IN THE COURT OF APPEALS OF IOWA

No. 9-738 / 08-1762
Filed October 21, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT JOSEPH VANCE,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Defendant appeals convictions for possession of methamphetamine precursors with intent to manufacture. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas J. Gaul, Assistant State Appellate Defender, for appellant.

Robert Joseph Vance, Coralville, pro se.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

EISENHAUER, J.

Robert Vance appeals his convictions for possession of anhydrous ammonia and possession of pseudoephedrine with the intent to manufacture methamphetamine. Vance argues: (1) there is insufficient evidence he possessed pseudoephedrine with the intent to manufacture methamphetamine; (2) the court erred in overruling his motion to suppress evidence; and (3) his counsel was ineffective for failing to challenge the search of the vehicle. We affirm Vance's convictions and preserve his ineffective assistance claim for possible postconviction relief proceedings.

I. Background Facts and Proceedings.

This case involves the early-morning stop by Officer Berry of a car driven by Vance. Before making this stop, Officer Berry had familiarity with both the vehicle and the vehicle's registered owner. Specifically, Officer Berry knew Athena Smith, the registered owner, had been stopped twice while driving the car. One stop was by Officer Berry, and one stop was by another officer. In both instances Smith was operating her car without a valid license. Additionally, during both stops methamphetamine was found in Smith's vehicle.

At 2:20 a.m. on July 11, 2008, Officer Berry observed a vacant vehicle parked legally, but in an odd manner, as though it had been parked quickly. A license plate check revealed the vehicle was registered to Athena Smith. Officer Berry next checked the status of Smith's driver's license and found it was still suspended. Approximately fifteen minutes later, Officer Berry saw the Smith vehicle turn onto a highway, and he followed and caught up with Smith's car but,

due to darkness, Officer Berry could not determine who was driving, the sex of the driver, or the number of occupants.

Officer Berry stopped the vehicle after it exited the highway, but before it entered Interstate 380 toward Evansdale. After approaching the car, Officer Berry found Vance to be the driver, not Smith. There were no passengers. Vance produced an Iowa non-driver's license identification card. After checking, Officer Berry discovered Vance had a barred driver's license and asked him to exit the car and move to the front of the squad car. After Vance removed a syringe, a metal spoon with burn marks, and a wooden spoon with methamphetamine residue from his pockets, Officer Berry thought Vance seemed to be getting very nervous and asked him to sit in the squad car. While Vance was sitting in the police car watching Officer Berry starting to look inside the vehicle, the police car's video shows Vance talking on his cell phone stating: "He's going to find the shit."

Officer Berry smelled a heavy chemical odor coming from the car and found newly-manufactured methamphetamine on the front driver's seat. The search further revealed court paperwork for Vance in the glove box and numerous items utilized in the manufacturing of methamphetamine located in the car's interior and trunk, including a coffee grinder.

After a jury trial, Vance was convicted of possession of pseudoephedrine and possession of anhydrous ammonia with the intent to manufacture methamphetamine and driving while barred. Vance appeals the possession convictions.

II. Insufficient Evidence.

Vance argues there is insufficient evidence to support his conviction because the State did not "prove Vance had *possession* of the pseudoephedrine with the *intent* to manufacture methamphetamine." We review Vance's claim for errors at law. *State v. Rohm,* 609 N.W.2d 504, 509 (Iowa 2000). The jury's verdict is binding upon a reviewing court unless there is an absence of substantial evidence in the record to sustain it. *Fenske v. State*, 592 N.W.2d 333, 343 (Iowa 1999). Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *Rohm*, 609 N.W.2d at 509. "When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record." *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). A jury verdict of guilty can be supported by circumstantial evidence alone. *State v. Moses*, 320 N.W.2d 581, 586 (Iowa 1982).

Proof of possession requires proof of three elements: "(1) dominion and control of the substance; (2) knowledge of its presence; and (3) knowledge of its nature." *State v. Bash*, 670 N.W.2d 135, 138 (2003).

Although no pseudoephedrine was found on Vance when he was arrested, substantial evidence supporting Vance's possession includes the CVS pharmacist explaining the process used at CVS when a customer buys pseudoephedrine. Photo identification must be shown, and the pharmacy's records state Robert Vance (with an address/birthdate identical to Vance's non-

driver's identification) purchased 2.4 grams of pseudoephedrine at 6:19 p.m. on July 10, 2008. Eight hours later Vance is stopped while driving alone and the police find the July 10, 6:19 p.m. CVS pharmacy receipt for this business transaction under the driver's-side floor mat. Also found in the car was a coffee grinder--an inexpensive item regularly found at methamphetamine labs. The grinder is used to start the manufacturing process by grinding up the pseudoephedrine pills. Vance's coffee grinder contained a red and white residue consistent with pulverized pseudoephedrine pills and no residue consistent with coffee. Therefore, circumstantial evidence reveals Vance had actual possession of the pseudoephedrine.

Likewise, the record contains substantial evidence of Vance's intent to use the pseudoephedrine to manufacture methamphetamine. The police car video shows Vance talking on his cell phone stating: "He's going to find the shit." The police indeed found a newly-made batch of methamphetamine, as well as numerous items indisputably tied to the manufacturing of methamphetamine: tubing, pliers, lithium battery shells, muriatic acid, Coleman camp fuel, an air tank containing anhydrous ammonia, an empty, clear pitcher with white methamphetamine residue, a coffee grinder with residue, and used and unused coffee filters. When methamphetamine is manufactured, after the pseudoephedrine pills are ground up in the coffee grinder, Coleman fuel is used to extract the pseudoephedrine and coffee filters are used to separate the byproduct. The used coffee filters in the car did not contain coffee grounds or

have discoloration consistent with coffee. Further, anhydrous ammonia and muriatic acid are chemicals used in methamphetamine manufacture.

When viewing the evidence in the light most favorable to the State, we conclude there is substantial evidence from which a rational jury could conclude beyond a reasonable doubt that Vance had possession of 2.4 grams of pseudoephedrine with the intent to manufacture methamphetamine. Because substantial evidence supports the jury's verdict, we affirm the verdict.

III. Motion to Suppress—Reasonable Cause to Stop Vehicle.

Vance argues the court erred in overruling his motion to suppress evidence because there was an insufficient basis for a finding of reasonable cause to stop the vehicle. Because this allegation concerns the constitutional right to be free of unreasonable searches and seizures; our review of the district court's suppression ruling is de novo. *State v. Kreps*, 650 N.W.2d 636, 640 (Iowa 2002). We independently evaluate the totality of the circumstances shown by the entire record. *Id.* The stop of an automobile for investigatory purposes is upheld if supported by reasonable suspicion that criminal activity has occurred or is occurring. *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997).

> When a person challenges a stop on the basis that reasonable suspicion did not exist, the State must show by a preponderance of the evidence that the stopping officer had specific and articulable facts, which taken together with rational inferences from those facts, to reasonably believe criminal activity may have occurred. Mere suspicion, curiosity, or hunch of criminal activity is not enough.

State v. Tague, 676 N.W.2d 197, 204 (Iowa 2004). An objective standard is used to judge whether the facts known to the officer at the time of the stop would lead

a reasonable person to believe the stop was appropriate. *Kinkead*, 570 N.W.2d at 100. If the State fails to carry its burden, any evidence obtained through the investigatory stop is inadmissible. *Id.*

Vance argues the stop was inappropriate because "[a]t the time the officer pulled over the vehicle, he knew nothing about who was driving it, not even the sex of the driver." However, it is reasonable to infer a vehicle is being driven by its owner when there is an "absence of evidence to the contrary." *State v. Mills*, 458 N.W.2d 395, 397 (Iowa Ct. App. 1990). Further, when an officer has an articulable and reasonable suspicion that a motorist is unlicensed, "it is reasonable for the officer to detain the vehicle and check the driver's license." *State v. Jones*, 586 N.W.2d 379, 382 (Iowa 1998), *overruled on other grounds by State v. Heminover*, 619 N.W.2d 353, 357 (Iowa 2000) (holding officer is not bound by the real reasons for the stop, rather, courts use an objective test).

Applying an objective standard to the facts available to Officer Berry would lead a reasonable person to believe the stop was appropriate. "The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot." *Kreps*, 650 N.W.2d at 642. Officer Berry was entitled to act on his reasonable belief Smith was barred from driving and she was once again ignoring the prohibition and driving her own car. Under the totality of the circumstances confronting Officer Berry at the time the decision to stop Smith's vehicle was made, he had reasonable suspicion to stop and briefly investigate the circumstances. *See Teague*, 676 N.W.2d at 204. Accordingly, the stop was valid and the district court correctly denied Vance's motion to suppress evidence.

IV. Ineffective Assistance of Counsel.

Vance's final argument is he received ineffective assistance of counsel because his attorney failed to challenge the search of the vehicle in a motion to suppress. In order to prevail on this claim, Vance must show (1) counsel failed to perform an essential duty and (2) prejudice resulted. *See State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007). We evaluate the totality of the relevant circumstances in a de novo review. *Id.* at 392. Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Lopez,* 633 N.W.2d 774, 784 (Iowa 2001). Those proceedings allow an adequate record to be developed "and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims." *Biddle*, 652 N.W.2d at 203.

This is not the "rare case" which allows us to decide Vance's ineffective assistance claim on direct appeal without an evidentiary hearing. *See State v. Straw,* 709 N.W.2d 128, 138 (Iowa 2006). We preserve Vance's claim for possible postconviction relief proceedings.

AFFIRMED.