IN THE COURT OF APPEALS OF IOWA

No. 8-457 / 07-1650
Filed July 16, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN KIBET CHESIRE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

The defendant appeals from his conviction of driving while barred. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel Rothman, Assistant County Attorney, for appellee.

Considered by Miller, P.J., Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

John Kibet Chesire appeals from his conviction of driving while barred in violation of Iowa Code section 321.561 (2005). He contends his trial counsel was ineffective in failing to file a motion to suppress. We review his claim de novo. *State v. Allison,* 576 N.W.2d 371, 373 (Iowa 1998).

In the early morning hours of April 13, 2007, Officer Matthew McCarty observed a vehicle pull into the parking lot of a store that had recently gone out of business. The vehicle proceeded to the back of the store and stopped near a semi trailer. The driver exited the vehicle and walked toward some trees at the south of the lot. The driver then returned to the car, moved it closer to the trailer, exited, and walked back into the wooded area.

McCarty approached the driver of the vehicle, who identified himself as Chesire. McCarty asked what his interest in the trailer was. Chesire informed the officer that he lived in an apartment building on the other side of the trees and that he owned the trailer. He explained that he had parked the car next to the trailer to prevent it from being stolen.

Upon checking Chesire's record, McCarty learned that he was barred from driving as a habitual offender. Chesire was arrested and convicted following a bench trial. He appeals, claiming his counsel was ineffective in failing to file a motion to suppress, challenging McCarty's initial seizure.

To succeed with such a claim, a defendant must prove two elements. *State v. Brooks,* 555 N.W.2d 446, 448 (Iowa 1996). First, he must show that counsel failed to perform an essential duty. *Id.* Second, he must prove he was

prejudiced by counsel's error. *Id.* We can affirm on appeal if either element is lacking. *Id.*

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) (citing *State v. Kinkead*, 570 N.W.2d 97, 103 (Iowa 1997)). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001); *State v. Ceron*, 573 N.W.2d 587, 590 (Iowa 1997). We conclude the record before us is adequate to address Chesire's claim of ineffective assistance on direct appeal.

Chesire contends counsel breached an essential duty in failing to challenge his initial "seizure." He claims McCarty did not have reasonable, articulable suspicion that criminal activity was afoot. *See Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). Because the officer did not seize Chesire, we reject his claim.

A seizure occurs when an officer by means of physical force or show of authority in some way restrains the liberty of a citizen. *Terry*, 392 U.S. at 19 n. 16, 88 S. Ct. at 1879 n. 16, 20 L. Ed. 2d at 905 n. 16; *State v. Johnson*, 395 N.W.2d 661, 664 (Iowa Ct. App. 1986). Not all communications between police officers and citizens involve a seizure. *State v. Pickett*, 573 N.W.2d 245, 247 (Iowa 1997).

> [L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. The person

> approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed.

Id. (quoting *Florida v. Royer*, 460 U.S. 491, 497-98, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229, 236 (1983) (citations omitted)).

Here, McCarty simply asked Chesire to identify himself. With this information, McCarty learned Chesire had been barred from driving. Chesire offers no evidence that he did not voluntarily provide the officer with the information regarding his identity or that the officer stopped him for longer than was reasonably necessary.

Because Chesire was not illegally seized, his trial counsel had no duty to move to suppress the evidence. Accordingly, we affirm.

AFFIRMED.