IN THE COURT OF APPEALS OF IOWA

No. 3-209 / 12-0664
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARTEZ DESHAWN ROGERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris (suppression hearing) and Todd A. Geer (bench trial and sentencing), Judges.

A defendant appeals his conviction asserting the district court erred in denying his motion to suppress evidence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Bower, J. takes no part.

MULLINS, J.

Martez Rogers appeals his conviction for possession of a controlled substance with intent to deliver with the second offender enhancement, in violation of Iowa Code sections 124.401(1)(c) and 124.411 (2011). He asserts the district court erred in denying his motion to suppress the evidence following the stop of a vehicle in which he was a passenger. He claims his constitutional rights were violated when the officers stopped the vehicle based only on the driver's commission of an already completed and corrected traffic offense. Because we find the stop does not violate Rogers's rights under the federal or Iowa constitutions, we affirm his conviction.

Rogers was a passenger in a van originally spotted by police in the parking lot of a bar. The bar's owner had requested additional assistance in enforcing the no loitering signs. In addition, the bar was a known location of drug activity, fights, and weapons. Sergeant McGeough and Officer Monroe observed several individuals in and around the van at 1:15 a.m. As the officers approached in a marked vehicle, one person began walking away from the van, but the person later returned to the van once the officers left the scene. Sergeant McGeough contacted Officer Zubak, who was in an unmarked vehicle, to maintain surveillance of the van. At approximately 1:45 a.m., Officer Zubak watched the van leave the parking lot of the bar and proceed down the road without its headlights on. As the van turned at the intersection of Sumner and 4th Street, Officer Zubak observed the lights had been turned on. Officer Zubak then contacted Sergeant McGeough to let him know the van had left the parking

lot without its headlights illuminated. Sergeant McGeough conducted a traffic stop of the van based on the failure to turn on the headlights, which violated Iowa Code section 321.384(1)—"Every motor vehicle upon a highway within the state, at any time from sunset to sunrise, . . . shall display lighted headlamps as provided in section 321.415 . . . ."

During the traffic stop, Rogers was found to be in possession of salt of cocaine, along with a number of baggies consistent with drug packaging. A digital scale with white powder was also found in the vehicle. Rogers filed a motion to suppress the evidence following the stop, which was denied by the district court. Rogers was ultimately convicted of possession with intent to deliver following a bench trial on the minutes of testimony. He appeals asserting the district court should have granted his motion to suppress because the stop of the vehicle was unreasonable based on a completed and corrected traffic offense.

We begin by noting the claim now made on appeal was not presented to the district court in the motion to suppress. With respect to the stop of the vehicle, counsel only alleged the stop was a pretext to search the vehicle;[1] counsel did not allege the stop was unreasonable based on the completed and corrected traffic offense. *See Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa

[1] Rogers testified at the motion to suppress hearing that the van's lights automatically came on when the vehicle was started. Thus, he claimed it was impossible for Officer Zubak to have observed the lights off when the vehicle entered the roadway. In denying the motion to suppress, the district court noted the driver of the van acknowledged on the video of the traffic stop that he activated his headlights once he turned the corner at East 4th Street. The court concluded this admission coupled with Officer Zubak's testimony of his observations that night provided "good cause" to stop the van.

2012) ("'It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.'" (citing *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002))). However, Rogers alternatively raises his claim within the ineffective-assistance-of-counsel rubric. *See 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 will therefore address his claim.

To prove counsel rendered ineffective assistance of counsel, Rogers must prove counsel breached an essential duty and prejudice resulted from that breach. *See State v. Clay*, 824 N.W.2d 488, 495 (Iowa 2012). Ineffective assistance of counsel is normally preserved for postconviction relief proceedings; however, where the record is adequate we will address the claim on direct appeal. *Id*. at 494. Finding the record adequate to address Rogers's claim, we proceed.

Rogers asks us to address an issue left undecided by the United States Supreme Court in *United States v. Hensley*, 469 U.S. 221, 229 (1985)—"whether *Terry* stops to investigate all past crime, however serious, are permitted." This issue was also left undecided by our supreme court. *See State v. Pals*, 805 N.W.2d 767, 774 (Iowa 2011) (noting the issue was left open by *Hensley* and the federal courts are divided on the issue but ultimately concluding the court did not need to address the issue because the defendant was detained based on probable cause of an ongoing civil infraction). Like the court in *Pals*, we find we do not need to address the issue because the vehicle Rogers was riding in was

not stopped based on a reasonable suspicion to investigate a simple misdemeanor. Instead, it was stopped based on probable cause that a traffic violation had occurred.

Officer Zubak observed the van leave the parking lot, make a left onto Sumner Road, and head to the intersection of Sumner and 4th Street without its headlights on. Officer Zubak estimated the vehicle traveled 150 yards before the intersection. Then, after it turned onto 4th Street, he saw the headlights had been turned on. In the video recording of the stop, the driver indicated once he made the corner at 4th Street he turned the headlights on and asked for leniency in the issuance of the ticket. The officer making the stop informed the driver that he needed to have the lights on before he hit the road. The district court believed the officer's testimony that he observed the headlights of the vehicle were not illuminated as it proceeded down the street, and so do we.

The court in *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006), stated, "[I]t is well-settled law that a traffic violation, no matter how minor, gives a police officer probable cause to stop the motorist." Failure to have the headlights of a vehicle turned on between sunset and sunrise or when conditions otherwise provide insufficient lighting violates section 321.384(1), and the violation of that section is a simple misdemeanor. *See* Iowa Code § 321.482. Just because Officer Zubak did not conduct the traffic stop, does not mean the stop lacked probable cause for the violation observed by Officer Zubak. "Where law enforcement authorities are cooperating in an investigation, the knowledge of

one is presumed shared by all." *State v. Ewoldt*, 448 N.W.2d 676, 677 (Iowa 1989).

Also, correcting the violation before the stop occurs does not cure the prior violation or remove the probable cause to stop based on the violation. *See State v. Farrell*, 242 N.W.2d 327, 329 (Iowa 1976) (holding the officers had probable cause to stop a vehicle which was operating on the road at night without its headlights where the lights had been off for only a short period of time and were on again by the time the vehicle came to a stop); s*ee, e.g.*, *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006) (holding an officer "clearly acted within his authority in stopping [the defendant's] vehicle" when the officer observed the vehicle run a red light); *State v. Kinkead*, 570 N.W.2d 97, 101 (Iowa 1997) ("If officers were not allowed to rely on their sensory perception in performing their jobs, their positions as enforcers of our state's laws would be rendered futile.").

Because the stop was valid under the federal and Iowa constitutions, counsel did not breach an essential duty by failing to challenge the stop on the grounds now asserted on appeal. *See Fountain*, 786 N.W.2d at 263 ("Counsel has no duty to raise an issue that has no merit."). We therefore reject Rogers's ineffective-assistance-of-counsel claim and affirm his conviction.

AFFIRMED.