MCKINLEY LUE, Applicant-Appellant, vs. STATE OF IOWA, Respondent-Appellee.

2009 | Cited 0 times | Court of Appeals of Iowa | July 2, 2009

IN THE COURT OF APPEALS OF IOWA

No. 9-421 / 08-1057 Filed July 2, 2009

MCKINLEY LUE, Applicant-Appellant,

vs.

STATE OF IOWA, Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve,

Judge.

Applicant appeals from the district court ruling dismissing his application

for postconviction relief. AFFIRMED.

Steven W. Stickle of Stickle Law Firm, P.L.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney

General, Michael J. Walton, County Attorney, and Kelly G. Cunningham,

Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ. SACKETT, C.J.

g denying

his petition for postconviction relief. Lue claims the district court erred in finding

failing

to object to inadmissible character evidence, (2) failing to object to prior bad acts evidence, and (3) failing to object to overly prejudicial evidence. He also at trial caused prejudice. Lastly, Lue argues the district court should have found ineffective for failing to challenge the sufficiency of the evidence.

I. BACKGROUND. Lue was charged with delivery of crack cocaine in violation of Iowa Code section 124.401(1)(c) (2003). The evidence at trial showed that officers witnessed what they believed to be an open air drug transaction when they saw a man approach a car in the street, appear to exchange something with the driver, place something in his pocket, and then walk away. One set of officers followed the car as it drove away and another set confronted the man who was on foot, later determined to be Dwayne Bennett. Bennett admitted he had just bought crack cocaine from the man in the car. He told officers he made the pu and gave them

The officers tracking the car followed it as it pulled up to a building. The driver left the car running, went into the building, and appeared to come back out and resume driving five to ten minutes later. The officers who arrested Bennett contacted those following the car and confirmed a drug transaction occurred.

The police stopped the car for a traffic violation, and the driver was identified as the applicant, McKinley Lue. Officers located a cell phone in the car. Officers and the phone recovered from

the car rung.

A jury found the applicant guilty of delivery of crack cocaine. We affirmed his conviction in State v. Lue, No. 04-0542 (Iowa Ct. App. February 24, 2005).

The applicant filed a petition for postconviction relief on June 12, 2006, asserting various ineffective-assistance-of-counsel claims. After a trial on the claims, the district court dismissed the petition finding on each claim the applicant either did not prove counsel failed to perform an essential duty, or that any failure caused prejudice.

II. STANDARD OF REVIEW. A denial of postconviction relief is generally reviewed for errors at law. Wemark v. State, 602 N.W.2d 810, 814 (Iowa 1999); McLaughlin v. State, 533 N.W.2d 546, 547 (Iowa 1995). However, when an applicant claims the denial of constitutional rights, we review de novo in light of the totality of the circumstances and the record before the postconviction court. Goosman v. State, 764 N.W.2d 539, 541 (Iowa 2009); Taylor v. State, 752 N.W.2d 24, 27 (Iowa Ct. App. 2008).

To prevail on a claim of ineffective assistance of counsel, an applicant must prove by a preponderance of evidence that the attorney failed to perform an essential duty and the failure caused prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); Anfinson v. State, 758 N.W.2d 496, 499 (Iowa 2008); Millam v. State, 745 N.W.2d 719, 721 (Iowa 2008). If an applicant fails to prove prejudice, we can dispose of the claim

on that ground alone without deciding rmed

deficiently. Ledezma v. State, 626 N.W.2d 134, 142 (Iowa 2001).

III. ANALYSIS. Lue first contends his trial attorney rendered ineffective

assistance by failing to object to testimony indicating Lue was a drug dealer. In

with

respect to the use of nicknames by drug dealers. The officer testified that drug

dealers tend to use fake names when conducting drug transactions and the

police keep track of the nicknames discovered in the course of drug

linked to the nick character evidence. Lue al implied Lue had committed prior bad acts. He asserts the admission of the

testimony regarding the use of nicknames and previous drug transactions was in

violation of Iowa Rule of Evidence 5.404(b). This section provides:

b. Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Iowa R. Evid. 5.404(b). Lue argues even if the testimony was admissible, it was

overly prejudicial and should have been excluded under rule 5.403. 1

The State argues , and

describing previous drug transactions was admissible under rule 5.404(b) to

establish identity and the relationship between Bennett and Lue. It also asserts

even if this evidence was inadmissible, Lue suffered no prejudice.

Upon our de novo review of the record, we agree that this evidence was

admissible under rule 5.404(b) and was not overly prejudicial under rule 5.403.

vital to the case It showed the relationship between

Bennett and Lue and helped prove that Lue knew he was delivering drugs. See

State v. McDaniel, 265 N.W.2d 917, 921 (Iowa 1978). This case is not like State

v. Liggins, 524 N.W.2d 181, 188 (Iowa 1994), where the court deemed prior drug

dealing activity was irrelevant in a trial for murder, sexual abuse, and kidnapping,

and under such circumstances, was unfairly prejudicial. In this case, the

testimony about the previous drug purchases is related to the charge disputed at

trial. to complete the

although other offenses come to light in the process. State v.

Walters, 426 N.W.2d 136, 141 (Iowa 1988) (quoting State v. Fryer, 243 N.W.2d

1 Iowa Rule of Evidence 5.403 states, Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. 1, 6 (Iowa 1976)). The probative value of the testimony is also not substantially

outweighed by the danger of unfair prejudice under rule 5.403. had no duty to object to admissible evidence. See State v. Griffin, 691 N.W.2d

734, 737 (Iowa 2005) .

We have considered Lue conclude that he has

failed to prove he suffered prejudice due to any alleged errors committed by his

trial or appellate counsel. To prove prejudice, Lue must show that absent

is a reasonable possibility that the trial result would have

been different. Strickland, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at

698; Ledezma, 626 N.W.2d at 143. The State presented strong and direct evidence implicating Lue. Multiple officers witnessed the transaction and the buyer, Bennett, immediately admitted that he made a purchase of crack cocaine from the driver of the car. Lue was identified as the driver of the car and the phone number that Bennett called to arrange the purchase linked to a cell phone prejudice due any potential error and his claims of ineffective assistance of counsel fail. His application for postconviction relief was correctly dismissed.

AFFIRMED.