IN THE COURT OF APPEALS OF IOWA

No. 3-166 / 10-1934
Filed April 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL SCOTT SINES,
Defendant-Appellant.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, Judge.

Michael Sines appeals his conviction for driving while barred, alleging his counsel was ineffective. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant County Attorney, Larry Brock, County Attorney, and Shawn Showers, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

Michael Sines appeals his conviction for driving while barred, alleging his counsel was ineffective by failing to make a motion to suppress Sines' admission as the product of an unconstitutional interrogation. Because Sines was not in custody, and the officer independently confirmed his barred status after Sines' voluntary statements, we affirm.

I. Background Facts and Proceedings.

Sines passed a patrol officer while navigating a snowmobile around 2:00 a.m. on February 14, 2010. The officer followed him, and watched him park and enter a residence. The officer did not turn on her lights or siren, but approached the residence to discover the identity of the snowmobiler and check the vehicle registration.

The owner of the residence answered the door. The officer indicated she was looking for the operator of the snowmobile. The resident opened the door to disclose Sines inside the residence, and directed Sines to exit the home and talk to the officer.

The officer asked Sines if the snowmobile belonged to him. He reluctantly admitted that it did. The officer asked for his name and he originally said either "Jessie" or "Jamie." The officer requested identification, but Sines had none.

The officer detected a strong odor of alcohol during the interview. Sines admitted to drinking two beers at his house. He then gave the officer his true name, date of birth, and address. The officer inquired why he had first given her

a false name. He replied that he did not have a valid driver's license because he was barred.

Officer Scarff called in Sines' information and confirmed his driver's license was barred. The officer also administered field sobriety tests, which Sines passed. Officer Scarff arrested Sines for driving while barred.

The State charged Sines with driving while barred in violation of Iowa Code sections 321.560 and 321.561 (2009). Sines filed a motion to suppress arguing that the officer had no reason to approach and detain him at the residence. The motion did not argue that Sines' admission was the product of an unconstitutional interrogation. The district court denied the motion. Sines waived his right to a jury trial and proceeded to a bench trial on the minutes of testimony. The court found him guilty as charged.

On appeal, Sines contends his trial counsel was ineffective by failing to file a motion to suppress his admission on the ground that it was the product of an unconstitutional interrogation. Specifically, Sines contends that he was not given *Miranda* warnings despite being subjected to what he alleges was a custodial interrogation.

II. Standard of Review.

We review ineffective-assistance-of-counsel claims de novo. *State v. Maxwell*, 743 N.W.2d 185, 189 (Iowa 2008); *see also State v. Fountain*, 786 N.W.2d 260, 263 (Iowa 2010) ("Ineffective-assistance-of-counsel claims are an exception to the traditional error-preservation rules."). We generally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings.

State v. Utter, 803 N.W.2d 647, 651 (Iowa 2011). However, when the record is adequate, we consider ineffective assistance claims on direct appeal. *State v. Cromer*, 765 N.W.2d 1, 7 (Iowa 2009) (citing Iowa Code § 814.7(3)).[1] Here, the appellate record is adequate to review the claim. "When the record is adequate, the appellate court should decide the claim on direct appeal." *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004).

III. Discussion.

To establish a claim of ineffective assistance of counsel, a defendant must prove by a preponderance of the evidence (1) the attorney failed to perform an essential duty and (2) prejudice resulted from the failure. *Strickland v. Washington,* 466 U.S. 668, 687 (1984); *Fountain,* 786 N.W.2d at 265–66. The claim fails if either element is lacking. *Strickland,* 466 U.S. at 697, 700; *Fountain,* 786 N.W.2d at 266. Accordingly, we need not determine whether counsel's performance was deficient before examining the prejudice prong of an ineffectiveness claim.

To establish prejudice, a defendant must show there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland,* 466 U.S. at 694; *accord Bowman v. State,* 710 N.W.2d 200, 203 (Iowa 2006). A "reasonable probability is a probability sufficient to undermine confidence in the outcome" of the

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[1] Iowa Code § 814.7(3) (2011) provides: "If an ineffective assistance of counsel claim is raised on direct appeal from the criminal proceedings, the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination under chapter 822."

defendant's trial. *Strickland,* 466 U.S. at 694; *accord Maxwell,* 743 N.W.2d at 196.

"The *Miranda* warnings protect a suspect's privilege against self-incrimination embodied in the Fifth Amendment by informing the suspect of his or her right to remain silent and right to the presence of counsel during questioning." *State v. Palmer,* 791 N.W.2d 840, 844 (Iowa 2010) (citing *Miranda v. Arizona,* 384 U.S. 436, 444–45 (1966)). "Any statements made by a suspect in response to a custodial interrogation are inadmissible unless there has been an adequate recitation of the *Miranda* warning and a valid waiver by the suspect of his or her rights." *Id.*

> We utilize a dual test in determining the admissibility of a defendant's inculpatory statements over a fifth amendment challenge. We first determine whether *Miranda* warnings were required and, if so, whether they were properly given. . . . *Miranda* warnings are not required unless there is both custody and interrogation.

State v. Countryman, 572 N.W.2d 553, 557 (Iowa 1997) (citations omitted).

"The custody determination depends on the objective circumstances of the interrogation." *Id.* We apply a four-factor test to assess whether a reasonable person in the defendant's position would believe that he was in custody. *Id.* at 558. "These factors include: (1) the language used to summon the individual; (2) the purpose, place, and manner of interrogation; (3) the extent to which the defendant is confronted with evidence of her guilt; and (4) whether the defendant is free to leave the place of questioning." *Id.*

We recognize that all police interviews have some coercive aspects. *See Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). However, the Fifth

Amendment's guarantees do not "protect a defendant from his own compulsions or internally-applied pressures which are not the product of police action." *United States v. Guerro*, 983 F.2d 1001, 1004 (10th Cir. 1993). Here, the brief interview did not so restrict Sines' freedom as to render him in custody. As noted by the district court:

> Officer Scarff at no time prior to administering the field sobriety test used physical force or a show of authority that would indicate to a reasonable person that he/she was not free to leave. The Defendant voluntarily stepped outside the residence to speak with Officer Scarff, voluntarily answered Officer Scarff's questions, voluntarily acknowledged that he was operating the vehicle without a valid driver's license and while barred, and voluntarily acknowledged that he had been drinking prior to operating the snowmobile.

Moreover, even if Sines' statement had been suppressed, the result of the proceeding would not have been different; thus, his ineffective-assistance-of-counsel claim fails. Officer Scarff had sufficient grounds, independent of his admission, to obtain Sines' driver's license record.

Prior to Sines' admission, he gave Officer Scarff a false identity and then acknowledged his deception by providing his correct name and address. Officer Scarff observed an odor of alcohol, and Sines admitted that he consumed two beers immediately prior to operating the snowmobile on the roadway. Thus, Officer Scarff had sufficient independent cause to run Sines' information through dispatch.

Because Officer Scarff would have obtained the information that Sines was a barred driver without his admission, Sines cannot demonstrate he was prejudiced by his counsel's failure to pursue a meritless motion to suppress.

State v. Carroll, 767 N.W.2d 638, 645 (Iowa 2009) (counsel has no duty to pursue a meritless issue).

Sines argues that his driving record, obtained after what he asserts was an unconstitutional interrogation, should be excluded as fruit of the poisonous tree. Even if we concluded that Sines' driving record was fruit of the poisonous tree, which we do not, it would not be excluded.

Non-testimonial evidence is not protected or affected by *Miranda* or Fifth Amendment violations. *State v. Decker*, 744 N.W.2d 346, 354 (Iowa 2008). Sines' statements were made voluntarily.[2] Thus, even if the driving record was obtained from a *Miranda*-violative statement, the exclusionary rule does not apply to bar admission of Sines' admission that he was driving while barred. *United States v. Patane*, 542 U.S. 630, 634-36 (2004) (finding the Miranda rule a "prophylactic employed to protect against violations of the Self-Incrimination Clause" which "is not implicated by the admission into evidence of the physical fruit of a voluntary statement").

IV. Conclusion.

Sines was not in custody; thus, he was not entitled to *Miranda* warnings. Officer Scarff independently confirmed his barred status after Sines' voluntary statements; thus, the exclusionary rule does not bar admission of his driving record. Because Sines cannot demonstrate prejudice, his ineffective-assistance-of-counsel claim fails.

AFFIRMED.

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[2] Sines did not argue or preserve a separate claim alleging involuntariness of his statements to Officer Scarff.