IN THE COURT OF APPEALS OF IOWA

No. 0-899 / 10-0042
Filed February 23, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

AARON DESHAWN WATSON,
Defendant-Appellant.

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

A defendant appeals his judgment and sentence, contending (1) his trial attorney was ineffective and (2) the district court abused its discretion in admitting fingerprint testimony and a report. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, Martha J. Lucey, Assistant Appellate Defender, and Cory McAnelly, Student Legal Intern, for appellant.

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

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

VAITHESWARAN, P.J.

Aaron Deshawn Watson appeals his judgment and sentence for possession of marijuana with intent to deliver and failure to affix a drug tax stamp. He contends (1) his trial attorney was ineffective in failing to challenge the admission of information retrieved from his cell phone during a warrantless search of the phone and (2) the district court abused its discretion in admitting fingerprint testimony and a report.

I. Background Facts and Proceedings

Davenport police officers, who were investigating Watson for drug-dealing, followed a vehicle in which he was a passenger. They stopped the vehicle for a traffic violation and searched it. The search yielded two one-pound bricks of marijuana underneath Watson's seat. Police seized a cell phone from Watson and, without a search warrant, extracted information from the phone.

The State charged Watson with possession with intent to deliver marijuana as a second or subsequent offender and failure to affix a drug tax stamp. Before trial, Watson's attorney did not move to suppress the information retrieved from the cell phone. At trial, a police officer summarized the substance of the retrieved information. The jury found Watson guilty. This appeal followed.

II. Ineffective-Assistance-of-Counsel Claim

Watson first contends his trial attorney was ineffective in failing to challenge the warrantless search of his cell phone. The record is inadequate to decide the issue on direct appeal. *See State v. Oberhart*, 789 N.W.2d 161, 163 (Iowa 2010). Accordingly, we preserve the matter for postconviction relief proceedings. *State v. Shortridge*, 589 N.W.2d 76, 84 (Iowa Ct. App. 1998) ("In

order to allow [defense] counsel to explain the trial decisions, we preserve his ineffective assistance of counsel claim for postconviction relief.").

III. Admission of Testimony and Report on Fingerprint Evidence

At trial, the district court allowed a criminalist from the Department of Criminal Investigation to testify about a comparison between latent fingerprints on the marijuana packaging and "known" fingerprints on a card labeled with Watson's name. The card itself was not introduced into evidence, nor did the State call a witness to establish where, when, how, or from whom the prints were obtained. Watson's attorney objected to the criminalist's testimony on the ground that the State failed to establish the "known" fingerprints were in fact Watson's. He argued that the criminalist's testimony was, therefore, irrelevant. The district court overruled the objection and the criminalist testified that a fingerprint on the marijuana packaging was made by "the individual whose fingerprint is on the card bearing the name Aaron DeShawn Watson."

On appeal, Watson again asserts there was no testimony establishing that the prints on the fingerprint card were indeed his prints. The State counters that this type of identification was unnecessary because Iowa Code section 691.2 (2009) authorizes the admission of reports such as the one at issue here. That provision states in pertinent part:

> Any report, or copy of a report, or the findings of the criminalistics laboratory shall be received in evidence, if determined to be relevant, in any court, preliminary hearing, grand jury proceeding, civil proceeding, administrative hearing, and forfeiture proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person.

Iowa Code § 691.2.

The State correctly points out that this provision creates an exception to the hearsay rule. *See State v. Casady*, 597 N.W.2d 801, 807 (Iowa 1999); *accord State v. Dykers*, 239 N.W.2d 855, 857 (Iowa 1976) (interpreting previous code section, then numbered as section 749A.4). But hearsay is not the issue Watson raises. He argues that, whether or not the evidence is hearsay, the state first had to establish relevancy. *See* Iowa Code § 691.2 (stating certain evidence shall be received by the court "if determined to be relevant"); *State v. Smith*, 272 N.W.2d 859, 863 (Iowa 1978) (noting for test results to have any relevancy it must be determined that sample was in same condition as when it was taken and that section 691.2 "has no bearing on the requirement that the item analyzed be identified as relevant"). In his view, absent testimony establishing that the "known" fingerprints came from Watson, the criminalist's comparison was irrelevant. *See State v. Ramirez*, 485 N.W.2d 857, 858 (Iowa Ct. App. 1992) (stating evidence shall not be admitted unless properly identified); *see also* Iowa R. Evid. 5.901(a) ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.").

We agree with Watson. Although a Davenport police officer testified generally to identification procedures used by the police department, and named the people in the department who generally handled those procedures, he did not identify the person from whom the fingerprints were taken. Similarly, the DCI criminalist acknowledged he had no personal knowledge that the fingerprints actually came from Watson. As the State did not establish that the "known"

prints belonged to Watson, we conclude the criminalist's comparison of the "known" prints to the latent prints was irrelevant and, therefore, inadmissible.

Our analysis does not end here, because the erroneous admission of evidence only constitutes reversible error if it is prejudicial. *See State v. Sullivan*, 679 N.W.2d 19, 29–30 (Iowa 2004); *see also State v. Ellis,* 350 N.W.2d 178, 183 (Iowa 1984) (concluding any error in admission of fingerprint evidence was harmless error). Under this analysis, we presume prejudice (i.e., that a substantial right of the defendant is affected) and reverse unless the record affirmatively establishes otherwise. *Sullivan*, 679 N.W.2d at 30. We believe the record affirmatively establishes otherwise.

The marijuana was found under the car seat on which Watson was seated. Additionally, officers testified about their surveillance of Watson before the vehicle stop. One officer testified that Watson exited the van prior to the stop, presumably to obtain marijuana. Another testified that, based on $100 in Watson's possession, Watson sold the marijuana to one of the other occupants of the vehicle. Watson's cell phone records revealed text messages about prices and marijuana purchase arrangements. After Watson was apprehended and questioned, he admitted to one of the officers that his prints may have been on the drugs. While he later retracted this admission, it was the fact-finder's prerogative to determine credibility. *See State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa Ct. App. 1992), and we believe we can consider this implied adverse credibility determination in deciding whether the record affirmatively shows the absence of prejudice. *See EnviroGas, L.P. v. Cedar Rapids/Linn Cnty. Solid Waste Agency*, 641 N.W.2d 776, 782 (Iowa 2002) (presuming factual matter was

resolved so as to support the court's ultimate ruling); *cf Reiss v. ICI Seeds, Inc.*, 548 N.W.2d 170, 173 (Iowa Ct. App. 1996) (noting that we construe trial court's findings broadly "to uphold, rather than defeat, the judgment"). In sum, we conclude this evidence affirmatively showed a lack of prejudice. For these reasons, the erroneous admission of the fingerprint analysis evidence does not require reversal.

We affirm Watson's judgment and sentence and preserve his single ineffective-assistance-of-counsel claim for postconviction relief.

AFFIRMED.