IN THE COURT OF APPEALS OF IOWA

No. 3-640 / 12-1549
Filed August 21, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GERALD MCNEAL,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, Judge.

A defendant contends (1) his attorney was ineffective in failing to seek suppression of his confession and (2) the district court used an incorrect standard in ruling on his motion for new trial. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Shelly Sedlak, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

A jury found Gerald McNeal guilty of two counts of burglary and one count of theft. On appeal, McNeal contends (1) his attorney was ineffective in failing to seek suppression of his confession and (2) the district court used an incorrect standard in ruling on his motion for new trial.

I. "Ordinarily, ineffective assistance of counsel claims are best resolved by postconviction proceedings to enable a complete record to be developed and afford trial counsel an opportunity to respond to the claim." *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004).

McNeal's suppression claim is premised on his assertion that the officer impermissibly promised leniency if he confessed. McNeal's attorney has not had an opportunity to weigh in on this assertion. *See State v. McCoy*, 692 N.W.2d 6, 14 (Iowa 2005) (deciding the suppression issue on direct appeal but noting that, on limited remand, attorney "testified concerning his reasons for not filing the motion to suppress"). Accordingly, we preserve the issue for postconviction relief proceedings.

II. After the jury found guilt, McNeal filed a combined motion in arrest of judgment and motion for new trial, challenging the sufficiency of the evidence and separately asserting that the verdict was "contrary to the law and the evidence submitted at trial" and that "the weight of the evidence submitted at trial was insufficient for a conviction of the burglary and theft offenses." The State raises an error preservation concern that we find unpersuasive, then essentially concedes that the district court limited its ruling to McNeal's sufficiency-of-the-evidence challenge and did not address the new trial motion premised on the

weight-of-the-evidence standard. *See State v*. *Ellis*, 578 N.W.2d 655, 658 (Iowa 1998) (distinguishing the standards and stating the "weight of the evidence" refers to "a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other" (quotation marks and citation omitted)). Accordingly, we affirm the convictions but reverse the ruling on the new trial motion and remand to the district court to rule on McNeal's motion for new trial under the weight-of-the-evidence standard. *See State v*. *Nitcher*, 720 N.W.2d 547, 560 (Iowa 2006).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.