IN THE COURT OF APPEALS OF IOWA

No. 7-359 / 06-1105
Filed June 27, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANNETTE MARIE ROLAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert (motion to suppress) and Karen A. Romano (sentencing), Judges.

Defendant appeals from a conviction of possession of a controlled substance. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John P. Sarcone, County Attorney, and Mark H. Taylor, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Defendant-appellant, Annette Rolan was convicted of possession of a controlled substance in violation of Iowa Code section 124.401(5). On appeal, the defendant contends (1) the district court erred in denying her motion to suppress evidence and (2) she was denied effective assistance of counsel when her attorney did not argue that the evidence should be suppressed under principles articulated in *Arizona v. Evans*, 514 U.S. 1, 115 S. Ct. 1185, 131 L. Ed. 2d 34 (1995). We affirm.

BACKGROUND. On March 1, 2006, three arrest warrants were issued when the defendant failed to appear in court. On March 6, 2006, the defendant appeared and the court withdrew two of the three arrest warrants. On March 8, 2006, the police approached the defendant, who was in a parked car near a building being investigated for a possible burglary. She was then arrested pursuant to the remaining outstanding warrant. At the jail, the defendant confessed to the staff that she had contraband hidden on her person. The staff recovered the contraband and she was charged with possession of a controlled substance. The defendant filed a motion to suppress the contraband evidence. She claimed that since the outstanding warrant should have been recalled pursuant to her court appearance, her initial arrest was illegal and all evidence recovered thereto must be excluded. The district court denied the motion to suppress.

STANDARD OF REVIEW. Motions to suppress evidence and ineffective counsel claims implicate constitutional protections and therefore are reviewed de novo. *State v. Lane*, 726 N.W.2d 371, 377, 392-93 (Iowa 2007). During our

review we independently evaluate the totality of the circumstances presented in the record. *Id.* at 377. To the extent the defendant raises new arguments to support her claim that the evidence should be suppressed, she asserts the failure to suppress the evidence was caused by ineffective assistance of counsel. Errors that pertain to ineffective assistance of counsel do not need to be preserved for appeal. *State v. Doggett*, 687 N.W.2d 97, 100 (Iowa 2004). However, "[o]nly in rare cases will the trial record alone be sufficient to resolve the claim on direct appeal." *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). "We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings." *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). These claims can only be resolved on direct appeal "when the record is clear and trial counsel's actions cannot be explained by plausible strategic or tactical considerations." *Id.* "To prevail on a claim of ineffective assistance of counsel, the applicant must demonstrate both ineffective assistance and prejudice." *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001).

ANALYSIS. The defendant claims that contraband evidence should have been suppressed when it was discovered pursuant to an arrest based on a warrant that should have been recalled. The defendant argues that the district court erred in overruling her motion to suppress this evidence and that her trial counsel provided ineffective assistance by not alerting the court to a relevant Supreme Court case.

"[A]n illegal arrest will generally require suppression of any evidence seized pursuant to the arrest." *State v. Thornton*, 300 N.W.2d 94, 95 (Iowa 1981). The district court determined that since the warrant was active,

regardless of whether it should be active, the arrest was lawful and therefore the evidence need not be suppressed. Based on our de novo review, we cannot agree with this conclusion. An "active" arrest warrant that is not supported by a complaint and accompanying affidavit(s) demonstrating probable cause is invalid even if it was secured and relied on by arresting officers. *See id.* at 95-96.

However, whether this warrant was valid or invalid at the time of the arrest is unclear from the record. The case now cited by the defendant for the first time on appeal relates to this issue by addressing whether a clerical error makes a warrant invalid for purposes of the exclusionary rule. *Arizona v. Evans*, 514 U.S. 1, 14-15, 115 S. Ct. 1185, 1193, 131 L. Ed. 2d 34, 46-48 (1995). In *Evans*, the Supreme Court applied a good faith exception and held that clerical errors that render a warrant invalid would not require exclusion of evidence. *Id.* We cannot apply the same reasoning here because Iowa does not recognize the good faith exception to the exclusionary rule. *State v. Prior*, 617 N.W.2d 260, 268 (Iowa 2000). Thus, even though the evidence would be allowed under the federal constitution, it may need to be excluded under Iowa constitutional principles. The current record is inadequate to determine whether this warrant involved a clerical error and thus whether defense counsel's conduct was deficient or prejudicial. We therefore preserve the claim for postconviction relief.

AFFIRMED.