IN THE COURT OF APPEALS OF IOWA

No. 7-200 / 06-0985
Filed April 25, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

REX ALAN COUSINS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister, Judge.

Rex Cousins appeals from his convictions for possession of methamphetamine, second offense, and manufacturing methamphetamine, second offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Jason B. Shaw, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Andrews, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad P. Walz, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

I. *Background Facts and Proceedings*.

Police officers were called to Rex Cousins' residence to investigate a suspicious odor reported by neighbors. When officers arrived on the scene, they noticed the smell of ether coming out of the dryer vent. While some of the officers were knocking at the front door, others remained near the dryer vent. The officers knocked at the front door for approximately five minutes before anyone answered. During that time, the officers stationed by the dryer vent noticed the smell began to diminish quickly and "the fumes were gone" by the time the front door was opened.

Pete Peters, a friend of Cousins', answered the door. The officers requested permission to enter the house and Peters refused. A few minutes later, Cousins appeared and started yelling at the police officers to leave the premises. Both Cousins and Peters denied smelling anything. The officers decided to evacuate the house because of the potential danger presented by the ether fumes. The officers secured the house and obtained a search warrant.

During their search, officers found a number of methamphetamine-related items. Officers discovered three homemade glass methamphetamine pipes in a jacket in Cousins' closet. The pipes contained burn residue which tested positive for methamphetamine. While searching for the source of an ether smell in the kitchen, an officer found a can wrapped in a yellow plastic bag underneath the garbage bag in the trash can. This can had been punctured at the bottom, wrapped first in coffee filters, then in clear plastic and then taped. The coffee filters were wet and contained fresh, grey sludge consistent with the appearance

of by-product produced by the metal-ammonia method of methamphetamine production. The sludge tested positive for methamphetamine residue. The puncture was apparently used to drain the can of ether, a technique for the maximization of ether commonly used by methamphetamine labs. A second empty can was also found in the garbage outside Cousins' house. This can was also punctured in the bottom and wrapped three times. All the components of a hydrogen chloride gas generator, which is used to convert methamphetamine base to methamphetamine hydrochloride were found near the washer and dryer. Officers searching the basement noticed the floor looked like it had been sprayed down recently. A sample was taken from the water in the basement floor drain. The sample tested positive for ethyl ether and methamphetamine. A coffee filter found in the same drain tested negative for methamphetamine.

Cousins was charged with possession of methamphetamine, second offense, on January 3, 2006. At the arraignment held on January 19, 2006, trial was set for March 14, 2006, and Cousins demanded his right to a speedy trial. Cousins was later charged with manufacturing a controlled substance, methamphetamine, as a second offender in a motion to amend trial information filed on February 13, 2006. The trial court granted the motion to amend trial information on February 23, 2006. The State filed a motion to continue, and the trial court granted the order on March 3, 2006, and set the new trial date as March 21, 2006. Also on March 3, 2006, Cousins reasserted his right to a speedy trial at a second arraignment. The trial court set jury trial for May 2, 2006 in the arraignment order. For reasons that do not appear in the record, an agreed order was filed which indicates that "[b]y agreement of counsel the court

approves rescheduling both the final pretrial conference and the trial until after March 17, 2006." Additionally, there is a handwritten notation on the order setting pretrial conference for April 10, 2006, and trial for May 2, 2006.

A pretrial conference was held on April 28, 2006. At that hearing, defense counsel filed a motion seeking to hire a chemistry expert. The trial court stated it would not grant the request on the eve of trial unless Cousins expressly waived his right to a speedy trial. Defense counsel replied defendant "[doesn't] want to waive speedy because he wants you to get him out of jail first . . . ." The trial court ruled that the request for an expert witness was denied and the trial would start as scheduled. The record was closed and then reopened twenty minutes later. The following exchange took place:

> DEFENSE COUNSEL: You Honor, my client and I visited as the court suggested and now he has changed his mind and he feels that he needs his counsel to be prepared for trial which I don't think I can be with an expert, and I'd ask the court's indulgence to grant him the opportunity to have an expert witness at state expense. . . .
>
> THE COURT: The State resisted it, but I'll grant it. . . . How long a continuance do you need?
>
> DEFENSE COUNSEL: I'd ask for at least two weeks, Judge.
>
> THE COURT: Any objections to the two-week continuance?
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> PROSECUTING ATTORNEY: Two weeks, Your Honor?
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> THE COURT: That will put it on the 16th of May with a pretrial on 12th of May. And $500 for expert witness fees. Okay?
>
> PROSECUTING ATTORNEY: Your Honor, maybe the defendant should be asked on the record.
>
> THE COURT: Mr. Cousins, you've heard the statements of your counsel. Is that a fair statement?
>
> DEFENDANT: Yes.
>
> THE COURT: That's what you want to do? Have a two-week continuance so you could get a hold of this expert?
>
> DEFENDANT: Yes.

Finally, the State filed a motion to continue on May 15, 2006, because the prosecutor would be unavailable for trial on May 16, 2006. The trial court granted the order and set trial for May 23, 2006.

Trial began as ordered on May 23, 2006. The jury found Cousins guilty of both charges. Before sentence was pronounced, Cousins was permitted to exercise his right to allocution. Cousins stated:

> Well, that I didn't know it carried thirty years or I probably wouldn't even went to court. I'd like to see some paperwork on this whole charge. The only piece of paperwork I got in my cell right now is domestic. So if I'd thought it carried thirty years, I would have begged for some kind of deal. I had no idea that it carried thirty years. That's all.

The following exchange then took place between the trial court and defense counsel:

> THE COURT: That's unusual. Mr. Standafer, is there anything you'd like to add to the remarks you made about the defendant's recommendation?
>
> DEFENSE COUNSEL: No, Your Honor. I visited with him frequently about this case. As you can tell, put my heart and soul into it.
>
> THE COURT: Okay.
>
> DEFENSE COUNSEL: Sometimes you can do something and sometimes you can't. I'd like to put that in the record.

The trial court then sentenced Cousins to one year in prison on the possession charge and twenty years on the manufacturing charge, instead of the possible thirty-year sentence, with the sentences to run concurrently.

On appeal, Cousins raises the following issues:

I. Trial counsel was ineffective for failing to make a motion to dismiss for lack of speedy trial.

II. Trial counsel was ineffective for failing to advise Cousins of the consequences of proceeding to trial.

II. *Discussion*.

Our standard of review for a claim of ineffective assistance of counsel is de novo. *State v. Button*, 622 N.W.2d 480, 483 (Iowa 2001). Ineffective assistance of counsel claims are generally preserved for postconviction relief in order to allow full development of the facts surrounding counsel's conduct. *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). Only in rare cases will the trial record alone be sufficient to resolve the claim. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). However, when the record is adequate, we will consider such claims on direct appeal. *State v. Leckington*, 713 N.W.2d 208, 217 (Iowa 2006).

Cousins argued he was pressured to waive his right to a speedy trial at the April 28 hearing. The record is unclear as to why Cousins would reassert his right to a speedy trial at his second arraignment on March 3, 2006, and the trial court would then set a trial date of May 2, 2006. We note that resolution of Cousins' claim that he was inadequately informed about the consequences of proceeding to trial is highly dependent on confidential conversations between Cousins and his trial counsel. "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). We find the record on direct appeal is insufficient to address Cousins' ineffective assistance of counsel claims and preserve them for postconviction relief. Therefore, we affirm Cousins' convictions.

AFFIRMED.