dealer, was always looking for guns and would buy them; and Higgins told Williams she would call back when she got the handguns.

On September 26, 2008, Higgins was sitting with her boyfriend, Walter Hawley, on the front porch of his Davenport, Iowa, residence. Hawley kept two red toolboxes in his bedroom: one contained several handguns and ammunition, the other contained archery equipment. Higgins asked to use the bathroom, which was located on the second floor of the house, as was the master bedroom. Hawley testified that Higgins was gone so long he was just about to go inside to check on her when she returned to the porch.

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<sup>1</sup> Higgins was also convicted of second-degree theft, in violation of sections 714.1(1) and 714.2(2), and being a felon in possession of a firearm, in violation of section 724.26. She does not challenge those convictions.

Higgins then said she wanted to put her groceries, which were in Hawley's truck, in the refrigerator. Hawley's refrigerator was in the garage, so he handed Higgins the keys to his truck and garage, and Higgins left the porch. The garage was behind the residence and could not be seen from the porch. Higgins was gone for about fifteen minutes. When she returned to the porch, she told Hawley she was going home. Rather than allow Hawley to drive her, she made a call on her cell phone.

Cornell Miller arrived and Higgins walked to his vehicle and spoke with him for a few minutes. Miller drove off and Higgins returned to the porch, telling Hawley that Miller needed to get gas and would return. Higgins again borrowed Hawley's garage keys stating she was going to get her groceries. Higgins was out of sight again for fifteen or twenty minutes. Higgins came back to the porch and returned Hawley's keys. Miller arrived and Higgins got in his vehicle and left.

About 2:30 p.m. that same afternoon, Williams had been picked up from her workplace by Spires and was en route to her home in Rock Island, Illinois, when she received a call from Higgins. Williams told Higgins that Spires was with her and that he wanted the guns. Williams then gave her cell phone to Spires. When Williams and Spires got to Williams's home, a black Saturn pulled up behind them. Higgins and Miller got out of the black Saturn. Carrying a long red tool box, Higgins entered Williams's house. Higgins showed Spires some handguns. Williams stated that if they were conducting a gun deal in her home, she wanted to be paid her cut. The transaction was interrupted, however, when Williams's son came home from school. Higgins left with the toolbox.

On the evening of September 26, 2008, Hawley went upstairs to his bedroom and noticed his two red tool boxes were missing. His itemization of missing items he gave to police included a .25 caliber Lorcin pistol with a distinctive pearl handle, a .38 caliber Colt copper pistol, a .38 caliber Smith & Wesson revolver with a modified grip, and a 9 mm Glock pistol.

A “couple weeks” later, Williams was in Spires’s apartment and saw Spires with the “pretty” pearl handled, silver handgun “he got from Shelley.” Williams also saw Spires playing Russian roulette with a black revolver.

Williams was a confidential informant for the Davenport Police Department in connection with the Department’s investigation of Spires for distribution of crack cocaine in Davenport.<sup>2</sup> With Williams’s information that Spires was in possession of handguns, Davenport police obtained a warrant and, on November 13, 2008, executed a search of Spires’s apartment, located at 1326 East 38th Street. Hawley’s .38 caliber Smith & Wesson revolver and Lorcin .25 caliber semi-automatic handgun with pearl grips were recovered. Police also found a red tool box containing ammunition, gun accessories, and a gun cleaning kit.

The jury found Higgins guilty of trafficking in stolen weapons, and she now appeals, contending the record lacks sufficient evidence to invoke territorial jurisdiction.

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<sup>2</sup> Williams testified she had been found in possession of crack cocaine and agreed to cooperate with the Davenport Police Department in order to avoid prosecution. Following her testimony about her agreement to work for Davenport police, she was asked if the events that she described occurred in Scott County, to which she responded, “Yes.”

## II. Scope and Standard of Review.

Higgins's territorial jurisdiction claim is raised in the context of an ineffective-assistance-of-counsel claim. We review ineffective-assistance claims de novo. *State v. Cromer*, 765 N.W.2d 1, 6 (Iowa 2009).

## III. Discussion.

Generally, claims of ineffective assistance of counsel made on direct appeal will be preserved for postconviction relief actions. However, "we will consider such claims on direct appeal where the record is adequate."

In addressing ineffective-assistance-of-counsel claims, we recognize the "[d]efendant has the burden of proof to establish by a preponderance of the evidence that counsel rendered ineffective assistance." The successful ineffective-assistance-of-counsel claim requires proof by a preponderance of the evidence that (1) counsel failed to perform an essential duty, and (2) prejudice resulted.

*Id.* at 7 (citations omitted).

"Counsel has no duty to raise an issue that has no merit." *State v. Fountain*, 786 N.W.2d 260, 263 (Iowa 2010). We must decide if it can be determined as a matter of law that Higgins's counsel was ineffective in failing to challenge the territorial jurisdiction of the trial court and whether Higgins was prejudiced because of this error. *See id.*

Territorial jurisdiction "refers to the power of the State of Iowa 'to create criminal law, especially with respect to the permissible geographical scope of penal legislation.'" *State v. Wagner*, 596 N.W.2d 83, 85 (Iowa 1999) (citation omitted). Territorial jurisdiction is an essential element of a crime. *State v. Liggins*, 524 N.W.2d 181, 184 (Iowa 1994). Pursuant to section 803.1(a), a person is subject to prosecution in Iowa if "[t]he offense is committed either

wholly or partly in Iowa.” A crime is partly committed in Iowa “if conduct which is an element of the offense, or a result which constitutes an element of the offense, occurs within this state.” Iowa Code § 803.1(2). “Thus, the court must examine the facts of the present case to determine whether conduct or a result of conduct constituting an element of the crime . . . took place in Iowa.” *Wagner*, 596 N.W.2d at 86.

The crime of trafficking in stolen weapons of which Higgins was convicted has two elements: (1) the defendant knowingly transferred or facilitated the transfer of a (2) stolen firearm. Iowa Code § 724.16A (“A person who knowingly transfers or acquires possession, or who facilitates the transfer, of a stolen firearm commits a class ‘D’ felony . . .”).

The State concedes that evidence that the firearm was stolen is evidence of its status and cannot provide “conduct” within the meaning of 803.1(2). See *Wagner*, 596 N.W.2d at 86. The State also appears to concede that there is no direct evidence Higgins “transferred” the handguns to Spires in Iowa. Consequently, the question is whether there is sufficient evidence that Higgins “facilitated the transfer” of stolen firearms in Iowa to invoke territorial jurisdiction.

A verdict will be upheld if substantial evidence supports it. *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). “Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.” *Id.* We consider all the record evidence, but viewed in the light most favorable to the State and including all presumptions and legitimate inferences that reasonably may be drawn. *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005).

We conclude the record evidence is adequate to address Higgins' claim on direct appeal and supports territorial jurisdiction for Higgins' trafficking-in-stolen-weapons conviction.

Viewed in the light most favorable to the State, a rational jury could find beyond a reasonable doubt that Higgins facilitated the transfer of weapons stolen from Hawley's Davenport residence. On September 26, 2008, Higgins called Miller to pick her up at Hawley's Davenport residence. Higgins and Miller arrived shortly thereafter in Rock Island, Illinois, with a red toolbox, displaying weapons stolen from Hawley's Davenport residence and offering them for sale to Spires. Those weapons were later found in the possession of Spires by Davenport police in Spires's apartment. Even if there is no direct evidence that Higgins transferred the weapons to Spires in Iowa, there is substantial evidence, albeit circumstantial evidence, that her conduct in Iowa facilitated the transfer of those weapons to Spires. See *State v. Serrato*, 787 N.W.2d 462, 470-72 (Iowa 2010) (concluding territorial jurisdiction proved beyond a reasonable doubt by circumstantial evidence supporting an inference that defendant engaged in conduct which manifested malice aforethought to kill victim and terminate the pregnancy while in Iowa); *State v. Wedebrand*, 602 N.W.2d 186, 189 (Iowa Ct. App. 1999) (noting territorial jurisdiction exists for offenses committed partially within the state).

In conclusion, we find the record on direct appeal is adequate to address and reject Higgins's claim of ineffective assistance of counsel. There was sufficient evidence to invoke territorial jurisdiction for the crime of trafficking in

stolen weapons and trial counsel had no duty to raise a meritless issue.

*Fountain*, 786 N.W.2d at 263. For these reasons we affirm.

**AFFIRMED.**