IN THE COURT OF APPEALS OF IOWA

No. 7-635 / 97-0374

000371

STATE OF IOWA,

Plaintiff-Appellee,

vs.

WILLIAM GERRARD PARKER,

Defendant-Appellant.

FILED
DEC 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick, Judge.

Defendant appeals from his conviction, following a jury trial, for interference with official acts. **AFFIRMED.**

Penelope C. Souhrada, Davenport, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, William E. Davis, County Attorney, and Alan Havercamp, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Mahan, JJ.

000372

MAHAN, J.

William Parker appeals from his conviction, following a jury trial, for interference with official acts in violation of Iowa Code section 719.1(1) (1996). We affirm the conviction.

On September 15, 1996, officers Richard Nahnybida and Steven Brown of the Davenport Police Department responded to a report of a disturbance involving yelling and screaming at a trailer home. Holly Walker answered the door. She denied there had been any disturbance at the house. The officers observed she had been crying and there was broken glass and other items on the floor. Walker then admitted there had been an altercation with her boyfriend, but stated he had left. Over Walker's objections, the officers decided to check the trailer to make sure there were no injured persons inside.

Officer Nahnybida found Parker lying in a bedroom. Officer Brown detained Parker in the bedroom while Officer Nahnybida questioned Walker about the incident. Parker testified he stood up in order to adjust his position and Officer Brown began to beat him. Officer Brown testified Parker swore at him and assumed a boxer's stance. Officer Brown tried to hold Parker but he hit Officer Brown, causing a cut on his forehead. With the assistance of Officer Nahnybida, Parker was placed in handcuffs and arrested.

Parker was charged with interference with official acts causing bodily injury, an aggravated misdemeanor. A jury found Parker guilty of the lesser offense of

interference with official acts, a serious misdemeanor. He was given a suspended sentence of 180 days in the county jail and placed on probation. Parker now appeals.

I. SUBSTANTIAL EVIDENCE. Parker contends the State presented insufficient evidence to establish he committed the offense of interference with official acts. He asserts the State failed to show he knowingly resisted or obstructed a peace officer in the performance of his duty. Parker claims he was rudely awakened by the officers. He believes the officers improperly prohibited him from moving freely within his own home.

When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all of the evidence in the record in a light most favorable to the State. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980). A jury is not bound to believe a defendant's version of events. *State v. Neuendorf*, 509 N.W.2d 743, 747-748 (Iowa 1993).

We find there was substantial evidence to support the jury's verdict. Instead of obeying Officer Brown's request to stay in the bedroom, Parker swore at the officer and assumed a boxer's stance. Parker hit Officer Brown in the forehead when he attempted to hold Parker to avoid a fight. Parker struggled with the officers when they attempted to place handcuffs on him.

II. INEFFECTIVE ASSISTANCE. To establish a claim of ineffective assistance of counsel, a defendant must show (1) his attorney failed to perform an essential duty, and (2) prejudice resulted. *Caldwell v. State,* 494 N.W.2d 213, 214 (Iowa 1992). Representation by counsel is presumed competent, and a defendant has the burden to prove by a preponderance of the evidence that counsel was ineffective. *Jones v. State,* 479 N.W.2d 265, 272 (Iowa 1991). A defendant must also show that, but for counsel's unprofessional error, the results of the proceedings would have been different. *State v. Hildebrant,* 405 N.W.2d 839, 841 (Iowa 1987).

Generally, claims of ineffective assistance of counsel are preserved for postconviction proceedings so that a more complete record may be developed on various issues. *State v. Baker*, 560 N.W.2d 10, 15 (Iowa 1997). "However, they may be resolved on direct appeal when the record adequately addresses the issues." *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996). The record on this issue is adequate and, therefore, this matter will be addressed on direct appeal.

A. Parker claims his trial counsel was ineffective because he did not move to suppress Parker's statements and the officers' observations made during the warrantless search of the trailer home. He asserts officers did not have a valid reason to enter his home without a search warrant.

A search and seizure without a valid warrant is per se unreasonable unless it comes within a recognized exception such as consent, search incident to arrest,

probable cause with exigent circumstances, or plain view. *State v. Manna*, 534 N.W.2d 642, 644 (Iowa 1995). The burden is on the State to justify an entry under one of these exceptions. *State v. Predka*, 555 N.W.2d 202, 206 (Iowa 1996).

Exigent circumstances sufficient to justify a search and seizure without a warrant usually include danger of violence and injury to the officers or others; risk of the subject's escape; or the probability evidence will be concealed or destroyed if not taken on the spot. *Van Hoff v. State*, 447 N.W.2d 665, 671 (Iowa App. 1989). The ultimate issue is whether an emergency or urgent need for the warrantless entry existed. *State v. Brecunier*, 564 N.W.2d 365, 368 (Iowa 1997) (quoting *State v. Hatter*, 342 N.W.2d 851, 855 (Iowa 1983)).

We find there were sufficient exigent circumstances in the present case to permit the officers to search the trailer home without a search warrant. Someone had reported to the police there was a disturbance with yelling and screaming at the trailer. When police officers arrived, they could see Walker had been crying. There was evidence of a disturbance in that broken glass, pizza, and other items were strewn across the floor. The officers reasonably decided to search the home for persons who were injured or who could have injured Walker. Parker's trial counsel was not ineffective for failing to file a motion to suppress. In addition, Parker has failed to show prejudice.

B. Parker claims he received ineffective assistance because his trial attorney did not challenge the statements he made to the officers prior to receiving

notice of his *Miranda* rights. He believes he was under custodial interrogation when he was held in his bedroom. He also claims he received ineffective assistance because his counsel failed to investigate whether the police officers provided him with notice of his *Miranda* rights. He states it is not clear from the record whether officers provided him with his *Miranda* rights at any point during the investigation.

The State is required to give *Miranda* warnings only when there is both custody and interrogation. *State v. Kasel*, 488 N.W.2d 706, 708 (Iowa 1992). We find there was neither custody nor interrogation in the present case. Generally, an interrogation in a defendant's home is not considered custodial for the purposes of *Miranda*. *State v. Evans*, 495 N.W.2d 760, 762 (Iowa 1993). Furthermore, Parker's statements were not made in response to questioning by officers, but were in the nature of voluntary statements. Voluntary statements are admissible even if *Miranda* warnings are not given. *See State v. Cook*, 330 N.W.2d 306, 312-313 (Iowa 1983). We determine trial counsel was not ineffective for failing to object to the admission of evidence on *Miranda* grounds. In addition, Parker has failed to show prejudice.

C. Parker claims he received ineffective assistance because his trial counsel failed to request a jury instruction for simple misdemeanors which are lesser included offenses of interference with official acts causing bodily injury. He believes interference with official acts, in violation of section 719.1(1), and harassment of a public official, in violation of section 718.4, are lesser included offenses of the crime

for which he was convicted. Parker believes he would have been convicted of one of these lesser offenses if they had been submitted to the jury.

We first note at the time the crime was committed there was no crime of simple misdemeanor interference with official acts. Section 719.1(1) was amended in 1995 to increase interference with official acts to a serious misdemeanor. Parker was actually convicted of this lesser included offense.

We find Parker was not prejudiced by the failure to submit harassment of a public official as a lesser included offense. Parker did not argue he had prevented a public officer from performing his duty; his defense was based on his claim he only stood up to adjust his position. We determine he is not entitled to relief on this ground.

We affirm Parker's conviction for interference with official acts.

AFFIRMED.