IN THE COURT OF APPEALS OF IOWA

No. 7-414 / 96-1446

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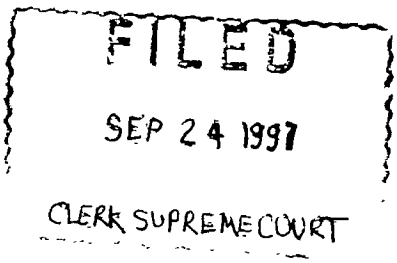
STATE OF IOWA,

Appellee,

vs.

MICHAEL MORGAN,

Appellant.



Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

Defendant appeals from his conviction for delivery of a controlled substance, in violation of Iowa Code sections 124.401(1)(c)(3) and 124.206(2)(d) (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Kelly G. Raines, Assistant County Attorney, for appellee.

Considered by Streit, P.J., Vogel, J., and Perkins, S.J.*

***Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).**

PERKINS, S.J.

On November 23, 1994, the Davenport police department arranged a controlled drug buy utilizing a paid informant, Lynda Solberg. Immediately before the buy, she was searched, "wired" with a micro-transmitter and given $20 to buy a rock of crack cocaine. Solberg purchased crack cocaine from a man named "Michael," but she did not know his last name. A week later, Solberg identified a photograph of the defendant, Michael Morgan, as the person from whom she purchased the drugs. Morgan was charged by trial information with delivery of a controlled II substance in March 1996. The delay in filing the charge was apparently because the State did not want to disclose Solberg's identity as she was assisting in other cases.

Morgan filed a motion to suppress Solberg's identification of him, which was denied. Prior to trial, he also moved in limine to cross-examine Solberg about her ten-year drug use and a theft charge. The court denied the motion, ruling the theft charge was inadmissible because there was no conviction, and evidence about her prior drug use was prohibited because it did not involve opinion or reputation for truthfulness. [redacted] that expert testimony was necessary to attack whether [redacted]. At trial Morgan made an offer of proof regarding: [redacted] was [redacted]

Following the State's case-in-chief, the court denied Morgan's motion for judgment of acquittal. He did not present any evidence. The jury found him guilty. The court sentenced him to an indeterminate ten-year term of imprisonment.

Morgan appeals. He argues the court violated his Sixth Amendment right to confrontation by prohibiting him from cross-examining Solberg about her drug use and theft charge to demonstrate: (1) her capacity to observe, remember, and recount the events in 1994; and (2) her motive and bias in testifying favorably for the State. He also claims that his counsel was ineffective for failing to properly preserve these issues for appeal in the event the court finds that error was not preserved.

The State raises several error preservation issues. It argues: (1) Morgan never raised a constitutional confrontation challenge below, and should be precluded from doing so on appeal; (2) there was no final ruling regarding whether the expert could testify because Morgan only made an offer of proof in chambers and never called the expert as a witness at trial; and (3) Morgan failed to cite either Iowa Rule of Evidence 608(b) or 609(a) in his appellate brief, therefore error was not preserved on the merits of the trial court's evidentiary rulings.

I. Morgan contends the district court erred in prohibiting him from cross-examining the informant regarding her cocaine usage and a theft charge, thereby denying the defendant his right to confrontation under the Sixth Amendment and the

Fourteenth Amendment to the United States Constitution and under article I, section 10 of the Iowa Constitution.

The district court before the start of the trial considered a motion in limine by the defendant which requested permission to cross-examine the informant regarding her ten-year usage of crack cocaine. Morgan argued such evidence was probative of the witness's bias in favor of the State and also was relevant to show a defect in her capacity to observe and remember events in question. The State argued there was no indication of drug usage at the time of the controlled buy which would affect her memory of the event.

The court ruled the informant's use of cocaine may not be used to attack the character of the witness for truthfulness or not. In order to attack the witness's credibility upon an issue of a defect in her capacity to review or remember matters there would have to be expert testimony regarding cocaine's effect on memory. We agree with the district court's ruling in this regard.

In the same motion, the defendant asked to examine the informant concerning a crim[redacted] a theft of money orders. The court denied that motion [redacted] conviction. We agree with the district court's ruling in this [redacted]

[redacted] defendant, [redacted] John

Jorgansen, the informant's boyfriend, who would have testified about her cocaine usage and the theft charge that led to her becoming an informant. The court's ruling was the same as its earlier ruling on the motion in limine.

The defense also presented a witness, Dr. John Barker, who testified in general about the possible adverse effects of crack cocaine on long-term and short-term memory. After the offer was completed, counsel for the defendant made no motions. Counsel for defense announced, "We will not be offering any witnesses since John Jorgansen was not allowed to testify." The district court did not rule on this witness and any objection is deemed waived. Iowa R. Evid. 103. We are satisfied the district court properly considered the issues and concluded under the Iowa Rules of Evidence 608(a) and 609(b) that the matters argued were not admissible.

In this appeal the defendant relies upon a claimed violation of his constitutional rights. At trial no constitutional issues were raised. No error was preserved on the constitutional issue regarding the right to confrontation.

II. The defendant contends in his appeal he was denied his constitutional right to effective assistance of counsel. Generally, ineffective assistance of counsel claims are not adjudicated on direct appeal. *State v. Rawlings*, 402 N.W.2d 406, 408 (Iowa 1987). This gives the allegedly ineffective attorney the opportunity to explain his or her conduct. *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978).

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The issue of ineffective assistance of counsel is preserved for postconviction proceedings.

AFFIRMED.