IN THE COURT OF APPEALS OF IOWA

No. 2-770 / 12-0040
Filed October 17, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JONATHAN T. CHESTNUT,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

A defendant appeals his convictions, sentence, and judgment for robbery in the second degree and neglect of a dependent person. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Johnathan Chestnut, Coralville, appellant pro se.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Amy Zacharias, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

VOGEL, P.J.

Defendant Jonathan Chestnut appeals following judgment and sentencing on his guilty pleas to robbery in the second degree, a class C felony in violation of Iowa Code sections 711.1 and 711.3 (2011), and neglect of a dependent person, a class C felony in violation of Iowa Code section 726.3. He claims his guilty plea was not entered knowingly and voluntarily, due to multiple omissions of the district court and in the alternative, ineffective assistance of his counsel. We affirm.

I. Background facts and proceedings

On September 16, 2011, Detective J. Hothersall of the Council Bluffs Police Department was working off-duty security at Walmart when he was contacted by the store's loss prevention personnel about a subject who had stolen several DVDs. Hothersall approached Chestnut as he was trying to leave the store with a shopping cart containing bags of merchandise and a small child. After Chestnut refused to comply with store personnel, Hothersall asked Chestnut to accompany him to the nearby police facility. Chestnut refused, picked the child up from the cart and walked out of the store, knocking Hothersall to the ground.

Hothersall then chased Chestnut to a vehicle in the parking lot, reaching the location just after Chestnut had entered the vehicle and closed the door. Hothersall opened the driver's door and tried to pull Chestnut from the vehicle, but Chestnut started the vehicle and backed out of the stall, clipping Hothersall with the open car door. The vehicle continued in reverse until it hit two cars parked behind it.

Hothersall pulled his gun and pointed it at Chestnut through the windshield of the vehicle and gave him commands to stop. Chestnut picked up the child that had been sitting in the front seat and put the child on his lap. Chestnut accelerated the vehicle towards Hothersall, who moved out of the way to avoid being struck by the vehicle. Chestnut sped away, across the parking, lot reaching nearly sixty miles per hour.

With the assistance of back-up officers, Chestnut's vehicle was stopped on Interstate 29. Pursuing officers pulled Chestnut from the vehicle. Other occupants in the car included Tonya Doran, and three children ages eight, six, and three. Later at the police station, Chestnut admitted to concealing DVDs in his pocket in an attempt to steal them. He also admitted to leading police on a pursuit from the store and putting his daughter's life in danger.

On September 29, 2011, Chestnut and Doran were charged by joint trial information with the following: attempted murder, a class B felony in violation of Iowa Code section 707.11; eluding, a class D felony in violation of Iowa Code section 321.279(3)(a); interference with official acts with a dangerous weapon, a class D felony in violation of Iowa Code section 719.1(1); assault on a peace officer with a dangerous weapon, a class D felony in violation of Iowa Code section 708.3A(2); interference with official acts causing bodily injury, an aggravated misdemeanor in violation of Iowa Code section 708.3A(3); assault on a peace officer causing bodily injury, an aggravated misdemeanor in violation of Iowa Code section 719.1[1]; robbery in the first degree, a class B felony in violation

[1] The trial information switched the code sections and offense descriptions around for the interference with official acts causing bodily injury, (Iowa Code section 708.3A(3))

of Iowa Code section 711.2; and four counts of neglect of a dependent person, class C felonies in violation of Iowa Code section 726.3.

On December 5, 2011, Chestnut appeared in court and pleaded guilty pursuant to a plea agreement with the State. Under the terms of the agreement, Chestnut would plead guilty to the lesser included offense of robbery in the second degree, a class C felony, and to one count of neglect of a dependent person. The remainder of the charges would be dismissed. The district court accepted Chestnut's plea.

In requesting immediate sentencing, Chestnut purported to waive his right to file a motion in arrest of judgment. The district court sentenced Chestnut to indeterminate terms of imprisonment not to exceed ten years on each count and ordered the sentences to run concurrently with one another. The court further ordered Chestnut to serve a seventy-percent mandatory minimum on his robbery sentence. Chestnut appeals.

II. Issue preservation

"Generally our review of a challenge to the entry of a guilty plea is for correction of errors at law." *State v. Tate*, 710 N.W.2d 237, 239 (Iowa 2006) (citing *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001)).

Iowa Rule of Criminal Procedure 2.8(2)(d) governs pleas to the indictment or information, providing: "The court shall inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such

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and assault on a peace officer causing bodily injury (Iowa Code section 719.1). As these offenses were dismissed as part of the plea agreement, the error is not relevant to the issues on appeal.

challenges shall preclude the right to assert them on appeal." This rule is to be read in tandem with rule 2.24(3)(a), which provides that "[a] defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal."

In determining whether the trial court has met the requirements of rule 2.8(2)(d) in guilty plea proceedings, we apply the standard of substantial compliance. *State v*. *Taylor*, 301 N.W.2d 692, 693 (Iowa 1981). Substantial compliance means that the defendant has been informed of the matters contained in the rules and understands them. *State v*. *Loye*, 670 N.W.2d 141, 151 (Iowa 2003).

We first look to see whether the court adequately informed Chestnut of the consequences of failing to timely file a motion in arrest of judgment. *State v*. *Burden*, 445 N.W.2d 395, 397 (Iowa Ct. App. 1989). Chestnut was advised of the consequences of failing to file a motion in arrest of judgment through the following exchange:

> THE COURT: You will never be able to withdraw these guilty pleas if you're sentenced today because to withdraw them, you would have to file a motion in arrest of judgment at least five days before your sentencing date. And obviously if you're sentenced today, you can't meet that five-day deadline. You will never be able to withdraw the guilty pleas. If you ever decided to appeal, your failure to file the motion in arrest of judgment affects the issues that you can raise in your appeal.
>
> Knowing about that motion, do you still want to be sentenced today?
>
> THE DEFEDANT: Yes, sir.

The district court informed Chestnut of his right to file a motion in arrest of judgment, the timeframe in which it must be filed, and of the consequences of not

filing. We find the trial court substantially complied with rule 2.8(2)(d) and adequately informed Chestnut of the consequence of failing to challenge acceptance of his guilty plea. Consequently, Chestnut is precluded under rule 2.24(3)(a) from attacking the adequacy of the guilty plea proceedings on appeal. *See State v*. *Worley*, 297 N.W.2d 368, 370 (Iowa 1980).

III. Ineffective assistance of counsel

Chestnut argues in the alternative, that should we find, as we did, that he was adequately informed of his right to file a motion in arrest of judgment, we should find his counsel breached an essential duty in not filing such motion. Failure to file a motion in arrest of judgment does not bar a challenge to a guilty plea if the failure to file the motion resulted from ineffective assistance of counsel. *State v*. *Bearse*, 748 N.W.2d 211, 217 (Iowa 2008). While a challenge to a guilty plea is normally reviewed for corrections of errors at law, when the challenge arises in the context of an ineffective-assistance claim, our standard of review is de novo. *State v*. *Tejeda*, 677 N.W.2d 744, 754 (Iowa 2004).

Chestnut identifies three problems with the plea colloquy undermining the knowing and voluntary fundamentals of entering a plea. He claims (1) he was not advised of the nature of the offenses, (2) he was not thoroughly advised of his right to a jury trial, and (3) there was no inquiry into his citizenship status.

In order to succeed on a claim of ineffective assistance of counsel, Chestnut must prove by a preponderance of evidence that (1) counsel failed to perform an essential duty, and (2) prejudice resulted. *See Strickland v*. *Washington*, 466 U.S. 668, 687 (1984). Ordinarily, we do not decide ineffective-assistance-of-counsel claims on direct appeal. *Tate*, 710 N.W.2d at 240. We

prefer to reserve such questions for postconviction proceedings so the defendant's trial counsel can defend against the charge. *Id.* However, we depart from this preference in cases where the record is adequate to evaluate the appellant's claim. *Id.*

Chestnut's first contention is that the district court failed to specifically advise him of the nature of the offenses to which he pleaded guilty. We apply a substantial compliance standard in assessing whether the trial court has adequately informed the defendant of the nature of the crime. *State v*. *Myers*, 653 N.W.2d 574, 578 (Iowa 2002). It is not required that the district court discuss each element of the crime with a defendant to ascertain his understanding of the nature of the offense. *State v*. *Yarborough*, 536 N.W.2d 493, 496 (Iowa Ct. App. 1995). Lack of explanation of an element of an offense is not reversible error if, under the circumstances, the accused understood the nature of the charge. *State v*. *Victor*, 310 N.W.2d 201, 204 (Iowa 1981). In some situations the name of the offense itself has been held to be sufficiently descriptive. *Id.*

After being informed of the details of the plea agreement, the court lead the following colloquy:

> THE COURT: How do you plead to Count VII, which is Robbery in the Second Degree, in violation of Section 711.3?
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> THE DEFENDANT: Guilty.
>
> THE COURT: And how do you plead to Count IIX, which is neglect of or abandonment of a dependent person in violation of 726.3?
>
> DEFENSE: [sic] Guilty.
>
> THE COURT: Tell me what you did wrong, first of all, with the robbery. Why are you pleading guilty to that?
>
> DEFENSE COUNSEL: Your Honor, the defendant . . . would request that the Court use the minutes of testimony for the factual basis on this charge. . . . [T]here was a theft at Walmart and then there was eluding the police and the police requesting him to

> stop. And there was an assault on an officer who tried to stop Mr. Chestnut. And then the neglect for—there was a child in the car, and this was a chase in the car providing the reckless danger to the child.
>
> THE COURT: Mr. Chestnut, here is a copy of the minutes of testimony. Have you read these over?
>
> THE DEFENDANT: Yes.
>
> . . . .
>
> THE COURT: And you essentially agree with [your attorney's] statement as well?
>
> THE DEFENDANT: Yes.

Chestnut was charged with robbery in the first degree under Iowa Code section 711.2, but pleaded guilty to robbery in the second degree under Iowa Code section 711.3, a lesser included offense of robbery in the first degree. *Compare* Iowa Code § 711.2 ("A person commits robbery in the first degree when, while perpetrating a robbery, the person purposely inflicts or attempt to inflict serious injury, or is armed with a dangerous weapon.") *with* § 711.3 ("All robbery which is not robbery in the first degree is robbery in the second degree."). As set forth above, Chestnut confirmed he had read the trial information and minutes of testimony and agreed the court could rely on such record as the factual basis for his pleas. Moreover, he agreed with his attorney's statements that "there was a theft at Walmart and then there was eluding the police . . . [and] . . . an assault on an officer who tried to stop" Chestnut. This is sufficient to find Chestnut was aware of and understood the nature of the robbery charge to which he was pleading guilty.

We also find the district court substantially complied in determining Chestnut understood the nature of the charge of neglect of a dependent person charge. Chestnut argues that there was no reference to the element of the offense that required proof that he was a parent or someone having custody of

the child. We disagree, as there were multiple references in the minutes of testimony that the three year-old child Chestnut was carrying out of the store and later sitting in his lap behind the wheel as he was fleeing the police, was his daughter. Even after the car chase ended, he agreed that "he had placed his daughter's [sic] lives in harm's way by his actions."

Next, Chestnut argues his plea was involuntary because he was not thoroughly advised of his right to a jury trial. We again apply a substantial compliance test. *See Myers*, 653 N.W.2d at 578 (setting forth standard for substantial compliance in guilty plea context). Chestnut argues the district court failed to advise him of the five factors set forth in *State v*. *Liddell*, 672 N.W.2d 805, 813-14 (Iowa 2003) for valid waiver of a jury trial.[2] However, our supreme court in *Liddell*, narrowed this holding by finding:

> We must point out, however, that these five subjects of inquiry are not "black-letter rules" nor a "checklist" by which all jury-trial waivers must be strictly judged. They merely point towards a knowing, voluntary, and intelligent waiver. The ultimate inquiry remains the same: whether the defendant's waiver is knowing, voluntary, and intelligent. In this respect, the waiver of a jury trial is no different than a guilty plea; the latter, of course, includes a waiver to a jury trial. *See* Iowa R. Crim. P. 2.8(2)(b) (guilty plea is a waiver of right to a jury trial). Just as we noted in *Stallings* that "noncompliance [with a written waiver requirement] will not necessarily invalidate a waiver of the right to trial by jury if the waiver can otherwise be shown to have been entered knowingly, voluntarily, and intelligently," neither is the failure to recite, in prayer-like fashion. . .

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[2] "(1) twelve members of the community compose a jury; (2) the defendant may take part in jury selection; (3) jury verdicts must be unanimous; (4) the court alone decides guilt or innocence if the defendant waive a jury trial; and (5) neither the court nor the prosecutor will reward the defendant for waiving a jury trial."
Liddell, 672 N.W.2d at 813-14.

Id. at 814 (citing *State v*. *Stallings*, 658 N.W.2d 106, 110 (Iowa 2003), *overruled by State v*. *Feregrino*, 756 N.W2d 700, 707 (Iowa 2008) (holding that the fact that the requirements of rule 2.17(1) regarding waiver of jury trials have not been met does not necessarily mean that a violation of the defendant's right to a jury trial—that is a structural error—has in fact occurred)). The State argues that the full jury trial waiver colloquy discussed in *Liddell* does not apply in guilty plea context. *See id.* at 814 n.2 (noting that Iowa Rules of Criminal Procedure set forth different standards for accepting a jury trial waiver and a guilty plea, with guilty pleas having more particularized requirements for substantial compliance). Without determining whether the *Liddell* factors are applicable to guilty pleas, we find that Chestnut was sufficiently advised about the trial rights he would waive by pleading guilty, including the right to a jury trial:

> THE COURT: Do you understand that when you plead guilty, you give up some of your constitutional rights. You're entitled to a speedy and public trial with a jury, and you have the right to be represented by a lawyer all during this case, and if you can't afford the lawyer, one is given to you at state expense. But by pleading guilty, you're admitted your own guilt, you give up your right to a trial, and there is not going to be a trial. Do you understand?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: You have the right to confront all of the state's witnesses against you and to cross-examination them in open court. And if your witnesses wouldn't come to court voluntarily, you could make them come with subpoenas. But by pleading guilty, you are giving up those rights too. Do you understand?
>
> THE DEFENDANT: Yes, sir.

Even if the *Liddell* factors apply, rather than the more particularized requirements of Iowa Rule of Criminal Procedure 2.8(2)(b)(4), this discussion is sufficient to show Chestnut's waiver was knowing, voluntary, and intelligent. Thus we cannot conclude Chestnut's trial counsel breached an essential duty by not filing a

motion in arrest of judgment; his ineffective-assistance of counsel claim must fail. *See State v*. *Buck*, 510 N.W.2d 850, 853-54 (Iowa 1994) (noting where evidence establishes voluntary waiver, trial counsel has no duty to preserve issue for appeal and ineffective-assistance claim fails).

Finally, Chestnut asserts that the district court's failure to inquire into his citizenship status renders his pleas involuntary. There is no question that the district court failed to advise Chestnut that his guilty pleas may have an impact on his status under federal immigration laws. Iowa R. Crim. P. 2.8(2)(b)(3). In the context of a guilty plea, an ineffective-assistance-of-counsel claim is heavily tied to the prejudice prong. *Castro v*. *State*, 795 N.W.2d 789, 793 (Iowa 2011) (explaining that a defendant must show that but for the breach of duty by counsel, the guilty plea would not have been entered.). While we agree with the State, "there is no hint in the record that Chestnut is not a United States citizen," neither is there evidence to the contrary. While the record is sufficient to determine Chestnut's counsel was not ineffective regarding the other issues raised on appeal, there is no evidence in the record regarding Chestnut's citizenship status, and therefore we can only surmise whether Chestnut suffered prejudice by this omission. We therefore must preserve this for post-conviction relief.

IV. Conclusion

Chestnut is barred from directly attacking his guilty plea because he was adequately advised of the consequences of failing to file a motion in arrest of judgment and failed to do so. The record before us is sufficient to determine Chestnut's counsel was not ineffective on any issues raised except the unknown

fact of Chestnut's citizenship status. That claim alone is preserved for possible postconviction relief.

AFFIRMED.