IN THE COURT OF APPEALS OF IOWA

No. 9-1049 / 09-0462
Filed February 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ISAAC PETTER JACKSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

Isaac Peter Jackson appeals the judgment and sentence entered upon his conviction for first-degree arson. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Fangman, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

Isaac Peter Jackson appeals following the judgment and sentence entered upon his conviction for first-degree arson in violation of Iowa Code sections 712.1(1) and 712.2 (2007). He contends the evidence was insufficient to support the verdict and his trial counsel was ineffective in several respects. Additionally, he raises several pro se issues. Upon our review, we affirm.

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

At about 7:30 p.m. on January 28, 2008, Robin Newell was in the living room of her duplex at 828 Randolph Street in Waterloo, Iowa, when she heard a loud crash of breaking glass coming from the front of the house. When she got up to see what happened, she saw an orange glow of flames in her front room. She ran to the kitchen to retrieve a fire extinguisher, but in her panic she was unable to release the extinguisher from its bracket. She then grabbed some personal items and fled out the back door. She yelled for help to persons standing outside.

One of Newell's neighbors heard the sound of breaking glass and looked outside his window. He saw flames reflecting in the windows across the street and went outside to discover the duplex was on fire. He knew that a family with young children lived in the upstairs unit of the duplex, so he beat on their door until they came out.

Meanwhile, electrician Mark Gardner was finishing up a job in a row house at the corner of Seventh Street and Randolph Street when he saw balls of flame coming up around Newell's duplex. He yelled for his boss, Alan Brase, to call 911. Gardner and Brase saw three young men running from the fire wearing

dark “hoodie” sweatshirts. Though it was dark, Gardner thought he saw two African-American men and one Caucasian man, while Brase thought all three men were African-American. Gardner and Brase watched as the three men ran around the corner to an old blue or green GM sedan parked in the alley behind Randoph Street. Gardner chased after the men while Brase called 911. The three men jumped in the car and hit the gas, but the tires spun on the icy alley. Gardner caught up to the vehicle and memorized its license plate number before the car sped off. Gardner told the number to Brase, who wrote the number in the snow. Gardner and Brase then ran to the duplex to make sure everyone had gotten out safely and to find out what had happened.

After alerting the upstairs family in the duplex to the fire, Howell returned to the front of the duplex. With the help of a police officer who had arrived, Howell kicked in Newell’s front door and sprayed the fire with a garden hose, extinguishing the flames.

Other police officers and fire officials responded to the 911 call after the fire had been extinguished. The duplex was taped off, and evidence was gathered by the police officers and fire officials. They collected several broken glass beer bottles from the porch. In the front yard they found an intact beer bottle filled with gasoline and a cloth wick shoved into the bottle’s neck, known as a Molotov cocktail. They also found a green lighter lying on the sidewalk leading to the house.

Battalion Chief Dave Boeson of the Waterloo Fire Department brought his arson investigation dog to the scene. The dog alerted to the presence of an ignitable liquid at several places inside and outside of the house. From this

evidence, Boeson opined that the fire was intentionally set and that an accelerant was used to start or spread the fire.

An officer spoke with Gardner and Brase about the men they observed running to the car and got the license plate number of the vehicle. Gardner and Brase also showed the officer an empty six-pack beer carton they found in the alley right by where the car had been parked.

At about 7:44 p.m., Officer Jason Chopard ran the license plate number through the department's computer database. The plate was registered to LaTavia Holmes's green Chevy Corsica. Officers went to Holmes's apartment to speak with her. Holmes told the officers that her car had been stolen while she left it running to warm up and that her only set of keys were in the car. The officers then asked Holmes to come to the police station to file a report and give a statement about her vehicle being stolen.

A short time after leaving Holmes's apartment, another officer found Holmes's vehicle parked on the side of the road in the 400 block of Courtland Street. No one was inside and the doors were locked. The car was then towed.

Chopard went back to the station to await Holmes's arrival. When Holmes did not show up, Chopard called her to get her to the station. Holmes arrived at station to give her statement approximately two and a half hours after she was first asked to come to the police station. She again stated that her car had been stolen, but she stated that her car had been taken at 8:15 p.m., which was after police first arrived at her apartment. Chopard asked Holmes about the vehicle's keys, and she again stated that the car had been stolen with her only set of keys inside it.

Investigator Brice Lippert interviewed Holmes again on January 29, 2008, due to the discrepancies in her statements. Lippert believed Holmes was lying based on the discrepancies and Holmes's "stand-offish" attitude, and he urged Holmes to tell the truth. Holmes eventually admitted that she had lied about her car being stolen and stated that she loaned her car to Isaac Jackson, who was a good friend of Holmes's and also the boyfriend of Holmes's best friend, Lucretia Redd. Jackson, who lived with Redd in an apartment below Holmes's apartment, was not a suspect at that time. Holmes's told police that Jackson had borrowed her car earlier in the day for about two hours to go to Cedar Falls. She told police that when Jackson returned, he asked to borrow a lighter and a gas can. She asked Jackson if the car had run out of gas, and he told her "No." He then borrowed her car again. She told police that Andrea Gardner (Andrea) gave Jackson a ride home. She told the police that Jackson told her he and his friends had jumped out of an alley and started throwing cocktail bombs inside an apartment complex. She told the police that Jackson was probably with a white male and a black male. She told police that the only reason she lied about the stolen car was because Jackson told Redd to tell her to report it stolen. Holmes told the investigator that she thought the whole incident was connected to Jackson getting beat up the previous night at a bar. Holmes stated she had seen a gas can in Redd and Jackson's apartment.

Lippert next interviewed Redd, but she was generally uncooperative. She told Lippert that Jackson was in Cedar Falls with Andrea during the incident.

Andrea was then interviewed by Lippert. She stated that she gave Jackson a ride on the night of the incident and that Jackson used his phone after

she picked him up. She told Lippert that Jackson said three or four times to the person on the phone to report the car stolen, in a very serious tone. Andrea told Lippert that she asked Jackson what had happened, and Jackson told her "I did some bullshit."

Investigator Lippert applied for and received a search warrant to search Redd and Jackson's apartment for any items connected to the arson. The warrant was executed, and the dog trained to sniff out accelerants was brought into the apartment. Several items were seized, including Jackson's birth certificate, prior driving citations Jackson had received while driving Holmes's vehicle, a gas can, and a t-shirt and a pair of Fila shoes that the dog indicated contained an accelerant.

Investigators and the arson dog also inspected Holmes's vehicle. The arson dog indicated that ignitable fluids were present in the back seat of Holmes's car. Investigators dusted the vehicle for fingerprints but found none.

Lippert also applied for and received a search warrant for the cell phone records of Holmes, Jackson, Redd, and Andrea. Phone records show that Andrea received a call from Jackson's cell phone at 7:45 p.m. Phone records also show that calls were made from Jackson's cell phone to Redd's cell phone from 7:15 p.m. to about 9 p.m.

Holmes was again interviewed by Lippert on March 8. Holmes told Lippert Jackson had asked her for a light and a gas can before taking her car the last time. She told Lippert that Jackson had been jumped at the bar the night before. She told Lippert that Jackson borrowed her car to buy cigarettes about forty minutes before police showed up.

On October 28, 2008, Jackson was charged by trial information with arson in the first degree in violation of Iowa Code section 712.2. Thereafter, Jackson filed a notice of alibi defense. A jury trial commenced on January 6, 2009. Ultimately, Jackson did not dispute that an arson occurred; he disputed that he committed the crime.

Holmes testified that she was unhappy to be involved in the matter and that she did not want to testify against Jackson because he was a close friend and that she was not a "snitch." She acknowledged she had initially lied to police, but testified she was telling the truth. She testified that she would lie if she thought that she would not get in trouble. She testified that she had pending criminal charges but the State had not offered to dismiss her charges in exchange for her testimony. She testified she initially lied to police about her car being stolen because she was scared. She testified Redd told her to report the car stolen. She testified that after loaning Jackson her car the second time, Jackson called her, before the police officers arrived at her apartment. She testified that she gave the phone to Redd, who was at Holmes's apartment. She testified that when Jackson returned home, Jackson told her that her car had been involved in an arson, specifically that the car had been in an alley, some white male had run after her car, and something about her tires was not right. She testified that Jackson had been involved in a problem at a bar a couple of nights before. She testified that Jackson apologized for getting her involved and that she was not present when the arson occurred. She testified that Jackson gave her the keys back when he returned the second time. She testified that Jackson was not at her apartment for the whole evening on January 28, 2008.

Andrea Gardner testified that Jackson called her on the 28th and asked her for a ride. He asked her to pick him up near a restaurant. When Andrea got to that location, she called him and he told her to pick him up at the intersection of Independence and Lane. She picked up Jackson and another African-American male there. She testified that that the other male was wearing a hooded sweatshirt. She thought Jackson was also wearing a hooded sweatshirt and a pair of Nike shoes. Jackson asked her to take him to his girlfriend's apartment. Andrea testified that Jackson was talking on his cell phone and stated something like "get rid of the car" or "report the car stolen." She testified that Jackson had been in a bar fight the night before the incident and that he had been beat up. She testified that the people who had previously lived in the house where the arson occurred also had some connections to the bar where Jackson had been involved in the fight.

Lippert testified that the corner or Independence and Lane, where Andrea picked up Jackson, was about two blocks from the 400 block of Courtland, where Holmes's car was found. Lippert testified that footprints were found in the snow in the alley where Gardner chased the car, but analysis of the footprints indicated that they did not match Jackson's Fila shoes. However, he testified that at the scene they could not find a set of footprints for two of the persons seen running from the scene, so the fact that Jackson's shoes did not match the print was not significant to him.

Redd testified as Jackson's alibi witness. She testified that Jackson had been in a fight in the bar parking lot the night before the incident. She testified he wore a white t-shirt and Fila tennis shoes to the bar that night, and that he got

beat up very badly in the parking lot. She testified that Jackson was in bed sick all day due to his injuries from the bar fight the day of arson occurred. However, she acknowledged she never told this to the police. She also admitted she told police a couple of times that Jackson was in Cedar Falls just before the incident, but testified she was lying to the police to get out of answering their questions.

The jury found Jackson guilty as charged. Jackson was sentenced to serve a term of imprisonment of up to twenty-five years. Jackson now appeals.

***II. Discussion*.**

On appeal, Jackson contends the evidence was insufficient to support the verdict and his trial counsel was ineffective in several respects. He also raises several pro se issues. We address his arguments in turn.

***A. Substantial Evidence*.**

"We review sufficiency of evidence claims for correction of errors at law." *State v. Johnson*, 770 N.W.2d 814, 819 (Iowa 2009). A jury's guilty verdict will be upheld on appeal unless the record lacks substantial evidence to support the charge. *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). Substantial evidence means evidence that could "convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *State v. Biddie*, 652 N.W.2d 191, 197 (Iowa 2002). In reviewing a challenge to the sufficiency of the evidence supporting a guilty verdict, the court considers all the record evidence in the light most favorable to the State and draws all reasonable inferences in the State's favor. *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005). The court does not pass upon the credibility of witnesses or resolve conflicts in the evidence, as "such matters are for the jury." *Id*. (citation omitted). "A jury is free to believe or

disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive." *Liggins*, 557 N.W.2d at 269. The existence of evidence that might support a different verdict does not negate the existence of substantial evidence sufficient to support the jury's verdict in the case. *State v. Frake*, 450 N.W.2d 817, 818-19 (Iowa 1990).

Jackson ultimately argues that Holmes's testimony was not credible, and the circumstantial evidence relied upon by the State was not entirely consistent with Jackson's guilt. Jackson contends the State therefore failed to prove beyond a reasonable doubt that Jackson committed the arson. We disagree.

Based upon the evidence presented at trial, considering all the record evidence in the light most favorable to the State and drawing all reasonable inferences in the State's favor, a rational jury could conclude that Jackson committed the arson at 828 Randolph Street. The jury heard the testimony of Holmes directly implicating Jackson in the crime. Additionally, the jury heard Andrea's testimony that she picked Jackson up near where Holmes's car was abandoned and that she heard him tell someone on the phone to report the car stolen. As stated above, a witness's credibility is a determination for the jury. *See Liggins*, 557 N.W.2d at 269. Additionally, phone records corroborated Holmes's and Andrea's testimony. The evidence seized from Jackson's apartment linked him to an accelerant like that used in the arson, and accelerants were detected on items of Jackson's clothing by the arson dog. We conclude substantial evidence supports the jury's verdict of arson in the first degree and therefore affirm on this issue.

***B. Ineffective Assistance of Counsel*.**

Jackson next asserts his trial counsel was ineffective for failing to properly challenge the composition of the jury panel. He argues his counsel failed to present evidence of the systematic exclusion of African Americans or the means used by Black Hawk County to create its jury pools. Additionally, he contends his trial counsel failed to raise the claim under the Equal Protection Clause of the United States Constitution. We conduct a de novo review of ineffective assistance of counsel claims. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008).

To establish ineffective assistance of counsel, a defendant must demonstrate by a preponderance of the evidence (1) counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2009). A defendant's inability to prove either prong defeats the claim of ineffective assistance of counsel. *State v. Scalise*, 660 N.W.2d 58, 62 (Iowa 2003). Although we generally preserve ineffective assistance of counsel claims for postconviction proceedings, we consider such claims on direct appeal if the record is sufficient. *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). However, only in rare cases will the trial record alone be sufficient to resolve the claim. *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999). "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Kirchner*, 600 N.W.2d 330, 335 (Iowa Ct. App. 1999) (citing *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978)). "Improvident trial strategy, miscalculated tactics, mistake, carelessness or inexperience do not necessarily amount to ineffective counsel." *State v. Aldape*, 307 N.W.2d 32, 42 (Iowa 1981). In this case, we find

the record is sufficient to address Jackson's ineffective-assistance-of-counsel claims on direct appeal.

1. Sixth Amendment.

"The Supreme Court has noted that the Sixth Amendment entitles a litigant to a jury panel designed to represent a fair cross section of the community." *State v. Watkins*, 463 N.W.2d 411, 414 (Iowa 1990) (citing *Holland v. Illinois*, 493 U.S. 474, 480, 110 S. Ct. 803, 805-06, 107 L. Ed. 2d 905, 914 (1990)). "A systematic exclusion of 'distinct' segments of the community violates this requirement." *Id*. (citing *Duren v. Missouri*, 439 U.S. 357, 364, 99 S. Ct. 664, 668, 58 L. Ed. 2d 579, 586-87 (Iowa 1979)).

A prima facie violation of the Sixth Amendment's fair cross-section requirement must first be established when challenging the composition of a jury panel. *Id*. 463 N.W.2d at 414 (citing *Duren*, 439 U.S. at 364, 99 S. Ct. at 668, 58 L. Ed. 2d at 586-87). Then "the State has the burden of justifying this infringement by showing that the attainment of a fair cross section would be incompatible with a significant state interest." *Id*. (citing *Duren*, 439 U.S. at 368, 99 S. Ct. at 670-71, 58 L. Ed. 2d at 589-90). To make a prima facie case the following must be shown:

> (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Id. (citing *Duren*, 439 U.S. at 364, 99 S. Ct. at 668, 58 L. Ed. 2d at 586-87). In assessing a defendant's prima facie case, a court must consider all relevant

circumstances. *Id*. (citing *Batson v. Kentucky*, 476 U.S. 79, 96, 106 S. Ct. 1712, 1722-23, 90 L. Ed. 2d 69, 88 (1986)). "[T]here is no constitutional requirement that a class be represented in exact proportions to the general population." *Id*. (citing *Hoyt v. Florida*, 368 U.S. 57, 69, 82 S. Ct. 159, 166-67, 7 L. Ed .2d 118, 126 (1961)). In other words, there is "no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population." *Holland*, 493 U.S. at 483, 110 S. Ct. at 808, 107 L. Ed. 2d at 918.

In showing that the jury venire is not fair and reasonable in relation to the number of such persons in the community, a defendant may use statistical evidence to calculate the absolute disparity between the distinctive group reflected in the census and as reflected on the jury. *State v. Fetters*, 562 N.W.2d 770, 777 (Iowa Ct. App. 1997). The disparity can be calculated by "taking the percentage of the distinct group in the population and subtracting from it the percentage of that group represented in the jury panel." *Id*. (citing *United States v. Sanches-Lopez*, 879 F.2d 541, 547 (9th Cir. 1989); *United States v. Rodriguez*, 588 F.2d 1003, 1007 (5th Cir. 1979); *Jones*, 490 N.W.2d at 793)). However, "[a] numerical disparity alone does not violate any of defendant's rights and thus will not support a challenge to the jury selection process utilized." *Id*. (citing *United States v. Garcia*, 991 F.2d 489, 492 (8th Cir. 1993)). "Some deviation is to be expected." *State v. Jones*, 490 N.W.2d 787, 793 (Iowa 1992).

"Only when this deviation becomes substantial is the fair cross-section requirement violated."[1] *Id*.

To make a showing of a systematic exclusion, the defendant "must show the exclusion is 'inherent in the particular jury-selection process.'" *Fetters*, 562 N.W.2d at 777 (citing *Duren*, 439 U.S. at 366, 99 S. Ct. at 669, 58 L. Ed. 2d at 588). Our Iowa Supreme Court has held that the manner of jury venire selection set out in Iowa Code section 607A.22 is proper. *See Jones*, 490 N.W.2d at 794.

Prior to the State's voir dire of the jury panel, Jackson raised an objection to the composition of the jury panel. Jackson argued that minorities were underrepresented on the panel. In support of his motion, Jackson presented testimony of the jury manager for the Black Hawk County District Court. The jury manager testified that prospective jurors are selected from a combined list of registered voters and licensed drivers. She testified that she told the computer system how many names she wanted for the jury pool, and the computer system then selected the names for the jury venire. She testified she generally had the computer system select 125 names for the average jury pool to get a good jury mix for the trial because some potential jurors selected might not be available.

Jackson's counsel also provided documentation that contained census records for the population of Black Hawk County. Jackson's counsel noted that

[1] In the following cases, the Iowa Supreme Court did not find a substantial deviation between minorities in the county and the minorities in the jury venire. *See Thongvanh v. State*, 494 N.W.2d 679, 683 (Iowa 1993) (absolute disparity of .18% was not substantial); *State v. Huffaker*, 493 N.W.2d 832, 833 (Iowa 1992) (2.85% absolute disparity is not a substantial deviation); *Jones*, 490 N.W.2d at 792 (deviation of 1.5% is not a substantial disparity).

Black Hawk County's population in 2000 was 8.1% African American, and that population for the city of Waterloo in the year 2000 was 13.9%.

The district court denied Jackson's objection, explaining:

> The court has had an opportunity to review the jury questionnaires. There were sixty questionnaires that were responded to. Eight persons did not note a race on the questionnaires. Of those that did, there were three African Americans, two Hispanic Americans, one Asian American, and one Native American. That comes to seven people who would be considered as part of a minority class. Given that there were sixty names drawn total, [Jackson's] motion . . . is denied.
>
> The court finds that under *Batson* and the cases that followed in the state of Iowa that a sufficient cross section of persons were given notice to appear today and that there had been no showing of any attempt to exclude . . . any race or any of the minorities.

We agree.

Jackson cannot prove a substantial underrepresentation. Here, the absolute racial disparity was only 2.3% to 3.1% (i.e., the difference between 3/52 or 3/60 and 8.1%). Additionally, Jackson is unable to prove a systematic exclusion, as the testimony of the Black Hawk County jury manager evidences that section 607A.22 was properly followed. *See Jones*, 490 N.W.2d at 794. Based on the supreme court's controlling precedents, Jackson would not have been able to establish a claim. Consequently, we cannot find counsel breached an essential duty in failing to further challenge the racial composition of the jury panel and was thereby ineffective.

2. Equal Protection.

Jackson also contends his trial counsel was ineffective for failing to raise the claim under the Equal Protection Clause of the United States Constitution. The Equal Protection Clause of the Fourteenth Amendment requires that jurors

> should be selected as individuals, on the basis of individual qualifications, and not as members of a race. An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race.

State v. Rhomberg, 516 N.W.2d 803, 805 (Iowa 1994), *overruled on other grounds by State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006), (internal citations and quotations omitted). "[T]o show an equal protection violation, the defendant must show that the procedure in selecting the venire resulted in substantial under representation of the defendant's race or group." *Id*. (citing *Jones*, 490 N.W.2d at 793-94. Because we have already found that Jackson cannot prove a substantial underrepresentation claim, and the supreme court applies the same standards to equal protection, we cannot find Jackson's trial counsel breached an essential duty in failing to challenge the racial composition of the jury panel under the Equal Protection Clause and was thereby ineffective.

***C. Pro Se Issues*.**

Jackson filed a pro se supplemental brief, which sets forth various statements and questions about the evidence. However, Jackson's pro se brief does not set forth any specific arguments or analysis, nor does it contain any citations to authority or the record in support of his statements. Jackson has therefore failed to adequately present his pro se issues for appeal. *See State v. Piper*, 663 N.W.2d 894, 913-14 (Iowa 2003) (concluding the defendant waived consideration of the merits of his claims on appeal which were presented as one-sentence conclusions without analysis).

***III. Conclusion*.**

Because we conclude substantial evidence supports the jury's verdict of arson in the first degree, Jackson's counsel was not ineffective for failing to properly challenge the composition of the jury panel, and Jackson failed to adequately present his pro se issues for appeal, we affirm Jackson's conviction and sentence.

AFFIRMED.