IN THE COURT OF APPEALS OF IOWA

No. 2-792 / 11-0923
Filed October 31, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

QUINTEZE LATIKER,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer (Motion to Dismiss) and Stephen C. Clarke (Trial), Judges.

A defendant appeals from his judgment and sentence for multiple drug convictions. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ. Bower, J. takes no part.

VOGEL, P.J.

Defendant, Quinteze Latiker, appeals from the judgment and sentence entered following his conviction for the following offenses: conspiracy to deliver more than fifty grams of cocaine base in violation of Iowa Code section 124.401(1)(a) (2005); possession of more than fifty grams of cocaine base with intent to deliver in violation of section 124.401(1)(a); conspiracy to deliver more than 100 grams of cocaine in violation of section 124.401(1)(b); possession with intent to deliver more than 100 grams of cocaine in violation of section 124.401(1)(b); ongoing criminal conduct in violation of sections 706A.1(5) and 706A.2(4); possession of marijuana in violation of section 124.401(5); and tax stamp violations for each controlled substance in violation of section 453B.12.

Latiker claims his trial counsel was ineffective for not obtaining a ruling on his motion to dismiss asserting a ninety-day speedy trial violation and related waiver of his right to speedy trial. He also claims the trial court erred in finding the evidence proved that he possessed the drugs and that he was involved in a conspiracy to deliver the cocaine and cocaine base. He also made multiple pro se claims. We affirm.

I. Background facts and proceeding

On February 25, 2009, Latiker was charged by trial information for multiple drug related offenses. An arrest warrant was issued the following day, which was entered into the National Crime Information Center database requesting a "nationwide pick-up." Latiker's co-defendants were quickly arrested. After thorough efforts in Iowa to apprehend Latiker, police attempted to locate him in Chicago. The Chicago Police Department and the Drug Enforcement

Administration in Chicago were contacted by the Waterloo police department, alerting them and seeking their cooperation in the search for Latiker. On July 6, 2009, Latiker was arrested by Illinois authorities. The same day, the Black Hawk County sheriff sent a detainer action notification to the Illinois authorities; however, Illinois authorities notified Black Hawk County that although Latiker had waived extradition, he was not ready for pick up because he had local charges pending. On August 2, 2009, Latiker was transported to Black Hawk County jail and made his initial appearance that same day.

After considerable pretrial proceedings, the case was submitted to the district court after a five day bench trial that commenced on August 17, 2010. On February 2, 2011, the district court made the following findings of fact:

> On February 26, 2006, Waterloo Police Department executed search warrants at 630 West Mullen, 112 Hartman, and 3853 Page, all located in the city of Waterloo, Black Hawk County, Iowa. Quantities of salt of cocaine, cocaine base, and marijuana were located. The total seized of cocaine base was well in excess of fifty grams. The quantity of salt of cocaine seized was well in excess of 100 grams. The quantity of marijuana seized was well in excess of 42.5 grams. This seizure was the culmination of an investigation into the activities of Marlon Earsery (a/k/a/ Pug), Anthony Sadler (a/k/a/ Chucky), Quinteze Latiker (a/k/a/ Koont), Isaac Jackson (a/k/a/ Buck), Eddie Wade (a/k/a/ Rocky), Everett Richardson, and Jessie Davis.
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> In 2003 and 2004 a number of associates from Chicago moved to Waterloo. They included . . . Latiker. With them came quantities of salt of cocaine, which was cooked into cocaine base, i.e., crack cocaine. . . .
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> Between 2004 and 2005 they moved their operation from West Third Street to 1264 West Mullen and ultimately to 630 West Mullen. During 2005 they also set up a "safehouse" at 112 Hartman. It is there that Marlon Earsery, Quinteze Latiker, Anthony Sadler, and Isaac Jackson, among others stored their supplies of drugs and money everywhere from the attic to the basement. . . . It was there that they cooked their cocaine into crack cocaine.
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> Throughout the latter part of 2005 and early 2006, these individuals worked together to further the manufacture and

> distribution of crack cocaine in Waterloo, Iowa. . . . The credible testimony of the parties is that Quinteze Latiker, along with others, sold crack cocaine out of 1254 [sic] and 630 West Mullen. The testimony of Marlon Earsery was that everybody "chipped in" to pay the rent."
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> . . . .
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> As noted above, 112 Hartman was the storage facility for drugs, guns, and money. In January of 2006, Marlon Earsery and Quinteze Latiker went to Home Depot and purchased two Sentry brand safes. The Sentry brand safe in the basement was generally known as one being shared by Anthony Sadler and Quinteze Latiker. That safe along contained 122.56 grams of cocaine and 65.42 grams of cocaine base (crack cocaine. The safe also contained over $20,000 in cash.
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> Contraband located in other common areas included over eighty grams of crack cocaine . . . more marijuana . . . and almost 600 grams of salt cocaine and in excess of 193 grams of cocaine base found in the attic area.

Latiker was convicted of the crimes listed above. At sentencing, the district court merged the conspiracy counts with their possession with intent to deliver counterparts. Latiker was sentenced to terms of incarceration of fifty years, twenty-five years, twenty-five years, six months, and three five-year terms, to be run currently. Latiker appeals.

II. Ineffective Assistance of Counsel

Latiker claims his trial counsel was ineffective for not obtaining a ruling on the motion to dismiss for an alleged ninety-day speedy trial violation "before waiving Latiker's speedy trial rights."[1] We review claims of ineffective assistance of counsel de novo. *Milliam v. State*, 745 N.W.2d 719, 721 (Iowa 2008). To show he was provided with ineffective assistance, Latiker must demonstrate by preponderance of the evidence first, that his trial counsel failed to perform an

[1] Latiker himself waived his own right to a speedy trial through a written waiver he signed on November 12, 2009. It was then filed with the district court on November 13, 2009. The contention that his attorney, Smith, waived this right for him is incorrect.

essential duty, and second, that this failure resulted in prejudice. *See id.* Although ineffective-assistance-of-counsel claims do not need to be raised on direct appeal, a defendant may do so if he has reasonable grounds to believe the record is adequate to address his claim. *State v*. *Johnson*, 784 N.W.2d 192, 198 (Iowa 2010). If we determine the record is adequate, we resolve the claim. *Id.* If we determine the record is inadequate, we must preserve the claim for post-conviction proceedings, regardless of our view of the potential viability of the claim. *Id.*

Attorney Smith was appointed to represent Latiker in August 2009. On August 31, 2009, attorney Hearity appeared as privately retained counsel on behalf of Latiker. On September 4, 2009, the State filed an application for a *Watson* hearing alleging that Hearity represented a co-defendant in the previous prosecution of this offense. *See State v*. *Watson*, 620 N.W.2d 233, 242 (Iowa 2000) (holding that a district court is obligated to hold a hearing on the propriety of the defendant's representation when there could be a conflict of interest of an attorney). Smith moved to withdraw on September 9, 2009. On September 24, 2009, the *Watson* hearing was held, but Hearity admitted that he had not yet advised Latiker of possible limitations should he be allowed to continue as counsel for Latiker. The hearing was adjourned and rescheduled for October 19, to allow Hearity an opportunity to discuss the matter with his client. Hearity filed a motion to dismiss for denial of speedy trial on September 30, 2009.

Trial was set for October 13, before the rescheduled *Watson* hearing. At a pretrial conference the day before trial was scheduled to commence, Hearity requested that the matter remain set for trial as his client was unwilling to waive

his right to a speedy trial or request a continuance. Smith's application to withdraw was preliminarily granted, with the cautionary note that she may be reappointed depending upon the results of the *Watson* hearing. The district court found good cause to continue the trial finding "as it related to [Latiker], the court finds that Mr. Hearity's involvement in this case is the reason for the *Watson* hearing and as a result, the continuance is a direct result of his involvement." The trial was reset for October 27, 2009.

On October 21, an order was entered finding that Hearity needed to be removed due to a conflict and Smith was reappointed. Latiker then waived his right to a speedy trial on November 13.

In January 2010, Smith filed a motion to withdraw citing a break down in the attorney-client-relationship. Attorney Kadenge was appointed to replace Smith. At a May 2010 hearing, Kadenge notified the court that Hearity's motion to dismiss had not been ruled on. Kadenge filed a brief in support of the motion to dismiss for want of a speedy trial on August 12.[2] Hearity's original one page motion dealt with the time between the filing of the trial information, February 26, 2009, until May 27—the ninety-day timeframe under Iowa Rules of Criminal Procedure 2.33(2)(b)—and the passage of a total of 125 days, when the motion to dismiss was filed. Kadenge expanded the time frame in his brief to include the approximately 395 days in-between filing of the trial information and filing of the brief. After a hearing on the motions to dismiss, in a well reasoned order, the district court overruled Latiker's motions, finding "that the State made a good faith and diligent effort to arrest [Latiker] after the trial information was filed." The

[2] Hearity filed no supporting memorandum with his September 2009 motion to dismiss.

district court also found "all trial delays after [Latiker's] apprehension are attributable to [Latiker]" with all delays but one—the October 9, 2009 continuance for good cause because the *Watson* hearing had yet to take place—at the request of Latiker.

We first look to see whether Latiker was prejudiced by his counsel's performance. "In analyzing this claim, we need not determine whether his trial counsel's performance was deficient before examining the prejudice component of his ineffective-assistance claim." *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006) (citations omitted). A defendant suffers prejudice "by counsel's failure to perform an essential duty when there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." *Milliam*, 745 N.W.2d at 722 (internal quotation omitted).

Latiker claims that had his counsel pursued the speedy trial violation, the remedy would have been a dismissal of all the charges and a complete bar from reindicting Latiker on the same offenses or lesser included offenses. *See State v. Abrahamson*, 746 N.W.2d 270, 273 (Iowa 2008) ("[D]ismissal for failure to provide a speedy trial is an absolute dismissal of the charge, with prejudice, prohibiting reinstatement or refilling of an information or charging the same offense."). He also claims that the failure to obtain a ruling before he waived his right to speedy trial waived his right to a meritorious speedy trial claim. However, the motion to dismiss was pursued by attorney Kadenge, a hearing was held, and the motion was ruled upon by the district court. The merits of his speedy trial claim were not waived as he now suggests. Latiker cannot show prejudice because even if attorney Smith had pursued the motion to dismiss before Latiker

waived his right to a speedy trial, the motion would have been dismissed on the merits, as it later was.

While the district court did use the multiple continuances requested by Latiker as part of its reasoning, it ruled directly on the content of Hearity's motion regarding the span of time between finding the trial information in February 2009, and Latiker's arrest in Chicago in July 2009.

Our rules of criminal procedure require that an accused be brought to trial within ninety days of the filing of the trial information unless good cause is shown. Iowa R. Crim. P. 2.33(2)(b). The burden of proving an exception to the speedy trial rule's ninety-day deadline rests with the State. *State v*. *Miller*, 637 N.W.2d 201, 204 (Iowa 2001).

> "The decisive inquiry in these matters should be whether events that impeded the progress of the case and were attributable to the defendant or to some other good cause for delay served as a matter of practical necessity to move the trial date beyond the initial ninety-day period required by the rule."

State v. *Campbell*, 714 N.W.2d 622, 628 (Iowa 2006). We review a trial court's ruling on the motion to dismiss based on speedy-trial grounds for an abuse of discretion. *Id.* at 627. In making that inquiry in the present case, we agree with the district court that the events causing the necessary delay were almost entirely attributable to Latiker.

The trial information was filed February 25, 2009. An arrest warrant with a "nationwide pick-up" was issued the next day. Latiker was arrested by Illinois authorities in July 2009. Latiker was then taken into custody by the Black Hawk County Sheriff on August 2, and then arraigned August 20, 2009. During the time period between February and July, officers knew Latiker was going back

and forth between Waterloo and Chicago. Waterloo officers were working in tandem with Chicago police as well as the Drug Enforcement Agency in the Chicago area to locate Latiker.

"Ordinarily the absence of defendant may constitute 'good cause' for delay." *State v*. *Brandt*, 253 N.W.2d 253, 258 (Iowa 1977). Nonetheless, delay solely due to the State's inaction in executing an arrest warrant falls far short of meeting the good cause exception. *See State v*. *Olson*, 528 N.W.2d 651, 654 (Iowa Ct. App. 1995) ("The reason for the delay, [the State's failure to execute the arrest warrant,] by itself, falls far short of establishing 'good cause.'"). The State cannot be dilatory or negligent in its duty to provide a speedy trial. *Miller*, 311 N.W.2d at 84. The State was not dragging its feet in locating Latiker. It was actively looking for him and it is contrary to the purpose of the rule that he can now take advantage of his hiding from the law. *See State v*. *Ruiz*, 496 N.W.2d 789, 792 (Iowa Ct. App. 1992) ("[A] defendant may not actively, or passively, participate in the events which delay his or her trial and then later take advantage of that delay to terminate the prosecution.").

The record contains detailed information that the authorities were actively looking for Latiker as he was actively participating in the events which led to his delay in trial. We find that the district court did not abuse its discretion in finding that one of the exceptions to Iowa Rule of Criminal Procedure 2.33(2)(b) requiring dismissal if a defendant is not brought to trial within ninety-days was present. Through evidence of the diligent efforts of the officers involved in the investigation and search into the whereabouts of Latiker, the State has met its burden of proving good cause for the delay. *See Miller*, 637 N.W.2d at 204.

III. Sufficiency of the Evidence

Challenges to the sufficiency of the evidence are reviewed for errors at law. *State v*. *Hansen*, 750 N.W.2d 111, 112 (Iowa 2008). The district court's findings of guilt are binding on appeal if supported by substantial evidence. *Id.* Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions that can fairly and reasonably be deduced from the record. *State v*. *Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.904(3)(p).

a. Actual possession

Latiker claims the State failed to prove that he constructively possessed the controlled substances in question, and in excess of the amounts in question. The State claims that it proved both actual possession as well as constructive possession.

In the realm of controlled substance prosecutions, possession can be either actual or constructive. *State v*. *Cashen*, 666 N.W.2d 566, 569 (Iowa 2003). To substantiate the possession charge, the State had the burden to prove Latiker "(1) exercised dominion and control over the contraband, (2) had knowledge of its presence, and (3) had knowledge that the material was a controlled substance." *State v*. *Carter*, 696 N.W.2d 31, 38 (Iowa 2005) (citation omitted). A defendant has actual possession of the drugs if he or she has "direct physical control" over the drugs. *Id.* Possession is constructive where the

defendant has knowledge of the presence of the drugs "and has the authority or right to maintain control of [them]." *Id.* (citation omitted).

The State claims there is substantial circumstantial evidence to prove Latiker was in actual possession of marijuana, particularly through testimony from his drug customers. In viewing the evidence in the light most favorable to the State, there is sufficient circumstantial evidence to prove Latiker had actual possession of marijuana.

The State also points out that because there is sufficient evidence to prove Latiker sold crack cocaine, there is sufficient evidence that he actually possessed it with intent to deliver prior to the sale. Latiker was charged with possessing more than fifty grams of cocaine base in count II and more than 100 grams of cocaine in counts III and IV. However, while there is circumstantial evidence from the testimony that Latiker sold crack cocaine, there is not sufficient evidence to prove the amounts of the controlled substances that were charged. The largest sale discussed in the testimony was for an "eight-ball or two,"[3] short of the quantities Latiker was charged with possessing and selling. Again, while there was evidence that Latiker actually possessed and sold crack cocaine, there is insufficient evidence that Latiker actually possessed the amount of crack cocaine he was charged with, and we therefore must analyze whether a rational trier of fact could find he constructively possessed the large amounts of crack cocaine upon which the conviction was based.

[3] According to testimony, an "eight-ball" is one eighth of an ounce.

b. Constructive possession

When the premises where the contraband is found is in the exclusive control of the accused, a fact finder may infer knowledge and the right to exercise dominion and control, however, such an inference is not permissible when the premises is not in the exclusive possession of the accused. *Cashen*, 666 N.W.2d at 570. When an accused is in joint possession of a premise, the State must establish more than the defendant's presence at the location; knowledge of the presence of the substance and the ability to maintain control over it must be proven. *State v*. *Reeves*, 209 N.W.2d 18, 23 (Iowa 1973). Several factors are considered when there is joint possession of the premises, including (1) incriminating statements made by the accused, (2) incriminating actions of the accused upon the police's discovery of a controlled substance among or near the accused personal belongs, (3) the accused's fingerprints on the packages containing the controlled substances, and (4) any other circumstances linking the accused to the controlled substance. *Cashen*, 666 N.W.2d at 571.

Latiker claims there is no evidence tying him to the controlled substances that were seized. Latiker was not at the house when the search warrant was executed, so as to have made any incriminating statements or actions upon the discovery of the controlled substances. Latiker's fingerprints were not found on any of the seized substances or on the safe found in the basement of 112 Hartman. There is, however, substantial evidence of the fourth factor from *Cashen* for a reasonable fact finder to find Latiker is guilty of constructively possessing more than 100 grams of cocaine and fifty grams of cocaine base, both with the intent to deliver.

The controlled substances were found at 112 Hartman, except for the marijuana found in a shed at 630 West Mullen. There was also evidence of a sales operation at 630 West Mullen, such as plastic baggies with the corners missing. Officer Meyer testified that this is an indicator of not just use of controlled substances, but the method of packaging and distributing controlled substances. Officer Meyer further testified that the amount of crack cocaine seized was consistent with distribution, not just held for personal usage. Latiker had access to both residences. There was even a photo of Latiker hanging on the wall of the living room at 112 Hartman. Earsery testified that when he moved from 1264 West Mullen to 630 West Mullen, everyone who had been living with him at 1264 West Mullen moved with him, including Latiker.

A Sentry brand safe was found in the basement of 112 Hartman hidden behind the water heater. Latiker had access to the basement of 112 Hartman. The safe contained over $20,000 in cash, along with 122.56 grams of cocaine and 65.42 grams of cocaine base (crack cocaine). Video surveillance matched with store records identified Latiker and Earsery purchasing two safes, one each, in January 2006. This was the same type of safe that was found in the basement of 112 Hartman. Earsery testified that the safe he purchased was stolen and the safe found in the basement was shared by Saddler and Latiker.

In addition to the safe, there are other facts and circumstances that linked Latiker to the drugs. During surveillance in February 2006, police saw Latiker at 630 West Mullen while many visitors came to the house and left again within a very short period of time, staying some times less than two minutes. At one point, Latiker was seen carrying in yellow shopping bags into the house. During

the raid only a few weeks later, police found a yellow shopping bag with more than 600 grams of powder cocaine and 193 grams of crack cocaine. There was also testimony from two witnesses who saw Latiker cooking cocaine into crack cocaine. There was also testimony explaining that once cooked, the crack cocaine would be upwards of two ounces—fifty-six grams—per batch.

In addition to the evidence that Latiker possessed the controlled substances, there is substantial evidence he aided and abetted others in the possession of controlled substances. "To sustain a conviction under a theory of aiding and abetting, the record must contain substantial evidence that the accused assented to or lent countenance and approval to the criminal act by either actively participating or encouraging it prior to or at the time of its commissions." *State v*. *Hearn*, 797 N.W.2d 577, 580 (Iowa 2011). The evidence proved Latiker aided and abetted others such as Earsery, Jackson, Saddler, Wade, and the rest of the group connected to the houses. As discussed more thoroughly below, Latiker either encouraged or actively participated in the drug operation, thus he bears the same culpability for the possession and sale of the drugs that others had in furtherance of the offenses.

c. Conspiracy

Latiker next contends there was not substantial evidence to support the finding of an agreement between himself and the others to support the conspiracy convictions.[4] "A conspiracy is a combination or agreement between

[4] At sentencing, the district court merged the crack and cocaine possession counts with the crack and cocaine conspiracy counts. While it is slightly unclear from the record whether the district court merged the conspiracy into the possession or the possession into the conspiracy, the merger was correct. *See*

two or more persons to do or accomplish a criminal or unlawful act, or to do a lawful act in an unlawful manner." *State v. Ross*, 573 N.W.2d 906, 914 (Iowa 1998). An agreement may be established by either direct or circumstantial evidence. *Id.* "A tacit understanding—one inherent in and inferred from the circumstances—is sufficient to sustain a conspiracy conviction." *State v. Speicher*, 625 N.W.2d 738, 742 (Iowa 2001). From this record, a reasonable trier of fact could infer from the circumstances there was an agreement between Latiker and the others involved to possess cocaine and cocaine base with the intent to deliver.

Latiker moved from Chicago in 2004 to join Earsery who was already selling drugs in Waterloo. Latiker accompanied Earsery on trips back to Chicago when Earsery went to purchase more cocaine. Earsery testified that when living at 1264 West Mullen, with Wade, Saddler, and Latiker, none had a legitimate source of income but were supporting themselves, including paying rent, by selling drugs. The group moved their sales operation to 630 West Mullen when Earsery was charged with possession with intent to deliver marijuana. Everyone who was staying at 1264 West Mullen, including Latiker, moved to 630 West Mullen. There were only a limited number of people, including Latiker, who the others would trust and therefore allow to sell crack cocaine out of 630 West Mullen. Looking at this evidence in the light most favorable to the State, there

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State v. Waterbury, 307 N.W.2d 45, 52 (Iowa 1981) (holding the last sentence of the statutory definition of conspiracy, Iowa Code § 706.1, merely creates a merger of the conspiracy and the substantive offense where the defendant has been found guilty of both offenses and the defendant should be sentenced solely on the substantive offense).

was sufficient evidence to establish the existence of an agreement and the court's findings of guilt on the conspiracy charges are affirmed.

Because we find the evidence was sufficient for the possession counts as well as the conspiracy counts, the evidence was also sufficient to prove ongoing criminal conduct, and the three failure to affix a tax stamp offenses. The State presented substantial evidence that Latiker committed criminal acts on a continuing basis by participating in numerous acts of selling and manufacturing drugs. *See State v. Reed*, 618 N.W.2d 327, 335 (Iowa 2000) (affirming an ongoing criminal conduct conviction on proof that the defendant committed three offenses of dealing drugs over a two-month period). Likewise, the State produced substantial evidence that Latiker failed to affix the required drug tax stamps as required under chapter 453B.

IV. Pro se issues

In his pro se brief, Latiker makes two arguments that were independent of those made in the brief filed by his appellate attorney: his right to confront his accusers was violated, and his right to trial by jury was violated.

Latiker has not preserved the confrontation issue for our review. Our regular error preservation rules also require parties to alert the district court "to an issue at a time when corrective action can be taken." *Top of Iowa Coop. v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000). "[A] motion for new trial is not the appropriate time to raise matters for the first time that could have been raised earlier." *State v. Krogmann*, 804 N.W.2d 518, 524 (Iowa 2011). During the pretrial argument regarding whether Latiker should be able to rescind his waiver of the right to a jury trial, Latiker requested that the court "allow him to be

confronted by the accusers that are saying that he's guilty . . . [and] look him in the eye and testify against him . . . ." There is also a pretrial order that states

> [Latiker] further agreed on the record that all witnesses listed by the State who were presently incarcerated would be allowed to testify at deposition and trial by telephone rather than personally appearing. [Latiker] was advised on the record of his right to confront said witnesses and agreed to waive said right insofar as it required personal presence of the witness provided that [Latiker] would be allowed to be present by telephone to hear any questioning and testimony of said witnesses.

In addition to this waiver, a confrontation objection was never made at trial. Latiker did object to the testimony of Clark Ford, who was called to testify via the telephone, but not because Latiker "could not look him in the eye" but because the State allegedly did not previously make him available for deposition. Neither the telephone testimony of Jesse Davis nor Earsery was objected to at trial. Latiker's counsel even stated that he did not have an objection when the telephone testimony of Earsery had to be rearranged. Therefore, this issue has not been preserved for review.[5]

Latiker also contends his right to a jury trial was violated. In December 2009, when Latiker requested a continuance of his trial, he filed a jury trial waiver. On August 9, 2010, at 4:20 p.m., with trial set to begin the next day, Latiker sought to withdraw his waiver of a jury trial, but he did not allege that his waiver was constitutionally infirmed. Rather, he simply "COMES NOW [Latiker] by and through counsel [Kadenge] and hereby Demands a Jury Trial." It was

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[5] Even if a motion for a new trial was sufficient to preserve error, there is no separate order on the motion, the judgment does not mention the motion for new trial, and there is no transcript regarding the motion for a new trial. Latiker has left this court without a district court ruling to review. *See e.g.*, *State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) ("Generally, we will only review an issues raised on appeal if it was first presented to and ruled on by the district court.").

only later in his motion for a new trial that Latiker alleged his waiver was unconstitutional. The only thing close to a constitutional claims is that during a pre-trial hearing Latiker's attorney argued that Latiker "indicated to [counsel] that it had been [Latiker's] understanding that he would be—even though he was waiving a jury at that time, he still would be entitled to demand a jury trial at a later time if he wanted to." Latiker did not argue his constitutional rights had been infringed but rather stated "I do not see what the prejudice is at this point to the State to grant the defendant a jury trial if the defendant-if the State believes the defendant is guilty."

The district court was correct in finding that the record indicated that Latiker knowingly and voluntarily waived his right to a jury trial. While he vaguely claimed he thought he could rescind his waiver at any time, the waiver he signed clearly stated, "I know that I may **not** withdraw a voluntary and knowing waiver of a trial by the jury as a matter of right, but the court in its discretion, may permit withdrawal of the waiver prior to the commencement of trial." Latiker's pro se claims are without merit.

V. Conclusion

We conclude Latiker has failed to prove his counsel was ineffective, as the district court ruled on and rejected his speedy trial claim. Further, we find there was sufficient evidence to prove the statutory elements of all of Latiker's convictions. Finally, Latiker's pro se issues are either not preserved or without merit.

AFFIRMED.