IN THE COURT OF APPEALS OF IOWA

No. 3-397 / 12-0534
Filed May 30, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONNELL FREDERICK BEECHUM,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson (motion to suppress), D.J. Stovall (bench trial), and Michael D. Huppert (sentencing), Judges.

Ronnell Frederick Beechum appeals from the judgment and sentences after a finding of guilty on charges of possession of a controlled substance with intent to deliver, failure to possess a tax stamp, and assault of a peace officer. **AFFIRMED.**

Cathleen J. Siebrecht of Siebrecht Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John Sarcone, County Attorney, and Andrea M. Petrovich, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Danilson, J., and Goodhue, S.J.*

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

GOODHUE, S.J.

Ronnell Frederick Beechum appeals from the judgment and sentences imposed after having been convicted of possession of a controlled substance with intent to deliver, failure to possess a tax stamp, and assault of a peace officer after a trial to the court. The sentences imposed were not to exceed ten years, five years, and one year, respectively, all to run concurrently. Probation was denied. The defendant specifically alleges that the State did not offer sufficient evidence to support the charge of assault on a police officer, counsel was ineffective for failing to file a motion requesting a judgment for acquittal, that the trial court erred in not granting the defendant's motion to suppress the drugs seized, and that the court erred further in not appropriately exercising its discretion in sentencing.

I. Background Facts and Proceedings

On June 6, 2011, at approximately 12:10 a.m., an officer observed the defendant walking down the middle of University Avenue in Des Moines with a two liter bottle in his hands. At least one motorist traveling in the 2200 block where he was walking had to stop to avoid hitting him. The officer stopped the defendant and asked for identification. The defendant was acting in a nervous manner. The officer decided to pat him down for weapons. When the pat down was under way, the defendant pulled away from the officer, spinning toward him, and struck the officer on the face with his hand. A second officer stepped in to help, and a scuffle ensued. The defendant was ordered to quit fighting, but he failed to do so. The defendant was finally subdued when one of the officers used a taser gun on the defendant. In placing handcuffs on the defendant, a plastic

container containing thirty-three blue pills was discovered. The defendant stated that the pills were morphine and he was going to sell them. The pills were confirmed to be morphine. The defendant filed a motion to suppress, alleging that the stop of the defendant was in violation of the State and Federal Constitutions. The motion was denied.

II. Standard of Review

A. Sufficiency of the Evidence

Sufficiency-of-the-evidence challenges are reviewed for errors of law. *State v*. *Thomas*, 561 N.W.2d 37, 39 (Iowa 1997).

B. Ineffective Assistance of Counsel

A claim of ineffective assistance of counsel is a constitutional claim and causes the scope of the review to be de novo. *Taylor v*. *State*, 352 N.W.2d 683, 684 (Iowa 1984).

C. Illegal Search and Seizure

The motion to suppress claimed an unconstitutional seizure under the Fourth Amendment and is therefore reviewable de novo with an evaluation of the totality of the circumstances. *State v*. *Watts*, 801 N.W.2d 845, 850 (Iowa 2011).

D. Abuse of Discretion in Sentencing

Absent a claim of an illegal sentence, the review of a sentence is for abuse of discretion or whether or not the sentence is based on "grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v*. *Cooley*, 587 N.W.2d 752, 754 (Iowa 1998).

III. Discussion

A. Sufficiency of the Evidence as to an assault of a peace officer

The defendant does not dispute that the victim was a police officer, that he knew the victim was a police officer, or that there was physical contact. The defendant contends the State did not prove the intent element of an assault as required by Iowa Code section 708.1 (2011).

Assault is considered a specific intent crime. *State v*. *Fountain*, 786 N.W.2d 260, 266 (Iowa 2010). Intent is seldom an element which can be established by definite proof but requires consideration of the facts and circumstances surrounding the act to determine the defendant's specific intent. *State v*. *Rinehart*, 283 N.W.2d 319, 321 (Iowa 1979). In finding the required intent in a situation very similar to the instant case, our Supreme Court stated that "defendants will ordinarily be viewed as intending the natural and probable consequences that ordinarily follow from their voluntary acts." *State v*. *Bedard*, 668 N.W.2d 598, 601 (Iowa 2003). There was no evidence or contention that striking of the officer was justified, that it was an accident, or that the defendant's continuation of the scuffle was justified.

When there is a claim of a lack of substantial evidence to support a verdict of guilty, the evidence is to be considered in the most favorable light to the State and all inferences fairly and reasonably deducted from the evidence must be accepted. *State v*. *Sanborn*, 564 N.W.2d 813, 816 (Iowa 1997). Substantial evidence exists if the evidence is such that it would convince a rational finder of fact that the defendant is guilty beyond a reasonable doubt. *State v*. *Evans*, 671

N.W.2d 720, 724 (Iowa 2003). We conclude that there was substantial evidence that the defendant was guilty of assault of a peace officer.

B. Ineffective Assistance of Counsel

To establish an ineffective-assistance-of-counsel claim, the defendant must establish by a preponderance of the evidence that (1) counsel has failed to perform an essential duty and (2) prejudice resulted. *State v*. *Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). The defendant's claim of ineffective assistance of counsel is predicated on the defense counsel's failure to challenge the required intent element in the assault charge. We have concluded that there was substantial evidence supporting the conviction of assault of a peace officer, which includes the intent element. The trial record alone will rarely be adequate to resolve a claim of ineffective assistance of counsel on an appeal. *State v*. *Straw*, 709 N.W.2d 128, 133 (Iowa 2006). As to the issue raised in the appeal we conclude the record was sufficient. Counsel has no duty to raise an issue that has no merit. *State v*. *Wills*, 696 N.W.2d 20, 24 (Iowa 2005). We conclude that the claim of ineffective assistance of counsel has not been established.

C. Illegal Search and Seizure

The defendant's written motion to suppress was predicated on the claim of an illegal stop. The trial court's ruling addressed and denied the motion as to the stop issue, addressed the legality of the pat-down search, and found it to have been permissible based on a reasonable belief of the officer that his safety was at issue. An officer may search if a reasonably prudent man in the circumstances would be warranted in the belief his safety was in danger. *State v*. *Riley*, 501 N.W.2d 487, 489 (Iowa 1993). On appeal the defendant's only

claim is the illegality of the pat-down search and not the stop. No record of the hearing on the motion to suppress or other record of the defendant having raised the issue of the legality of the pat-down search has been presented on appeal. It is an appellant's duty to establish the record on any claim asserted, and failure to do so constitutes a waiver of the claim. *State v*. *Mudra*, 532 N.W.2d 765, 767 (Iowa 1995).

Even if the pat-down search issue is considered to have been raised, not only was the pat-down search justified for safety reasons, but also the defendant was subject to arrest for walking in the middle of the street and was so charged. For a pat-down incident to an arrest to be a legal search, the arrest need not be made prior to the pat down. If the arrest is immediately following the search, it is a legal search. *State v*. *Horton*, 625 N.W.2d 362, 364 (Iowa 2001).

Finally, even if the initial pat-down search was to be considered an illegal search, the seized pills were not obtained until after the scuffle, and the defendant was being handcuffed. The defendant's characterization of the seizure of the pills as the "fruit of the poisonous tree" is not appropriate. A defendant has no right to resist arrest. It was the search incident to the second arrest when the pills were found, and as such it was clearly a legal search. *See State v*. *Dawdy*, 533 N.W.2d 551, 555-56 (Iowa 1995). We conclude that the morphine pills were legally seized.

D. Abuse of Discretion in Sentencing

Abuse of discretion in sentencing exists when a sentence is predicated on grounds that are clearly untenable or unreasonable. *State v*. *Bentley*, 757 N.W.2d 257, 262 (Iowa 2008). The sentencing court is obligated under Iowa

Rule of Criminal Procedure 2.23(3)(d) to give its reasons for the sentence imposed. The reasons stated may be terse and succinct, but so long as the reasons for the sentence imposed and the discretion exercised are such as to permit review, they are adequate. *State v. Victor*, 310 N.W.2d 201, 205 (Iowa 1981). We conclude that the statements of the sentencing court were more than adequate for review and that the sentences imposed were reasonable and do not reflect an abuse of discretion.

AFFIRMED.