IN THE COURT OF APPEALS OF IOWA

No. 2-090 / 11-0524
Filed February 29, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LUCAS JONATHAN JACKSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Lucas Jackson appeals his convictions for possession of a controlled substance with intent to deliver—second or subsequent offense—and failure to possess a tax stamp. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant Appellate Defender, for appellant.

Lucas Jonathan Jackson, Newton, pro se.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, John P. Sarcone, County Attorney, and Stephanie Cox, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Lucas Jackson appeals his convictions for possession of a controlled substance with intent to deliver—second or subsequent offense—and failure to possess a tax stamp. As there was sufficient evidence to corroborate the co-conspirator's testimony, we affirm. We also find adequate reasoning in the overall sentencing scheme to support the imposition of consecutive sentences. Finally, Jackson's ineffective-assistance-of-counsel claim must fail because Jackson could not show how he was prejudiced by his counsel's performance.

I. Background Facts and Proceedings

Around 6:00 a.m. on September 22, 2010, Lucas Jackson, who was being held at the Polk County Jail, was overheard having a telephone conversation with Mary Lozeau, which appeared to be related to drug dealing. Officer Joe Emberlin contacted Sergeant Bob Stanton regarding this and other similar telephone conversations. A driver's license check indicated Jackson's address was 715 East McKinley Avenue, Des Moines. Lozeau also resided at 715 East McKinley, in the basement of a duplex. Jackson and Lozeau had known each other for approximately six weeks and were in an intimate relationship.

On September 22, 2010, officers went to 715 East McKinley. Sherry Walker, who lived at the address and rented the basement level to Lozeau, consented to a search of her upstairs residence. Nothing illegal was found. When Lozeau arrived home, her fourteen-year-old daughter, Jackson's sixteen-year-old step-brother, Robert Gruen, and a friend of Gruen's took the stairs toward the lower-level residence. Officers stopped them, stating no one could go downstairs until they spoke with Lozeau.

While in the presence of officers, Gruen reached for the front pocket of his jeans. Deputy Mark Chance performed a pat search of Gruen and discovered a lump in his front, left pocket. Inside the pocket was a clear plastic bag with a green leafy substance. In his front right pocket were two unidentified white pills in a plastic wrapper.

Lozeau was provided a written consent search form, which she read and signed. Officers searched the basement bedroom where Lozeau resided. The bedroom had one closet. During the search, officers discovered a shoebox inside a Foot Locker bag in the closet. Inside the shoebox was a brown shirt; wrapped inside the shirt was a black bag containing seven clear plastic bags, which contained a white crystal substance, which later testing revealed was methamphetamine. The amount of methamphetamine was described as consistent with a "dealer amount or distribution amount," not the amount a user would have. The shoebox label contained a model or SKU number of the shoe, which matched the identifying number located on the tongue of Jackson's shoes that were at the Polk County Jail.

Two clear plastic bags containing marijuana were found next to the bed. A glass marijuana pipe was sitting on top of a safe sitting on the floor next to the bed. Jackson had purchased the safe and had Gruen help him carry it into Lozeau's residence. After obtaining a search warrant for the safe, officers discovered a black bag with several clear plastic bags, vinyl gloves, "drug notes" in a blue composition notebook, miscellaneous documents, a key to a Cadillac, jewelry, and letters of residency for Lozeau and Jackson, listing Jackson's address as 715 East McKinley. Lozeau stated that although Jackson was on

work release at Fort Des Moines, he had some of his things at her place, including clothes, shoes, and the safe.

As detectives were talking to Lozeau, she received a call on her cell phone. When Lozeau was done with the call, Detective Eric Burrows asked if he could look through her cell phone; Lozeau consented. Detective Burrows noted in his report, "While reviewing the text messages, I located messages that indicated [Lozeau] had knowledge of [Jackson's] drug dealing and was also involved with distribution and use." When Burrows confronted Lozeau regarding the text messages, Lozeau, who previously denied involvement with the methamphetamine, admitted she had not been honest with the officers.

On October 27, 2010, Jackson was charged by trial information with conspiracy to deliver a controlled substance in violation of Iowa Code section 124.401(1)(b)(7) (2009) (Count I); possession of a controlled substance with intent to deliver in violation of section 124.401(1)(b)(7) (Count II); and failure to affix a drug tax stamp in violation of sections 453B.3 and 453B.12 (Count III). Trial was held February 14 and 15, 2011. The jury returned a guilty verdict on all counts. After the jury was discharged, Jackson stipulated to his prior drug conviction. Counts I and II merged and after applying the "second or subsequent offense" enhancement under section 124.411, Jackson was sentenced to imprisonment for a period not to exceed seventy-five years for Count II, and five years for Count III, as provided by Iowa Code sections 902.9 and 902.3. The sentences were to run consecutive to one another. Jackson appeals.

II. Standard of Review

"Challenges to the sufficiency of evidence to corroborate an accomplice's testimony are reviewed for errors at law." *State v. Taylor*, 557 N.W.2d 523, 525 (Iowa 1996); *see State v. Doss*, 355 N.W.2d 874, 880 (Iowa 1984) ("The existence of corroborative evidence is a question of law for the court, but its sufficiency is a question of fact for the jury."). We ultimately review a defendant's sentence for correction of errors at law. *See State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006) (explaining the ultimate review of a sentence is for errors at law, but that an abuse of discretion standard applies "when the sentence imposed is within the statutory limits or the defendant's challenge to his or her sentence does not fall outside the statutory limits"). We review ineffective-assistance-of-counsel claims de novo. *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011).

III. Sufficient Corroboration

Jackson claims the district court erred in finding sufficient corroboration to support the testimony of accomplice and co-conspirator Mary Lozeau. Jackson further contends the independent evidence was not sufficient to establish that he "had, at some time in the past, possessed methamphetamine with the intent to deliver."

Iowa Rule of Evidence 2.21(3) states:

> *Corroboration of accomplice or person solicited.* A conviction cannot be had upon the testimony of an accomplice or solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. Corroboration of the testimony of victims shall not be required.

Moreover, the corroborating evidence "need not be strong so long as it connects the accused with the crime and supports the credibility of the accomplice." *State v. Powell*, 400 N.W.2d 562, 564 (Iowa 1987). "Once the legal adequacy of the corroborating evidence is established, the sufficiency of the evidence is for the jury." *State v. Bugley*, 562 N.W.2d 173, 176 (Iowa 1997).

We agree with the district court that adequate evidence was presented to corroborate Lozeau's testimony, which ultimately led to Jackson's conviction of possession of a controlled substance with intent to deliver. The State presented evidence of the telephone call between Jackson and Lozeau on the morning of September 22, discussing the black bag containing methamphetamine and the safe found at 715 East McKinley. In this conversation Jackson also referenced a Foot Locker bag, jewelry in the safe, and a Cadillac.[1] Jackson advised Lozeau to take the black bag out of the Foot Locker bag in the closet and put it in the safe. He then instructed Lozeau to move the safe into the closet. The State also entered into evidence text messages between Jackson and Lozeau that alluded to drug dealing and presented evidence of men's clothing being found at 715 East McKinley, letters of residency for Jackson addressed to 715 East McKinley, and a shoebox consistent with a pair of tennis shoes, in the same size and model number, owned by Jackson. Based on this information, we agree with the district court's conclusion that there was sufficient evidence to corroborate Lozeau's testimony and affirm as to this issue.

[1] A Cadillac key was found in the safe.

IV. Consecutive Sentencing

Jackson was sentenced to seventy-five years on Count II and five years on Count III, to run consecutively. Jackson asserts the district court failed to provide reasons for imposing the five-year sentence consecutive to his "already lengthy sentence." The State contends the district court provided adequate reasons for imposing consecutive sentences.

Iowa Rule of Criminal Procedure 2.23(3)(*d*) provides, "The court shall state on the record its reason for selecting a particular sentence." "'A statement may be sufficient, even if terse and succinct, so long as the brevity of the court's statement does not prevent review of the exercise of the trial court's sentencing discretion.'" *See State v. Hennings*, 791 N.W.2d 828, 838 (Iowa 2010) (quoting *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989)). Here, the district court stated:

> I have reviewed the presentence investigation report. I am familiar with the defendant's age; his prior record of convictions, which is very extensive for his age; his employment and family circumstances, the nature of the offense that was committed here, there was no weapon or force involved that I can see, the defendant's financial circumstances, his need for rehabilitation and what I see as virtually no potential for rehabilitation, the necessity for protecting the community from further offenses by the defendant and others, and the other factors that are set forth in the presentence investigation report.
>
> Mr. Jackson, from my perspective, you have taken absolutely no responsibility for anything in this case. . . . You have blamed everybody for where you are except you. . . . You have demonstrated nothing to me throughout this case . . . except a desire to try and be smarter than everybody else, to avoid the responsibility and consequences of your actions, and it's simply not going to work.
>
> In my view everything you have done in this case, and the fact that you committed a new offense and a serious offense while you were on parole, merits that you receive the maximum possible sentence in this case. I am going to sentence you to 75 years on

> Count II, with mandatory one-third before you are eligible for parole; five years on Count III. That will be consecutive to that on Count II.

The district court considered several factors in making a sentencing determination, including Jackson's age, prior convictions—which was noted to be "extensive" for his age, employment, family circumstances, nature of the offense committed, financial circumstances, potential for rehabilitation, and the need to protect the community from further offenses by Jackson. The district court also weighed Jackson's failure to take responsibility for his actions and the fact that the offense was committed while he was on parole in determining the length of the sentence.

Based on the district court's conclusions, it is apparent to us that the imposition of consecutive sentences was done as part of an overall sentencing plan. *See Hennings*, 791 N.W.2d at 839 (noting where it was apparent that two consecutive sentences were imposed as "part of an overall sentencing plan," the district court's explanation was sufficient). We therefore affirm the district court's imposition of consecutive sentences.

V. Ineffective Assistance of Counsel

Jackson claims trial counsel was ineffective for failing to argue statements made by Gruen in Lozeau's presence were not hearsay and should have been admissible. In asserting an ineffective-assistance-of-counsel claim, Jackson must establish trial counsel (1) failed to perform an essential duty and (2) prejudice resulted from such failure. *See State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052,

2064, 80 L. Ed. 2d 674, 693 (1984)). Jackson must prove both elements by a preponderance of the evidence. *Id.*

To understand the contested statement requires explanation of how the trial proceeded. During cross-examination of Officer Matthew Jenkins, trial counsel asked whether, "Robert Gruen indicated to [Jenkins] that he owned the safe that was located in the residence" and whether "Mr. Gruen took responsibility for everything in the house." The State objected to both questions as attempting to elicit hearsay. The court sustained the objections. The State then moved in limine to preclude Jackson from inquiring into statements made by Gruen to other witnesses. The court granted the motion "as to any statements unless we get any further foundation." Jackson does not dispute that Gruen's statements made to the officers were hearsay and were not admissible.

During cross-examination of Lozeau, however, trial counsel inquired, "And it was Robert [Gruen] that had asked you to find some people to sell drugs for you at McDonald's; is that correct?" The State objected, arguing the question violated the motion in limine ruling. In a discussion outside the presence of the jury, the district court opined that trial counsel "clearly" violated the ruling by calling for a statement by Gruen and that the statement was hearsay. Trial counsel thereafter conceded the statement was hearsay. Jackson faults his trial counsel because "[c]ounsel's agreement appeared to end the discussion and when court resumed the question was not re-asked" and "[c]ounsel failed to explore Robert Gruen's involvement any further."

Jackson argues Gruen's statement about locating methamphetamine purchasers is admissible as a statement by a co-conspirator made in furtherance

of a conspiracy, under Iowa Rule of Evidence 5.801(*d*)(2)(E), or as a nonhearsay statement because it was not offered to prove the truth of any matter asserted. *See* Iowa Rule of Evidence 5.801(*c*) (defining hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). Jackson further argues:

> Defendant was prejudiced by this evidentiary ruling. Without the demonstration that Gruen had the ability and authority to act on his own in the relationship with Lozeau, as shown by his urging of Lozeau to find customers for the drug at McDonald's, defendant was denied the ability to present a full defense. His argument was that Gruen and Lozeau could well have acted on their own with regards to the drugs found in the shoebox, that defendant was not directly connected to those drugs, and that defendant had no authority to control the drugs in the shoebox.

While Jackson sets forth arguments under both evidentiary rules and alleges he was prejudiced, he fails to actually establish prejudice. "To establish prejudice, a defendant must prove 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *State v. Lyman*, 776 N.W.2d 865, 878 (Iowa 2010) (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698). To establish a reasonable probability that the result would have been different, Jackson "need only show that the probability of a different result is sufficient to undermine confidence in the outcome." *State v. Palmer*, 791 N.W.2d 840, 850 (Iowa 2010). Here, even if Gruen's statements had been admitted as nonhearsay, there was still sufficient evidence to support Jackson's conviction of the conspiracy charge. Therefore, there was not a reasonable probability that the result would have been different if Gruen's statements, suggesting he was also involved in the conspiracy, were admitted. As the State notes, "Even if [Gruen] was part of the

conspiracy, his involvement does not diminish the probative value of the other evidence establishing Jackson's guilt—the recorded phone conversation, text messages, and Lozeau's testimony." Admitting Gruen's statements into evidence would not have been sufficient to "undermine confidence in the outcome." *Id.* For these reasons, Jackson was not prejudiced by trial counsel's failure to argue statements made by Gruen were not hearsay and should have been admitted by the district court.[2]

AFFIRMED.

[2] Jackson filed a pro se brief, in which he raises four additional issues for our consideration. His brief does not comply with the rules of appellate procedure in a number of ways, including not addressing error preservation, standard of review, or citing any authority. *See* Iowa R. App. P. 6.903(2)(*g*)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). We find his argument waived.