

IN THE COURT OF APPEALS OF IOWA

No. 7-320 / 06-0837
Filed June 27, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHESTER LEE BAILEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Chester Lee Bailey appeals from his conviction of third-degree burglary.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Christen Douglass, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Jim Katcher, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

Chester Lee Bailey appeals from his conviction of third-degree burglary for his role in the theft of Lester Howard's tools and antique engines. Bailey admitted that he helped Tony Howard remove the items from Lester Howard's property, but claimed he was unaware Tony Howard did not have permission to do so. The fighting issue at trial was whether Bailey knew the items were being stolen. On appeal, he contends his trial counsel was ineffective in failing to object to the testimony of law enforcement officers. He contends the testimony improperly commented on the credibility of statements Bailey made to a sheriff's deputy. He also claims counsel should not have elicited testimony from Lester Howard which expressed the opinion Bailey knew the articles did not belong to Tony Howard. He also claims counsel should have moved to strike Deputy Nichols's opinion that he believed Bailey knew the items were stolen.

We review claims of ineffective assistance of counsel de novo. *State v. McBride*, 625 N.W.2d 372, 373 (Iowa Ct. App. 2001). To establish an ineffective assistance of counsel claim a defendant must show (1) counsel failed to perform an essential duty, and (2) prejudice resulted therefrom. *Wemark v. State*, 602 N.W.2d 810, 814 (Iowa 1999). The defendant has the burden of proving both elements of his ineffective assistance claim by a preponderance of the evidence. *Ledezma v. State*, 626 N.W.2d 134, 145 (Iowa 2001). We may dispose of the defendant's ineffective assistance claims if he fails to prove either prong. *Id.*

Ordinarily, we preserve ineffectiveness claims raised on direct appeal for postconviction relief to allow full development of the facts surrounding counsel's conduct. *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999). Only in rare

cases will the trial record alone be sufficient to resolve the claim. *Id.* “Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned.” *State v. Kirchner*, 600 N.W.2d 330, 335 (Iowa Ct. App. 1999) (citing *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978)). Because the record is not fully developed, we preserve for postconviction relief the question of whether counsel was ineffective.

AFFIRMED.