IN THE COURT OF APPEALS OF IOWA

No. 9-745 / 08-1917
Filed December 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL NAVARO JONES,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar (motion to suppress) and Todd A. Geer (trial), Judges.

Michael Navaro Jones appeals his convictions for first-degree robbery and felon in possession of a firearm. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and James Katcher, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Potterfield, J., and Huitink, S.J.*

Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

Michael Navaro Jones appeals his convictions following a jury trial, for robbery in the first degree and felon in possession of a firearm, as a habitual offender, in violation of Iowa Code sections 711.1, 711.2, 724.26, and 902.8 (2007). He asserts the district court erred in denying his motion to suppress evidence seized from his home after obtaining information during a traffic stop. Jones claims the police officer's stop of his vehicle was not reasonable and was a pretext to gain Jones's identity. He also claims his counsel was ineffective for failing to challenge the weight of the evidence in a motion for a new trial and in failing to challenge the veracity of some of the State's witnesses. Finding no violation of Jones's constitutional rights, we affirm the district court but preserve one issue for possible postconviction relief.

We review Jones's claims de novo; constitutional issues are reviewed under the totality of the circumstances. *State v. Kreps*, 650 N.W.2d 636, 640 (Iowa 2002)

On August 2, 2007, a Check into Cash store was robbed at gunpoint. The two employees working at the time gave a description of the suspect and the vehicle, having recognized him from previous visits to the store. On August 24, 2007, Officer Camarata received a call from a Black Hawk County Sheriff's lieutenant about sighting the possible robbery suspect. Officer Camarata, in plain clothes, located the vehicle but contacted a uniformed officer, Officer Crozier, to make the vehicle stop. Officer Crozier initially observed the driver was not wearing a seatbelt, so stopped the vehicle. By the time Officer Crozier approached the driver, Jones, he was wearing his seatbelt. Officer Crozier then

asked to see Jones's driver's license, ran a criminal history check, and allowed him to be on his way, without issuing a citation. The police then prepared a photo line-up, and Jones was immediately identified by one of the Check into Cash employees. After obtaining a search warrant, the police searched what they believed to be Jones's residence, and found a nine millimeter handgun in a safe in the home, along with various papers bearing Jones's name and address, indicating the home was Jones's residence.

Jones filed a motion to suppress, challenging the legality of the traffic stop, claiming that Officer Crozier did not have reasonable suspicion to stop his vehicle. Whether reasonable suspicion exists for an investigatory stop must be determined in light of the totality of the circumstances confronting a police officer, including all information available to the officer at the time the decision to stop is made. *Kreps*, 650 N.W.2d 636 at 642. The evidence justifying the stop need not rise to the level of probable cause. *State v. Richardson*, 501 N.W.2d 495, 496-97 (Iowa 1993). An officer may make an investigatory stop with "considerably less than proof of wrongdoing by a preponderance of the evidence." *Id.* A good test of such a founded suspicion is that "the possibility of criminal conduct was strong enough that, upon an objective appraisal of the situation, we would be critical of the officers had they let the event pass without investigation." *Kreps*, 650 N.W.2d 636 at 642.

The district court found that

> Officer Crozier, at the direction of Investigator Camarata, made an investigatory stop. The knowledge of Camarata is imputed to Crozier for the purposes of the stop. Crozier provided a pretextual reason for the stop to Jones. However, Crozier's real reason for the stop was the direction of Camarata and the imputed knowledge

> of Camarata. Camarata had a reasonable suspicion based upon articulable facts that a stocky, muscular, longer haired African American male driving a red Suburban had committed an armed robbery in the same city approximately three weeks earlier. The articulable facts include the credible reports of two eyewitnesses to the armed robbery. Jones fit the description and facts completely. The stop was brief and non-invasive other than the production of Jones's driver's license. The totality of the circumstances establishes that the stop did not violate the Defendant's right to be free of unreasonable searches and seizures.

We agree with the district court. The State is not limited to reasons given by the investigating officer in justifying an investigative stop. *State v. Heminover*, 619 N.W.2d 353, 361 (Iowa 2000), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601 (Iowa 2001). Officer Crozier stopped Jones for what he initially observed to be a seatbelt violation. He was also armed with the knowledge imputed to him by Officer Camarata, who had a reasonable suspicion Jones had committed the robbery based on the location, vehicle, and the description of the suspect. *See State v. Thornton*, 300 N.W.2d 94, 97 (Iowa 1981) (stating the general rule that when officers act in concert, their common knowledge may be considered). The stop was brief, only identification was requested and a criminal history check was run, and in light of the totality of the circumstances confronting Officer Crozier, we find the stop was reasonable.

Jones next claims counsel was ineffective for failing to challenge the weight of the evidence in a motion for new trial.[1] In order to succeed on a claim of ineffective assistance of counsel, Jones must prove (1) counsel failed to perform an essential duty, and (2) prejudice resulted. *Ledezma v. State*, 626

[1] Jones also argues his counsel was ineffective for failing to preserve the issue whether his wife's testimony was protected by the spousal privilege. Jones and his wife were married after the events surrounding the robbery occurred, making the spousal privilege inapplicable. Iowa Code § 622.9 (2007).

N.W.2d 134, 141 (Iowa 2001). Jones specifically asserts a motion for new trial would have been successful based on the evidence he presented for an alibi defense, his claimed lack of knowledge of the safe containing the gun, and alleged weakness in the eyewitness identification. A new trial may be granted when the verdict is contrary to the law or evidence of the case. Iowa R. Crim. P. 2.24(2)(*b*)(6); *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). There was sufficient evidence (a) Jones lived in the residence that contained the safe with the gun; (b) the witness gave an accurate description of Jones; and (c) Jones's alibi defense contained inconsistencies such that the jury could reject the defense. We conclude Jones's trial counsel did not fail to perform an essential duty by not moving for a new trial.

Finally, Jones asserts several of the State's witnesses gave false testimony at trial, and counsel was ineffective for failing to challenge their veracity.[2] We find the record is insufficient to address this claim, therefore we preserve the issue for possible postconviction proceedings. *See State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002) ("[W]e preserve such claims for postconviction relief proceedings, where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims.").

AFFIRMED.

[2] Jones raises several other issues in a pro se brief, which we do not address as the issues were not raised below. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).