IN THE COURT OF APPEALS OF IOWA

No. 2-968 / 12-0370
Filed February 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTHONY JOSEPH MELTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

Defendant appeals his conviction for operating a motor vehicle without owner's consent. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael Salver, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

Following a bench trial, Anthony Tony Melton was convicted of operating a motor vehicle without owner's consent and assault causing bodily injury. Melton appeals his motor vehicle conviction. First, he argues the evidence was insufficient to establish he operated the vehicle without the owner's consent because registered-owner Kyle Stanley did not testify at trial and was not interviewed by the investigating police officer.

We review Melton's challenge to the sufficiency of the evidence for correction of errors of law. *See State v*. *Webb*, 648 N.W.2d 72, 75 (Iowa 2002). We will uphold a conviction if it is supported by substantial evidence. *Id.* We "view the evidence in the light most favorable to the State, including legitimate inferences and presumptions that fairly and reasonably may be deduced from the evidence in the record." *State v. Hoeck*, 547 N.W.2d 852, 859 (Iowa Ct. App. 1996).

Christina Stanley and her two small children live in Dexter with Christina's mother. Christina is taking classes at Kaplan University in Des Moines. Since November 2010, Christina's father, Kyle Stanley, provided her with the use of his 1997 Mercury Sable. Christina testified she was "borrowing" this car from her father and her father used a different car. Christina planned to return the Mercury to her father when she was able to afford her own car.

Christina and Melton had been dating for five months. On March 30, 2011, Christina drove the Mercury to pick up Melton. Earlier in the day, she had told him she wanted to end their relationship. As she was driving with Melton in the passenger seat, Christiana continued the process of ending their relationship.

When Christina's cell phone rang, Melton took it and reviewed her text messages. Melton became upset with Christina and yelled at her. Melton punched Christina's right arm two times in quick succession. Due to Melton's assault, Christina wanted to be in a public place and she pulled into a Clive McDonald's. Christina grabbed the car keys, ran inside, and asked to use the business's phone to call the police. Melton followed Christina inside, told her he needed a ride, grabbed her arm, and tried to pull her out of the building. A customer intervened and told Melton to leave. Melton took the car keys from Christina's hand and drove away in the Mercury. Officer Rehberg arrived and observed a visibly upset Christine with redness and swelling on her upper right arm.

The next day, Melton gave the keys to Christina's brother-in-law, and the car was retrieved from the location Melton specified. Also the next day, Melton agreed to an interview with Officer Rehberg. Melton eventually stated if he hit Christina, it was an accident. Melton also stated Christina told him, "I'm tired of this. I'm scared of you. I'm calling the police." During his investigation, Officer Rehberg did not speak with Kyle Stanley, and Kyle did not testify at trial. Officer Rehberg testified:

> Q. Do you remember who [Melton] said the owner was? A. He said it was Christina's car.
> Q. Okay. Did he tell you whether Ms. Stanley gave him permission to take the car? A. He said he did not have permission.
> . . . .
> Q. Let's talk about the car . . . . [W]hen you spoke with Mr. Melton, he told you . . . it was [Christina's] car; right? A. Yes.
> Q. He told you that he took Christina Stanley's car without her permission; Right? A. Yes.
> Q. And he told you he didn't return it to her; right? A. Yes.

> Q. It was clear from Mr. Melton's point of view, he absolutely believed the car belonged to Ms. Stanley; right? A. Yes.

The district court ruled operating without consent is a general intent crime and found:

> [H]ad [Melton] made no admission to officer Rehberg regarding his own actions of taking the car from Ms. Stanley without permission, it would have been necessary for [Kyle] Stanley to testify, or by some other admissible evidence, that he did not give permission to Mr. Melton to operate the motor vehicle . . . . [I]t has been clearly shown beyond a reasonable doubt that [Melton] operated the motor vehicle owned by Kyle Stanley and used by Christina Stanley with Kyle Stanley's permission without the owner's consent on March 30, 2011.

In Iowa, direct and circumstantial evidence are equally probative. *Id*. We conclude substantial evidence establishes Kyle Stanley did not give Melton permission to use the car. Melton thought Christina was the owner, he took the keys from Christina's hand after his attempt to force her out of the restaurant was unsuccessful, and he admitted to police he drove away without Christina's permission after perhaps "accidentally" hitting her and after Christina told him she was calling the police. Under these circumstances, substantial evidence supports the conclusion Melton drove the Mercury without the owner's consent.

Second, Melton contends counsel rendered ineffective assistance in failing to object to alleged hearsay statements by Christine: (1) as far as she observed, Melton didn't contact her father to ask permission and (2) as far as she was aware, neither she nor her father gave Melton permission to take the car.

"Ineffective-assistance-of-counsel claims have their basis in the Sixth Amendment to the United States Constitution." *State v. Vance*, 790 N.W.2d 775, 785 (Iowa 2010). We review de novo. *Nguyen v. State*, 707 N.W.2d 317, 323

(Iowa 2005). We believe the record is adequate to resolve the issue. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004).

To prevail, Melton must prove by a preponderance of the evidence his trial attorney failed to perform an essential duty and this failure resulted in prejudice. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). Courts always have the option to decide the claim on the prejudice prong without deciding whether the attorney performed deficiently. *State v. Maxwell*, 743 N.W.2d 185, 196 (Iowa 2008).

We first address the prejudice issue. Melton must demonstrate "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Even if we assume Christina's statements constitute inadmissible hearsay, the combination of Melton's admissions to Officer Rehberg and the other record evidence leads us to conclude Melton has failed to prove counsel's failure to object resulted in prejudice. *See State v. Carey*, 709 N.W.2d 547, 559 (Iowa 2006).

AFFIRMED.