

IN THE COURT OF APPEALS OF IOWA

No. 6-903 / 05-1804
Filed December 13, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES LEON TATE,
Defendant-Appellant.

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

James Tate appeals from his convictions of possession of crack cocaine
with the intent to deliver and failure to affix a drug tax stamp. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert Ranschau,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney
General, William E. Davis, County Attorney, and Kelly Cunningham, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

A jury found the defendant, James Tate, guilty of possession of crack cocaine with the intent to deliver and failure to affix a drug tax stamp. After the district court sentenced him to prison, Tate filed this appeal. He claims his trial counsel was ineffective because he did not file a motion for new trial alleging the jury's verdict was contrary to the weight of the evidence presented at his trial. After reviewing the record and considering the argument presented, we affirm Tate's convictions.

While on routine patrol, Davenport Police Sergeant Kevin Smull saw a vehicle he believed was being driven by Jack Philips, an individual with an active felony arrest warrant. The officer signaled the driver to stop. The driver pulled into an alleyway, swung his car door open, and took off running, allowing his vehicle to roll back into Smull's squad car. Contrary to Sergeant Smull's belief, the driver of the vehicle was not Jack Philips. James Tate was driving the vehicle without a valid driver's license.¹

Smull pursued Tate on foot. He briefly lost sight of Tate, but was directed by a bystander to the area where the defendant was hiding. A search of Tate's person revealed \$297 in cash consisting primarily of twenty-dollar bills. Tate also had two cellular phones in his pocket. Smull retraced the route of his pursuit and located a plastic bag next to a bush near the area where Tate was hiding. The

¹ Tate entered guilty pleas to driving while barred and driving while suspended. His convictions for those offenses have not been challenged on appeal.

plastic bag contained 4.97 grams of crack cocaine.² The crack cocaine was worth \$980, and the plastic bag did not have a tax stamp affixed to it.

The jury heard testimony indicating the amount of cash on Tate's person and the denomination of the bills he was carrying suggested he was dealing drugs.³ The jury was also informed it was not unusual for drug dealers to have two cellular phones.

Tate claims if a motion for new trial had been filed, the district court would have weighed the evidence presented and granted him a new trial. In order to prevail on his claim, Tate must demonstrate that his trial counsel failed to perform an essential duty and prejudice resulted from this omission. *State v. Martin*, 587 N.W.2d 606, 609 (Iowa Ct. App. 1998). We usually preserve ineffective assistance claims for postconviction relief; however, if the record sufficiently presents the issues, we will resolve Tate's claim on direct appeal. *State v. Martens*, 569 N.W.2d 482, 484 (Iowa 1997). We find the record in this case adequate to rule on Tate's ineffective assistance claim. We review Tate's claim de novo. *Collins v. State*, 588 N.W.2d 399, 401 (Iowa 1998).

Iowa Rule of Criminal Procedure 2.24(2)(b)(6) permits the trial court to grant a new trial when the jury's verdict is contrary to law or evidence. A verdict is contrary to evidence when it is contrary to the weight of the evidence. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998).

² Sergeant Smull testified it was raining and misting on the day he apprehended Tate. He said the plastic bag was dry when it was discovered, indicating it had been recently discarded. Smull testified, "It was thrown and either bounced off the house or bounced in the bush. Nobody took the time to hide it."

³ The defendant presented testimony from his sister, Temeshi Tate. She claimed she had borrowed \$300 from her brother and paid him back the morning of the day he was arrested.

Trial courts have been instructed to exercise their discretion in ruling on motions for new trial “carefully and sparingly.” *Id.* The power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. *Id.* When the evidence is such that different minds could reasonably arrive at different conclusions, the district court should not disturb the jury’s findings. *State v. Reeves*, 670 N.W.2d 199, 203 (Iowa 2003). Even if the district court might have rendered a different verdict than the jury, in the face of mere doubts that the verdict is correct, the court must not overturn it. *Id.*

Upon our review of the record, we find no reason to reverse Tate’s convictions or preserve his claim of error for postconviction relief proceedings. The jury heard convincing circumstantial evidence of Tate’s guilt. In addition, the record reveals no basis for concluding the jury ignored any critical piece of evidence in reaching its verdict. We find nothing in this record to suggest that the trial court would have overridden the jury’s verdicts if a motion for new trial had been filed challenging the weight of the evidence.

Tate’s trial attorney was under no obligation to file a meritless motion. See *State v. Rice*, 543 N.W.2d 884, 888 (Iowa 1996). Because trial counsel was not ineffective for failing to file a motion for new trial under the *Ellis* standard, we affirm Tate’s conviction.

AFFIRMED.