

**IN THE COURT OF APPEALS OF IOWA**

No. 7-608 / 06-1867  
Filed October 24, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JOSHUA JAMES JACOBSEN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, James D. Coil and Nathan A. Callahan, District Associate Judges.

Joshua Jacobsen appeals from the district court's denial of his motion to suppress evidence and alleges ineffective assistance of counsel. **REVERSED AND REMANDED.**

Michael M. Pedersen, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brett Schilling, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Police officers mistakenly identified Joshua James Jacobsen as the Jacobsen named in an outstanding warrant. The dispositive question on appeal is whether that mistaken identification was reasonable.

***I. Background Facts and Proceedings***

A convenience store employee called police to report two suspicious men lingering behind the store. Evansdale police officers responded to the call. They found Jacobsen and his friend behind the store by the air pumps. One of the officers asked the men for identification. Both provided their driver's licenses.

The officer radioed the dispatcher to check for outstanding warrants. He testified that he believed he provided the dispatcher with Jacobsen's first, middle, and last name, but he was not sure. He did not provide a birth date, social security number or physical description. The dispatcher responded that there were no outstanding warrants. The officer gave the licenses back to the men and told them to "be on their way."

When the officers returned to the patrol car, the dispatcher informed them there was a warrant on "James Jacobson" or "Joshua Jacobsen." After receiving this information, one of the officers again made contact with Jacobsen and told him about the warrant. Jacobsen denied its existence and asked the officers to check it against his social security number. The officers did not immediately do so.

A search incident to arrest turned up marijuana and methamphetamine. After the arrest and search, officers discovered that the middle name and the birth date on the outstanding warrant were not the same as Jacobsen's.

The State charged Jacobsen with two counts of possession of a controlled substance under Iowa Code section 124.401(5) (2005). Jacobsen moved to suppress the evidence obtained during the search incident to arrest. Following a hearing, the district court denied the motion. Jacobsen waived his right to a jury trial and stipulated to a trial on the minutes of testimony. The district court found Jacobsen guilty of both counts and this appeal followed.

***II. Preservation of Error/Ineffective Assistance of Counsel***

On appeal Jacobsen makes four arguments: (1) “did counsel provide adequate representation (Sixth Amendment) by failing to assert Fourth Amendment analysis of initial encounter,” (2) “whether the trial court erred in allowing officers to arrest defendant before confirming his identity,” (3) “whether the trial court erred in finding defendant guilty on evidence which should have been inadmissible,” and (4) “whether the knowledge of the dispatcher is imputable to officers.” The State argues error was not preserved on the first, third, and fourth issues but concedes error was preserved on the second issue.

Ineffective assistance of counsel claims operate as an exception to the error preservation rules. *State v. Lucas*, 323 N.W.2d 228, 232 (Iowa 1982). At oral arguments, appellate defense counsel indicated that all four issues would need to be reviewed under an ineffective-assistance-of-counsel rubric. His brief, however, frames the second issue in terms of trial court error rather than ineffective assistance, and the State’s concession that error was preserved on that issue is supported by the record. For this reason, we will afford appellate defense counsel the benefit of the doubt as to error preservation on the second

issue and we will not review that issue as an ineffective-assistance-of-counsel claim.

### ***III. Reasonableness of Officer's Misidentification***

Jacobsen contends the district court “err[ed] in finding the officers’ disregard of obvious identification problems to be reasonable.” He maintains his identity “was readily ascertainable” and the officers, therefore, “had a duty to clear up the confusion before making the arrest rather than after.”

The law on arrests based on mistaken identity is as follows. When police officers have probable cause to arrest one person and they reasonably mistake a second person for the first, the arrest of the second person is a valid arrest. *Hill v. California*, 401 U.S. 797, 802, 91 S. Ct. 1106, 1110, 28 L. Ed. 2d 484, 488-89 (1971). “[S]ufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment.” *Hill*, 401 U.S. at 803, 91 S. Ct. at 1111, 28 L. Ed. 2d at 490.

There is no question the police officers had probable cause to arrest the person identified in the warrant. There is also no question that the officers mistook Defendant Jacobsen for the Jacobsen identified in the warrant. The key question is whether that mistake was reasonable. On our de novo review of this constitutional issue, we conclude it was not.

The officers took Jacobsen’s driver’s license to check for outstanding warrants. The license contained his name as well as additional identifying information, as required by Iowa Code section 321.189(2)(a). Nonetheless, the officers only gave the dispatcher Jacobsen’s name. This was unreasonable. See *Simons v. County of Marin*, 682 F. Supp. 1463, 1472 (N.D. Cal. 1987)

(finding reasonableness of mistaken identification was issue of triable fact where “there was little if any reason, other than a superficial congruence of names, to believe that the plaintiff was in fact the man sought by the warrant”); *Commonwealth v. Pinney*, 378 A.2d 293, 295-96 (Pa. 1977) (holding mistake was unreasonable where officers had physical description of person wanted for murder and defendant did not exactly fit description and provided identification showing his name did not match name of wanted person). *Cf. Sanders v. United States*, 339 A.2d 373, 378-79 (D.C. Ct. App. 1975) (holding mistake was reasonable where first and last name matched, descriptions similar, and admission by defendant of corroborating fact); *State v. Payton II*, 401 N.W.2d 219 (Iowa Ct. App. 1986) (holding name, coupled with absence of driver’s license and registration supported finding that officer was acting under reasonable belief that defendant was the person named in warrant); *People v. Gordon*, 723 N.E.2d 1249, 1256 (Ill. App. Ct. 2000) (holding mistake reasonable where name, sex, race, and date of birth either matched or nearly matched warrant); *State v. Bateman*, 99 P.3d 656, 660 (Mont. 2004) (holding mistake was reasonable where defendant was similar age, lived in same area, and had similar physical characteristics as person in warrant and where “the officers quickly sought to verify whether Bateman’s protests regarding mistaken identity were true”); *City of Tulsa v. Clifford*, 787 P.2d 1285, 1286-87 (Okla. Crim. App. 1990) (holding mistake reasonable where defendant was twin brother of person named in warrant; driver’s license check showed no license for defendant, but did show a license for his brother; and passenger in defendant’s car had no knowledge of a twin); *State v. Navanick*, 987 P.2d 1276, 1280 (Utah 1999) (stating mistake was

reasonable where defendant's first and last name and date of birth exactly matched name and date of birth on warrant and there were other circumstances supporting this defendant's arrest).

Even after Jacobsen informed the officers he was not the person identified in the warrant and told them to verify the warrant against his social security number, the officers did not do so, electing instead to proceed with the arrest. Although "aliases and false identifications are not uncommon" in this context, *Hill*, 401 U.S. at 803, 91 S. Ct. at 1110, 28 L. Ed. at 489, one court has aptly stated that, "[s]hould doubt as to the correct identity of the subject of warrant arise, the arresting officer obviously should make immediate reasonable efforts to confirm or deny the applicability of the warrant to the detained individual." *Navanick*, 987 P.2d at 1270 (quoting *Sanders*, 339 A.2d at 379).

Under these circumstances, we conclude the mistaken identification was not reasonable, and the police were not "entitled to do what the law would have allowed them to do" if Jacobsen had been the person identified in the warrant, "that is, to search incident to arrest and to seize evidence of the crime the police had probable cause to believe [the person named in the arrest warrant] had committed." *Hill*, 401 U.S. at 804, 91 S. Ct. at 1111, 28 L. Ed. 2d at 490.

We find it unnecessary to decide or preserve the remaining issues. We reverse the district court's denial of Jacobsen's motion to suppress and remand for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**