

IN THE COURT OF APPEALS OF IOWA

No. 3-286 / 11-0609
Filed May 15, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CRISTIAN SCOTT LUCIER,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

Defendant appeals his convictions for first-degree robbery, first-degree burglary, and possession of marijuana with intent to deliver. **AFFIRMED.**

John J. Bishop, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., Tabor, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MAHAN, S.J.**I. Background Facts & Proceedings.**

At about 8:00 p.m. on January 1, 2011, Cristian Lucier sent some text messages asking if the recipients were interested in buying some high-grade marijuana. He also sent follow-up texts detailing amounts and prices.

At about midnight, Jon Winburn and Amanda Dahl were in their apartment in Cedar Falls, Iowa, when they heard noises. Winburn went to investigate and saw three men in their apartment. One of the men threatened him with a gun. After they left, Winburn ran out and saw the men getting into a red or maroon four-door vehicle. Winburn and Dahl discovered a flat-screen television, an i-pod touch, two cell phones, a wallet, cash, and 123.4 grams of marijuana had been stolen.¹ They went to a neighbor's apartment to call the police.

Dahl had an application on her cell phone that permitted tracking by a global positioning system (GPS). She used a neighbor's computer to track her cell phone and provided this information to police officers. Using the information, officers stopped a red four-door vehicle that was occupied by Lucier, Jacob Noelting-Petra, and Johntrell Humphrey. As the officers first approached, Lucier kicked a gun and Winburn's wallet under the vehicle. Officers found other stolen items in the car.

Lucier was charged with robbery in the first degree, in violation of Iowa Code section 711.2 (2011), burglary in the first degree, in violation of section 713.3, and possession of a controlled substance (marijuana) with intent to

¹ Winburn testified he agreed to enter a guilty plea to a charge of possession of marijuana.

deliver, in violation of section 124.401(1)(d). Notice was given that he intended to rely on the defenses of intoxication and diminished responsibility. Prior to trial Lucier made a motion for a change of venue, which was denied by the district court.

The case proceeded to a jury trial beginning on April 12, 2011. Lucier did not dispute the facts of the State's allegations against him. Instead, he argued he was not capable of forming specific intent. The jury found Lucier guilty of the crimes charged. He was sentenced to a term of imprisonment not to exceed twenty-five years on the charges of first-degree robbery and first-degree burglary, and five years on the charge of possession with intent to deliver, all to be served concurrently. Lucier now appeals his convictions, claiming he received ineffective assistance of counsel.

II. Standard of Review.

We review claims of ineffective assistance of counsel de novo. *Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008). "In determining whether an attorney failed in performance of an essential duty, we avoid second-guessing reasonable trial strategy." *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). In order to show prejudice, a defendant must show that, but for counsel's breach of duty, the result of the proceeding would have been different. *State v. Brubaker*, 805 N.W.2d 164, 174 (Iowa 2011).

III. Ineffective Assistance.

Ordinarily, we preserve claims of ineffective assistance of counsel for postconviction relief proceedings. *State v. Reyes*, 744 N.W.2d 95, 103 (Iowa 2008). “That is particularly true where the challenged actions of counsel implicate trial tactics or strategy which might be explained in a record fully developed to address those issues.” *State v. Clay*, 824 N.W.2d 488, 494 (Iowa 2012). One of the primary reasons for preserving ineffective-assistance-of-counsel claims, “is to ensure development of an adequate record to allow the attorney charged to respond to the defendant’s claims.” *Brubaker*, 805 N.W.2d at 170. “Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned.” *State v. Bentley*, 757 N.W.2d 257, 264 (Iowa 2008). We will consider claims of ineffective assistance of counsel on direct appeal only where the record is adequate. *State v. Bearse*, 748 N.W.2d 211, 214 (Iowa 2008).

We conclude the record in this case is not sufficient to permit us to address Lucier’s claims he received ineffective assistance of counsel. Lucier has raised several specific instances of alleged ineffective assistance on the part of his trial counsel. We conclude Lucier should be given an opportunity to develop an adequate record of his allegations, and his trial counsel should be granted an opportunity to respond to those claims. We therefore affirm his convictions and preserve his claims of ineffective assistance of counsel for potential postconviction relief proceedings.

AFFIRMED.