

IN THE COURT OF APPEALS OF IOWA

No. 1-159 / 10-1046
Filed April 13, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KENNETH LEONARD INGRAM,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, James M. Drew, Judge.

Defendant Kenneth Leonard Ingram appeals following his conviction of sexual abuse in the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, Paul L. Martin, County Attorney, and Erica W. Clark, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., Potterfield, J., and Huitink, S.J.* Tabor, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

SACKETT, C.J.

Defendant Kenneth Leonard Ingram appeals following his conviction of sexual abuse in the third degree in violation of Iowa Code sections 709.1 and 709.4(1) (2009). He contends his attorney was ineffective in failing to object to evidence the house where the sexual abuse occurred was used for selling drugs and that Ingram committed the sexual abuse as a retaliatory act. We affirm.

BACKGROUND. Ingram was charged with burglary in the first degree, in violation of Iowa Code sections 713.1 and 713.3(1)(d), and sexual abuse in the third degree, in violation of sections 709.1 and 709.4(1). The State contended Ingram forced entry into a rented house in Mason City, Iowa, in May of 2009, grabbed a woman, and forced her against her will to disrobe and perform fellatio.

The case was tried to a jury. Ingram was acquitted on the burglary charge. He admitted the sexual activity, but despite his claim it was consensual, he was convicted on the sexual abuse charges.

In opening statement Ingram's attorney told the jury the evidence would show, among other things, that a person called Bo rented the house for the victim so he could sell drugs from there. There was testimony at trial entered without objection that rent for the house was paid by someone referred to as Bo in exchange for the opportunity to sell drugs from the house. In addition there was evidence Brandon Blocton stayed in the house and also sold drugs there.

On May 5, 2009, Bo allegedly told Ingram's victim that there were too many people in the house and he was no longer going to pay rent. She asked

Blocton to leave and there was an incident when the police came but no charges were filed.

Following the incident above Ingram and his brother came to the house allegedly to retrieve a television at the house. The victim testified the two men were told to leave the house, and she tried to get them to leave but Ingram pushed her back inside, grabbed her by the neck and threw her against the wall, telling her she would be nothing but a memory as she was owned by Bo. He then ordered her to take her clothes off. Then in the kitchen he told her to get on her knees and “suck his dick like it was the last one she would ever suck.” The victim complied and then they moved to the bedroom where Ingram again told the victim to perform fellatio. The police came and when the victim learned they were there and had asked for her, she put her clothes on, grabbed her phone, and ran outside. She talked to the police and went to the hospital.

INEFFECTIVE ASSISTANCE OF COUNSEL. Ingram contends his trial attorney was ineffective in allowing evidence the house was used for drug dealing and that he was acting on Bo’s, a drug dealer’s, orders. He contends this evidence was not necessary to show his reason for being in the house when the fact he was retrieving the television set would have explained it all. He contends the evidence was unfairly prejudicial. Ingram also contends this evidence was not relevant to the alleged sexual abuse, but if relevant, “its probative value was substantially outweighed by its prejudicial effect.”

General error preservation rule do not apply to a claim of ineffective assistance of counsel. See *State v. Lucas*, 323 N.W.2d 228, 232 (Iowa 1982).

Claims of ineffective assistance of counsel claims involve a constitutional challenge and are reviewed de novo. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994).

For Ingram to succeed on his claim of ineffective assistance of counsel he must establish that (1) his trial counsel failed to perform an essential duty, and (2) this omission resulted in prejudice. “A defendant’s inability to prove either element is fatal.” *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003).

The State alleges the fact that there were drug deals out of the house provided support for Ingram’s defense. The State also argues that omitting evidence of the drug dealing and Ingram’s association with Bo would have left the narrative of the crime confusing and misleading. The State contends the crime was part of a chain of events that took place at the house where drug dealing occurred, on that day the victim argued with her roommate and told him he would have to leave, and the crime is a direct result of that argument. The State also argues there was no connection made between Ingram and the drug dealing.

The issue of the victim living in a house where drugs were sold was first called to the jury’s attention by defense counsel in opening statements where she related that the victim talked to Bo about renting a house and putting it in her name so he could sell drugs from the house. She further stated that there was no evidence Ingram or his brother knew Bo or that Ingram’s going to the house was in retaliation for the victim kicking Brandon out. The victim then testified

without objection to substantially the same evidence as to the drug sales from the house.

We agree with the State's argument that Ingram's attorney was using the evidence of drug dealing out of the house rented by the victim to support defendant's defense. He was not convicted on the burglary charges, and the only question on the sexual abuse charge was who was credible, Ingram or the victim. The questioned evidence discredited the victim. We conclude Ingram has not demonstrated prejudice.

AFFIRMED.