

IN THE COURT OF APPEALS OF IOWA

No. 7-483 / 06-1365
Filed August 22, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT CECIL MAJORS, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

Robert C. Majors appeals from the judgment and sentence entered after his conviction for possession of a controlled substance with the intent to deliver, failure to possess a tax stamp, and possession of a controlled substance.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant State Appellate Defender, for appellant.

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

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

Robert C. Majors appeals from the judgment and sentence entered after his conviction for possession of a controlled substance with the intent to deliver, failure to possess a tax stamp, and possession of a controlled substance. We affirm.

After receiving a report that two people were peeping into the windows of a residence in Clive, police officers stopped a white van occupied by two men matching the description of the suspects. Robert Majors was the driver and registered owner of the van, and John Conrad was a passenger in the front seat. Majors gave police officers consent to search the van where officers found sixteen baggies containing a total of approximately 15.81 grams of methamphetamine. Most of the methamphetamine was in an organizer located between the driver's seat and the center console. Majors did not have drug tax stamps for the methamphetamine. Officers also found \$1700 in cash, pipes, a spoon, map, note and a phone book in the van.

Conrad was searched and released at the scene. Majors was arrested and taken to jail where he was searched. Officers found 1.69 grams of methamphetamine on him. Majors talked to a narcotics detective and admitted the drugs, cash and the drug paraphernalia found in the van belonged to him.

Majors consented to a search of his home. Officers found approximately one-half gram of methamphetamine and drug paraphernalia in Majors's bedroom. Majors was charged with possession of a controlled substance with the intent to deliver (more than five grams of methamphetamine), failure to possess a drug tax stamp and possession of a controlled substance.

Jury trial commenced on June 18, 2006. At trial, Majors testified that the drug and drug paraphernalia found in the van belonged to John Conrad, and he lied to the officers at the stop and arrest because he was afraid of Conrad. He admitted the methamphetamine found in his bedroom was his and he bought it from Conrad for personal use. The jury found Majors guilty of all charges. Majors appeals, contending the trial counsel was ineffective for failing to file a motion for a new trial challenging the weight of the evidence.

We review claims of ineffective assistance of counsel *de novo*. *State v. McBride*, 625 N.W.2d 372, 373 (Iowa Ct. App. 2001). Generally, ineffective claims are preserved for post-conviction relief. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). However, claims can be resolved on direct appeal when the record adequately presents the issue. *Id.* The record in this case is adequate for us to decide this issue on direct appeal.

To succeed with a claim of ineffective assistance of counsel, a defendant typically must prove the following two elements: (1) counsel failed to perform an essential duty, and (2) defendant was prejudiced by counsel's error. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). There is a strong presumption that counsel performed within the "wide range of reasonable professional assistance." *Id.* 466 U.S. at 689, 104 S. Ct. at 2065, 80 L. Ed. 2d at 694-95.

Majors argues that in a case such as this where the verdict rests on the credibility of the witness, it is incumbent on the trial counsel to move for a new trial asking the court to assess the weight of the evidence. This argument is mistaken. Counsel has a duty to file the motion only if it has merit. See *State v.*

Hochmuth, 585 N.W.2d 234, 238 (Iowa 1998). In the present case, counsel would not have an obligation to file a motion for new trial if the motion is not warranted by the evidence.

A new trial should be granted only if, after considering both inculpatory and exculpatory evidence, the jury's verdict was contrary to the weight of the evidence. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). The district court should exercise its discretion in ruling on motions for new trial "carefully and sparingly." *Id.* A new trial should be granted only in exceptional cases where the evidence preponderates heavily against the verdict. *Id.* When the evidence is nearly balanced or is such that different minds could fairly 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) (quoting *State v. Oasheim*, 353 N.W.2d 291, 294 (N.D. 1984)).

We do not find evidence in the present case preponderates heavily against the verdict. The amount of drugs and cash found in the van is consistent with drug dealing. After arrest, Majors admitted he had been dealing drugs as a middleman for the past six months and substantiated this admission with details. He told the narcotics detective that he would usually buy approximately three and a half grams to seven grams of methamphetamine at one time. He stated that he had a supplier named D.C. in Omaha to whom he owed \$600 purchase money. Majors claimed at trial that these pretrial statements were false and he lied because he was afraid of Conrad. However, there is no corroborating evidence making this fear credible. Majors also denied the \$1700 were proceeds from drug dealings. He claimed he withdrew the money from his bank account to buy

Valentine's Day gifts for his family. However, he did not provide a bank statement to support his testimony. The evidence supporting Majors's conviction is strong. The trial court would not have abused its broad discretion by denying a motion for new trial. Consequently, Majors has not established that his counsel was ineffective in failing to file a motion for new trial.

AFFIRMED.