IN THE COURT OF APPEALS OF IOWA

No. 9-014 / 97-2288

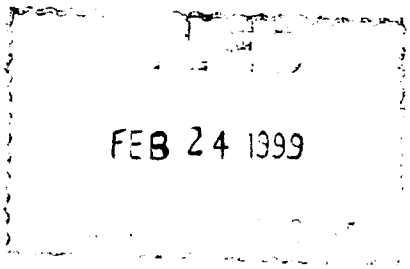
STATE OF IOWA,

Plaintiff-Appellee,

vs.

PATRICIA JONES,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Defendant appeals from her conviction for possession of methamphetamine.

AFFIRMED.

Patrick Wegman of Parrish, Kruidenier, Moss, Dunn & Montgomery, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John Sarcone, County Attorney, and Stephanie Cox, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

SACKETT, C.J.

Defendant-appellant Patricia Jones appeals from a conviction of possession of methamphetamine in violation of Iowa Code 124.401(5) (1997). Defendant contends her trial attorney was not effective when he did not move for a judgment of acquittal. We affirm.

Defendant was a passenger in a truck stopped for a traffic violation. The officer who stopped the truck learned the driver of the truck did not have a valid driver's license. The officer also discovered there was an outstanding warrant for the arrest of the second passenger in the truck. The truck was searched and the officers found under the passenger seat a glass pipe and a compact that appeared to have drug residue. Defendant had been seated in the passenger seat together with a second passenger. The compact was found close to where the defendant was sitting. There was evidence defendant admitted the compact was hers, which she later denied.

Defendant contends her trial attorney was not effective when he did not move for a judgment of acquittal, depriving her of her Sixth Amendment right to a fair trial. In making this claim, defendant must show (1) the trial attorney failed to perform an essential duty, and (2) prejudice resulted therefrom. *Snethen v. State*, 308 N.W.2d 11, 14 (Iowa 1981). Defendant has the burden to prove both of these elements by a preponderance of the evidence. *Sallis v. Rhoads*, 325 N.W.2d 121, 122 (Iowa 1982).

To show defendant's trial attorney was not competent, defendant must show more than a trial strategy backfired or another attorney would have prepared and tried

the case somewhat differently. *Fryer v. State*, 325 N.W.2d 400, 413-15 (Iowa 1982); *Hinkle v. State*, 290 N.W.2d 28, 30-31 (Iowa 1980). Defendant must overcome a presumption her trial attorney was competent. *Strickland v. Washington*, 466 U.S. 668, 689-90, 104 S. Ct. 2052, 2065-66, 80 L. Ed. 2d 674, 694-95 (1984). We look at the entire record and totality of the circumstances to determine if the trial counsel's performance was within the range of normal competency. *Henderson v. Scurr*, 313 N.W.2d 522, 524 (Iowa 1981).

The State argues if a motion for a judgment of acquittal had been made, it would not have been granted. Defendant advances the district court's comments at sentencing indicate the motion would have been granted. At sentencing the district court judge said:

> Well, Ms. Jones, taking into consideration the facts that I heard as I sat here in trial, I believe that there could have been inferred a reasonable doubt as to your guilt in this matter, and it's one of the reasons I've determined to be as easy as I can under the law.

We do not interpret these remarks as an indication the district court would have sustained a motion for a judgment of acquittal. Furthermore, our review of the evidence convinces us there was substantial evidence to prove defendant guilty beyond a reasonable doubt.

To prove her trial attorney was not effective, defendant would have to show prejudice. She is required to show that her trial attorney's failure to file the motion worked to her actual and substantial disadvantage and thereby constituted "a denial of the accused's due process right to a fair trial, a fundamental miscarriage of justice,

or an equivalent constitutional deprivation." *State v. Miles*, 344 N.W.2d 231, 234 (Iowa 1984). Specifically, defendant is required to show there is a reasonable probability that, but for trial counsel's failure to file the motion, the result of the proceeding would have been different. *See Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

In determining whether there is sufficient evidence to support submitting the case to a jury, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record. *See State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). The question is whether the State introduced substantial evidence to support the elements of the offense. Substantial evidence is "evidence that could convince a rational fact finder that a defendant is guilty beyond a reasonable doubt." *State v. Parrish*, 502 N.W.2d 1, 3 (Iowa 1993). Furthermore, direct and circumstantial evidence are equally probative. *Id.*

The compact was found near where the defendant was sitting in the truck, and there was evidence she admitted it was hers. This was substantial evidence to support the conviction. Defendant has failed to show her trial counsel was not effective. We affirm.

AFFIRMED.