IN THE COURT OF APPEALS OF IOWA

No. 7-328 / 06-1263
Filed July 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ELDRICK DESHONE ROBERTSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce Zager, Judge.

Eldrick Deshone Robertson appeals from his convictions of several drug offenses. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

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

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Eldrick Deshone Robertson appeals from his convictions of possession of more than ten grams of cocaine base with intent to deliver while in possession of a firearm in violation of Iowa Code sections 124.401(1)(b)(3) and 124.401(1)(e) (2005), possession of cocaine with intent to deliver in violation of section 124.401(1)(c), a drug tax stamp violation under section 453B.12, and possession of marijuana in violation of section 124.401(5). He contends the district court erred in overruling his motion to suppress, the court erred in denying his *Batson* challenge, and his trial counsel was ineffective for failing to challenge the weight of the evidence in his motion for new trial. Because we find no merit in any of his claims, we affirm.

I. Background Facts & Proceedings

Todd McGee was arrested several times in 2005 for possession of crack cocaine. He agreed to act as an informant in exchange for a favorable plea agreement and began working with the police as an informant in a sting operation. Sergeant Mark Meyer, the lead officer in the sting, had known McGee for approximately fifteen to twenty years. McGee had provided information in the past that had led to two drug arrests and prosecutions.

McGee had known Eldrick Robertson since 2003 and had purchased cocaine from him. On October 28, 2005, McGee called Robertson and "let him know that I was in town and I would be comin' by to buy some drugs." McGee and Robertson agreed to meet at a Hy-Vee store. When McGee arrived at the agreed upon location, Robertson came out of an apartment behind the store and got into the front seat of McGee's vehicle. Robertson asked McGee to drive

around the block during which time Robertson sold McGee seventy dollars worth of crack cocaine. After taking Robertson to a gas station so he could buy some cigars, McGee dropped Robertson off back at the apartment building.

The following day McGee and Sergeant Meyer agreed that McGee would set up another drug deal with Robertson. The police planned to stop McGee's truck before the transaction could be completed. McGee called Robertson and negotiated to purchase two eight-balls of crack for $250. The pair agreed to meet in a Hy-Vee parking lot to complete the transaction, but McGee called Robertson and said the parking lot was not a good location to meet because the store had closed. McGee then arranged to pick Robertson up in front of Robertson's apartment complex.

When McGee picked Robertson up on October 30, 2005, at approximately 1:00 a.m., Robertson sat in the back seat on the driver's side of McGee's truck because McGee had a female friend riding in the front seat. Robertson had McGee drive around the block, which was his customary practice during the commission of a drug transaction.

Sergeant Meyer had established surveillance and witnessed Robertson exit the apartment and enter McGee's vehicle. Meyer radioed officers Steven Bose and Matt McGeough, who were located nearby in a marked car, and ordered the officers to stop McGee's vehicle because the passenger in the back seat was in possession of crack cocaine. Officers Bose and McGeough completed the stop within thirty to forty-five seconds, and Officers Kristin Hoelscher and Albert Bovy parked their squad car behind the officers that had executed the stop.

McGee and his female friend consented to a pat-down search. Robertson also consented to a pat-down search and offered to "drop his drawers right there for [the officers] because he said he didn't have anything on him." The officers did not locate any drugs on Robertson's person. After Sergeant Meyer arrived at the scene, McGee told Meyer he had not yet received any drugs from Robertson, so they "had to be on him or in the vehicle." McGee consented to a search of his truck, but the officers found no drugs in the vehicle. The officers also searched the route the truck had followed after Robertson entered the vehicle, but they found nothing that could have been thrown out of the vehicle.[1]

The officers called a canine unit to the scene, and the drug dog indicated there was a scent of drugs in the vehicle. The drug dog had not been trained to search people. The officers placed Robertson under arrest for possession of drugs with intent to deliver and transported him to the police station for a strip search. During the strip search at the station, the officers discovered two cellophane-wrapped eight-balls of crack cocaine between Robertson's buttocks.

The officers also found a key on Robertson's person that fit the lock of apartment 209 at the apartment complex from which Robertson had emerged. The police then obtained and executed a warrant to search the apartment. At the apartment, the police discovered a large amount of cash, marijuana, a loaded gun, a large quantity of cocaine, and plastic bags. The officers also found the hood of a coat that matched what Robertson had been wearing at the time of the arrest, photographs of Robertson, and documents with Robertson's name.

[1] The two eight-balls of crack cocaine that McGee had ordered from Robertson were too large to swallow.

The State charged Robertson with multiple drug offenses. Robertson filed a motion to suppress, which the district court denied. On June 5, 2006, the jury found Robertson guilty of possession of more than ten grams of cocaine base with intent to deliver while in possession of a firearm, possession of cocaine with intent to deliver, a drug tax stamp violation, and possession of marijuana. Robertson was sentenced to a mandatory fifty-year term of incarceration for the possession with intent to deliver while in possession of a firearm conviction. The court imposed shorter concurrent sentences for the other convictions. Robertson now appeals.

II. Motion to Suppress

Robertson contends the district court erred in overruling his motion to suppress because the police lacked probable cause to arrest him.[2]

When a defendant asserts that his or her constitutional rights under the Fourth Amendment were violated, our review is de novo. *State v. Heminover*, 619 N.W.2d 353, 356 (Iowa 2000), *rev'd in part on other grounds by State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). We independently evaluate the defendant's claim under the totality of the circumstances. *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997). We give deference to the district court's assessments of credibility and findings of fact, but we are not bound by those findings. *Turner*, 630 N.W.2d at 606. Any evidence obtained in violation of the defendant's Fourth Amendment rights is inadmissible and must be suppressed

[2] Robertson has not challenged the validity of the strip search or the warrant to search his apartment except to the extent evidence obtained in these searches "should have been suppressed as the fruit of the poisonous tree."

regardless of its probative value or relevance. *State v. Schrier*, 283 N.W.2d 338, 342 (Iowa 1979).

Under Iowa Code section 804.7(3), an officer may make an arrest without a warrant "[w]here the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it." The "reasonable ground for belief'" standard within section 804.7(3) is tantamount to probable cause. *State v. Freeman*, 705 N.W.2d 293, 298 (Iowa 2005). Probable cause to make an arrest turns upon the circumstances of each case; the facts must give rise to something more than a mere suspicion, but they need not be so strong as to convince officers involved in the arrest of a suspect's guilt. *State v. Bumpus*, 459 N.W.2d 619, 624 (Iowa 1990). Probable cause exists if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing it. *Id.* All of the evidence available to the arresting officer may be considered, regardless of whether or not each component would support a finding of probable cause by itself. *State v. Ceron*, 573 N.W.2d 587, 592 (Iowa 1997).

At the time Robertson was arrested for possession of drugs with intent to deliver, the officers knew: (1) McGee had given reliable information to the police in the recent past, he was known by Sergeant Meyer for fifteen to twenty years, and he had a strong incentive to give reliable information to reduce his sentence for pending drug charges; (2) McGee had made a purchase of drugs from Robertson less than forty-eight hours before the arrest, and McGee and

Robertson planned to complete the second drug transaction in a similar manner with McGee picking up Robertson and driving around the block during the sale; (3) after his truck was stopped, McGee told the officers Robertson hadn't given him the two eight-balls of crack yet, so the drugs had to be in the truck or on Robertson's person; (4) a drug dog indicated drugs were in or had been present in the truck; and (5) because the drugs were not located in the truck, had not been thrown from the truck during the short drive, were not located in pat-down searches, and were too large to swallow, they had to be in Robertson's possession.

The record reveals a reasonable and prudent person could believe Robertson had drugs in his possession at the time he was arrested. We conclude these facts, taken together, rise above mere suspicion and provide probable cause for Robertson's arrest.

III. Batson Challenge

Robertson next contends his right to equal protection was violated when the prosecutor used a peremptory challenge to remove the only black juror from the jury panel. Robertson challenged the prosecutor's decision to strike the juror, but the district court denied the challenge.

We review Robertson's equal protection claim de novo. *State v. Veal*, 564 N.W.2d 797, 806 (Iowa 1997), *overruled in part on other grounds by State v. Hallum*, 585 N.W.2d 249, 253-54 (Iowa 1998). To successfully challenge a prosecutor's peremptory strike of a prospective juror on account of race, a defendant must

> establish a prima facie case of purposeful discrimination by showing that he or she is a member of a cognizable racial group and that the prosecutor has used peremptory challenges to remove prospective jurors of the defendant's race, raising an inference that such exclusion is discriminatory.

Veal, 564 N.W.2d at 806 (citing *Batson v. Kentucky*, 476 U.S. 79, 96-97, 106 S. Ct. 1712, 1723, 90 L. Ed. 2d 69, 87-88 (1986)). Once this occurs, the State has the burden of articulating a racially neutral rationale for challenging the juror. *Id.* Then, the trial court must determine whether the defendant established purposeful discrimination. *Veal*, 564 N.W.2d at 806-07. We give great deference to the trial court's determination of the credibility of the State's explanation for the peremptory strike. *Id.* at 807.

During voir dire, the juror admitted she had a drug conviction. The juror also admitted she had a relative who was currently being prosecuted for the same offense, possession of crack cocaine with intent to deliver, by the prosecutor who was handling Robertson's trial. The prosecutor referred to these comments when explaining his reasons for striking the juror. The district court found the reasons given by the prosecutor for striking the juror were nondiscriminatory. We agree.

Robertson argues the State's reasons for striking the juror "do not overcome the proscriptions against striking minority jurors" because the juror indicated she would be fair and reasonable despite her drug conviction and the prosecution of her relative for the same offense Robertson had been charged with. As the district court noted, if the juror had reason to believe her relative was getting "a raw deal on a similar charge," she could harbor a bias in favor of the defendant especially because the same prosecutor was involved in both

cases. Moreover, our de novo review of the record convinces us that Robertson failed to establish purposeful discrimination in the strike of the only black juror. The record simply does not support the claim that the prosecutor peremptorily struck the juror solely on account of her race. In addition, the record does not support the conclusion that the reasons offered by the prosecutor were pretextual. Accordingly, we reject this assignment of error.

IV. Ineffective Assistance of Counsel

Robertson asserts his trial counsel was ineffective for failing to challenge the weight of the evidence in his motion for new trial. We review ineffective assistance of counsel claims de novo. *State v. Collins*, 588 N.W.2d 399, 401 (Iowa 1998). We typically preserve ineffective assistance claims for postconviction relief; however, if the record sufficiently presents the issues, we will resolve a defendant's claims on direct appeal. *State v. Martens*, 569 N.W.2d 482, 484 (Iowa 1997). We find the record in this case adequate to rule on Robertson's ineffective assistance claim.

To establish ineffective assistance of counsel, the defendant must prove: (1) his attorney's performance fell below "an objective standard of reasonableness" and (2) "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). To establish breach of duty, the defendant must overcome the presumption counsel was competent and prove counsel's performance was not within the range of normal competency. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). To establish prejudice, the defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have

differed. *State v. Atwood*, 602 N.W.2d 775, 784 (Iowa 1999). We may dispose of Robertson's ineffective assistance claims if he fails to prove either prong. *State v. Query*, 594 N.W.2d 438, 445 (Iowa Ct. App. 1999).

A motion for new trial may be granted if the trial court determines the verdict is contrary to the weight of the evidence. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). The weight-of-the-evidence standard involves a "determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other." *State v. Reeves*, 670 N.W.2d 199, 201 (Iowa 2003) (quoting *Tibbs v. Florida*, 457 U.S. 31, 37-38, 102 S. Ct. 2211, 2216, 72 L. Ed. 2d 652, 658 (1982)).

Trial courts should exercise their discretion in ruling on motions for new trial "carefully and sparingly." *Ellis*, 578 N.W.2d at 659. They should only grant a new trial in exceptional cases where the evidence preponderates heavily against the verdict so they do not diminish the jury's role as the principal fact-finder. *Id*. When the evidence is such that different minds could reasonably arrive at different conclusions, the district court should not disturb the jury's findings. *Reeves*, 670 N.W.2d at 203. Even if the district court might have rendered a different verdict than the jury, in the face of mere doubts that the verdict is correct, the court must not overturn it. *Id.* If the court finds the verdict incorrect due to mistake, prejudice, or other cause, only then may it set aside that verdict and remand the question to a different jury. *Id*.

We conclude Robertson has not shown he was prejudiced by his counsel's failure to include a weight-of-the-evidence argument in his motion for new trial. The most serious conviction in this case, possession of more than ten

grams of cocaine base with intent to deliver while in possession of a firearm, rested largely on evidence that Robertson was the sole resident of the one-bedroom apartment where the majority of the drugs and a loaded gun were discovered. The apartment contained photographs of Robertson and personal papers and files imprinted with Robertson's name. The apartment also contained a coat hood that matched the coat worn by Robertson at the time of the arrest, and the key to the apartment was found on Robertson's person. The officers who searched the apartment found only "what appeared to be clothing from one person." Although the apartment lease and utilities were listed in another person's name, trial testimony revealed this is a common practice of drug dealers.

On appeal, Robertson attacks McGee's credibility due to his multiple criminal convictions and the fact that he is an admitted crack cocaine user and drug dealer. However, McGee had incentive to provide accurate information about Robertson to the police in order to reduce his sentence, and the information provided by McGee was substantiated when the police discovered drugs on Robertson's person and in his apartment. The jury was made aware of McGee's criminal record and the concessions he received in sentencing for his cooperation with the State, but the jury still convicted Robertson.

Even from a cold appellate record, we believe it is clear the greater amount of credible evidence supports a finding of guilt.[3] This is not a case in which the evidence preponderates heavily against the jury's verdict. In light of

[3] The jury is free to believe or disbelieve the testimony of witnesses. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). Robertson's jury clearly resolved questions regarding McGee's credibility in favor of the State.

the foregoing, Robertson has not proved the result of the proceeding would have differed if his trial counsel had challenged the weight of the evidence in his motion for new trial. Because Robertson has not demonstrated prejudice, we reject this assignment of error.

V. Conclusion

We find the district court did not err in overruling Robertson's motion to suppress or in denying his *Batson* challenge. Robertson has also failed to demonstrate that any alleged breach of an essential duty by his trial counsel affected the outcome of this proceeding. We affirm his convictions and sentence.

AFFIRMED.