IN THE COURT OF APPEALS OF IOWA

No. 8-206 / 97-0934

STATE OF IOWA,

Plaintiff-Appellee,

vs.

SAMUEL BECK JACKSON,

Defendant-Appellant.

FILED
JUL 31 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clinton County, David H. Sivright, Jr. and James R. Havercamp, Judges.

Defendant appeals from his conviction for third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik and James G. Tomka, Assistant State Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Lawrence H. Schultz, County Attorney, and Bruce A. Ingham, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

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PER CURIAM

Defendant Samuel Jackson appeals from his conviction for third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1995). He claims (1) his trial counsel was not effective in failing to file a timely motion to suppress evidence, and (2) there was not evidence to support his conviction. We affirm.

On the morning of December 23, 1996, the Clinton Law Center received a report of a person going from house to house knocking on doors and asking who lived there. Officer Reid saw defendant a block or two north from where the reported activity had occurred. Defendant matched the physical description of the person reportedly knocking on doors.

Asked his name, defendant responded "Sam Jackson." The officer recognized defendant, who had previous burglary arrests. At the time stopped, defendant carried a large bundle over his shoulder and a container of laundry detergent. A video game controller protruded from defendant's pocket. Asked about the bundle, defendant said it contained toys for his children given to him by Dawn.

Another officer arrived to assist Officer Reid. Defendant was handcuffed and placed in a squad car. The officers took defendant to the place defendant identified as Dawn's home to confirm defendant's explanation about the items in the bundle. Officer Reid knocked on the door but no one answered.

While defendant was still in the police car, a report came over the radio there had been a burglary in the area where defendant was picked up. Defendant, hearing

the report, responded, "Shit." The victim of the burglary identified the items in defendant's bundle as the property taken that morning from her home. Defendant was arrested and charged with third-degree burglary. An amendment charged defendant with being an habitual offender, citing two other burglary convictions.

Defendant was arraigned on January 23, 1997. His trial counsel filed a motion to suppress evidence obtained following his detention by Officer Reid on March 17, more than forty days after arraignment. The district court denied the motion to suppress on its merits. The court found Officer Reid had the requisite reasonable suspicion to stop defendant and investigate. The court noted the officer was aware of a report of a suspicious man going from house to house, knocking on doors, and inquiring as to who resided therein. The court noted it was two days before Christmas, when homes were often filled with valuable gifts. The court concluded it was reasonable to infer defendant was looking for homes where no one would respond in order to burglarize them. The court found Officer Reid knew defendant had previously been arrested for burglary. The court found there was sufficient reason for the investigatory stop. The court found the same circumstances constituted probable cause for the officers to seize defendant, handcuff him, and place him in the squad car. A jury found the defendant guilty as charged, and he appeals.

Defendant first claims his trial counsel was not effective because he failed to file a timely motion to suppress.

Claims trial counsel was ineffective involve a constitutional challenge which we review de novo. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994). A defendant has the burden of proving by a preponderance of the evidence his attorney did not perform an essential duty and, as a result, he was prejudiced. *State v. Howes*, 525 N.W.2d 874, 876 (Iowa App.1994). To demonstrate prejudice, a defendant must prove there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *State v. Tracy*, 482 N.W.2d 675, 680 (Iowa 1992). It is not necessary to determine whether counsel's performance was deficient before examining the prejudice component of an ineffective assistance claim. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

A plain reading of the district court's ruling on defendant's motion to suppress reveals no indication the time of filing was considered by the court in its decision. The district court carefully analyzed the merits of defendant's motion and ruled only on the merits. Because the late filing of the motion did not affect its consideration by the court, defendant cannot show he was prejudiced by his trial counsel's action. Without a showing of prejudice, defendant's ineffective assistance claim must fail.

Defendant also contends there was not a reasonable suspicion criminal activity was afoot when he was stopped, and even if the stop was warranted, the length of the detention far exceeded the reasonable duration of a *Terry* stop. *See Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). We agree with

the district court's ruling on the motion to suppress and affirm the trial court on its denial.

Defendant also challenges the sufficiency of the evidence to support his conviction. He concedes a burglary occurred but claims there was insufficient proof of the identity of the burglar. He contends his possession of the stolen property is the only evidence of his participation in the burglary.

We review challenges to the sufficiency of the evidence for correction of errors of law. Iowa R. App. P. 4. We will uphold a jury's verdict if it is supported by substantial evidence. *State v. Smith*, 508 N.W.2d 101, 102 (Iowa 1993). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Walker*, 538 N.W.2d 316, 319 (Iowa App. 1995).

Defendant argues the jury should not be permitted to infer from his possession of stolen property that he committed a burglary. Possession of stolen property, standing alone, cannot support a finding defendant committed the burglary. *State v. Hall*, 371 N.W.2d 187, 189 (Iowa App. 1985). However, considering defendant's

proximity both in time and location to the burglary and his reaction to the radio report of the burglary, there was substantial evidence from which the jury could find beyond a reasonable doubt defendant committed the burglary. *State v. Lewis*, 242 N.W.2d 711, 722 (Iowa 1976).

We affirm the conviction.

AFFIRMED.