

IN THE COURT OF APPEALS OF IOWA

No. 7-842 / 06-2019
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES DAVID SOURWINE,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, John J. Linn,
Judge.

James Sourwine appeals from his conviction for first-degree robbery.

AFFIRMED.

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

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney
General, Patrick C. Jackson, County Attorney, and Tyron Rogers and Jeffrey
Lavalley, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

BAKER, J.

James Sourwine appeals from his conviction for first-degree robbery. We preserve three claims of ineffective assistance of counsel for a possible postconviction relief application and affirm the conviction.

Background Facts and Proceedings.

On April 28, 2006, at approximately 1:00 p.m. two men entered the Style By Design salon in Burlington and demanded money from the register. One of the men carried a pistol and wore a mask and latex gloves. He pointed a gun at the owner's face while she retrieved \$153 in cash from the register. As the two men were leaving, he told the customers and workers to put their hands up and not look at him.

A number of witnesses testified that they observed parts of the robbery. Ranee Koss, who lives near the salon, was outside her house when she saw two men walking toward the salon. The two men then left in a red car, and they were followed by a silver car. Travis Neff, who was driving home around the time of the robbery, saw two people dart in front of his vehicle and then leave in a maroon Buick. He identified the two individuals as Sourwine and Steven Lovell, both of whom he had known for several years. Deb Smutzer, who works across the street from the salon, was walking to lunch when she saw two young men running north. Her suspicions raised, she decided to follow the men in her truck as they got into a red car and left at a high rate of speed. She followed for approximately two miles, but eventually lost sight of them.

Upon investigation, police located a mask and a pair of rubber gloves two blocks from the salon. After these items were turned over to the Department of

Criminal Investigation (DCI) for analysis, it was discovered that DNA on both the mask and the gloves matched Sourwine's profile. DCI determined that the probability an unrelated person would have the same DNA was less than one in one billion. Further investigation led police to Lovell. Lovell later admitted to police that he was involved in the robbery. He claimed that he and Sourwine robbed the salon so they would have money to buy drugs.

Based on this incident, the State charged Sourwine with first-degree robbery, in violation of Iowa Code sections 711.1 and 711.2 (2005). Following a jury trial, Sourwine was found guilty as charged and the court sentenced him to an indeterminate term of imprisonment not to exceed twenty-five years. Sourwine appeals from this conviction.

Claims on Appeal.

On appeal, Sourwine makes four separate claims of error that he believes entitle him to a reversal or new trial. First, he asserts trial counsel was ineffective in not requesting the court to instruct the jury, as a matter of law, that Lovell was an accomplice. Second, he maintains the district court erred in failing to appoint substitute counsel to argue his motion for new trial, which denied him the effective assistance of counsel. Third, he contends the district court erred in denying his motion for new trial. Fourth, he argues counsel was ineffective in failing to question Travis Neff about a prior conviction for making a false report.

Ineffective Assistance of Counsel.

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief

proceedings. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). “[W]e preserve such claims for postconviction relief proceedings, where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant’s claims.” *Biddle*, 652 N.W.2d at 203. In this case, we conclude the record is inadequate to address Sourwine's three claims of ineffective assistance of counsel. Accordingly, we preserve these claims for possible postconviction relief proceedings.

Motion for New Trial.

Sourwine claims the jury’s verdict was contrary to the weight of the evidence, and that the district court should have granted his motion for new trial on this ground. When a defendant argues the trial court erred in denying a motion for new trial based on a claim the verdict is contrary to the weight of the evidence, our standard of review is for abuse of discretion. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). The power of the trial court is much broader in a motion for new trial than a motion for judgment of acquittal. *Id.* at 658. In applying the weight of the evidence standard,

If the court reaches the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, the verdict may be set aside and a new trial granted. The motion [for new trial] is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial on this ground should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict.

Id. at 658-59

Here, one of the robbers, Lovell, testified that Sourwine was the masked gunman. The owner of the salon and others present testified and identified a mask and latex glove as similar to those worn during the robbery. They also testified to the route the robbers took upon exiting the salon. Along that path, police officers found a mask and latex glove that contained Sourwine's DNA. One witness, who knew both Lovell and Sourwine, identified both men as running away from the salon following the robbery.

This is not a case in which the testimony of a witness or witnesses which otherwise supports conviction is so lacking in credibility that the testimony cannot support a guilty verdict. Neither is it a case in which the evidence supporting a guilty verdict is so scanty, or the evidence opposed to a guilty verdict so compelling, that the verdict can be seen as contrary to the evidence. The evidence in this case simply does not preponderate heavily against the verdict. The district court did not err in overruling Sourwine's motion for new trial.

Defendant's Pro Se Arguments.

The defendant has raised a number of issues in a separate brief. He fails to provide the standard of review, note where the issues were preserved, or cite any legal authority for his claims. As a result, we deem these issues waived. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief . . . to cite authority in support of an issue may be deemed waiver of that issue."); Iowa R. App. P. 6.14(1)(f) (requiring a party, for each issue raised, to state how the issue was preserved for review and refer to portions of the record that reveal where the issue was raised and decided by the district court). Even were we to address

these issues, we find each of them to be without merit or preserved for possible postconviction relief proceedings.

Conclusion.

We reject Sourwine's claim the district court erred in refusing to grant his motion for new trial. Therefore, we affirm his conviction of first-degree robbery and preserve his ineffective-assistance-of-counsel claims for possible postconviction relief proceedings.

AFFIRMED.