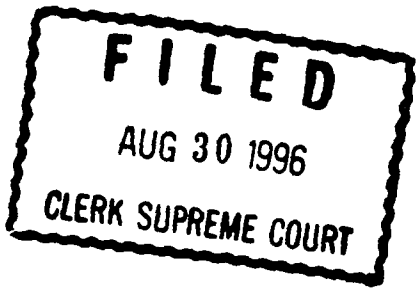
IN THE COURT OF APPEALS OF IOWA

No. 6-322 / 95-1207



STATE OF IOWA,

Appellee,

vs.

DAVID LEVON GRIFFIN, JR.,

Appellant.

Appeal from the Iowa District Court for Scott County, C. H. Pelton, Judge.

David Griffin challenges his conviction of possession of cocaine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Realff H. Ottesen, Assistant County Attorney, for appellee.

Considered by Cady, P.J., and Streit and Vogel, JJ.

VOGEL, J.

The State charged David Levon Griffin, Jr., with possession of crack cocaine with intent to deliver and failure to affix a drug tax stamp. The matter proceeded to a jury trial.

The evidence indicated during the early evening Officer Paul Sikorski, driving an unmarked patrol car, viewed a car driven by Griffin pulling away from a bar with its tires squealing and lights off. A second man was in the front passenger seat and a third man was in the rear seat. Sikorski summoned a marked patrol car driven by Officer John Hutcheson. The marked car caught up with the car driven by Griffin and turned on its lights in an attempt to stop it.

Both Officers Sikorski and Hutcheson saw the man in the back seat bend over as if he were placing something under the front seat. They also saw Griffin and the front seat passenger make motions toward each other and the passenger leaning over as if he were touching the floorboard.

The officers stopped the car and searched both the car and its passengers. They discovered a pill bottle containing sixteen individually wrapped rocks of crack cocaine under the front seat approximately where the toes of the rear seat passenger would have been. Also under the front seat, but more toward the front of the car, they discovered five large individually wrapped rocks of crack cocaine and an electric scale. The cocaine in the five large packages weighed 4.88 grams. The scale was

turned on and operating at the time the officers discovered it. They also found $312 on Griffin's person.

The jury found Griffin guilty as charged. The court entered judgment on the jury's verdict and sentenced Griffin to concurrent terms of up to ten years on the possession with intent to deliver conviction and up to five years on the drug tax stamp conviction.

Griffin appeals.

Griffin's appeal is limited to two separate claims of ineffective assistance of trial counsel. Griffin contends counsel was ineffective for failing to make relevancy objections when the vial of crack cocaine that was found under the passenger seat containing sixteen individually wrapped rocks of crack cocaine was offered into evidence. Griffin argues the evidence was not relevant to his case and its admission was highly prejudicial. Griffin also contends his counsel was ineffective for failing to request appropriate limiting instructions regarding the other crime's evidence admitted during the trial.

In reviewing claims of ineffective assistance of counsel, we review de novo the totality of relevant circumstances. *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987). The burden of proof in such claims rests with the defendant. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

A claim of ineffective assistance of counsel requires a showing that: (1) counsel's performance fell outside the normal range of competency; and (2) the

deficient performance so prejudiced the defendant as to give rise to a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992).

Ineffective assistance of counsel claims which cannot be decided on direct appeal due to an inadequate record may be preserved for possible postconviction relief. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994); *State v. Ueding*, 400 N.W.2d 550, 553 (Iowa 1987). When the trial record alone is insufficient to resolve the claim, the issue should be preserved for postconviction proceedings in order to develop a more complete record. *State v. Rawlings*, 402 N.W.2d 406, 408 (Iowa 1987).

We find the record before us to be insufficient to decide the ineffective assistance of trial counsel claims. Griffin's attorney, as the State suggests, may have had tactical reasons for not objecting to the other crime's evidence and not asking for a limiting instruction. If so, trial counsel should be allowed the opportunity to answer Griffin's claims in postconviction proceedings. *See State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). We affirm Griffin's conviction and preserve the issues of ineffective assistance of counsel for possible postconviction proceedings.

AFFIRMED.