

IN THE COURT OF APPEALS OF IOWA

No. 0-192 / 89-453

FILED

JUL 23 1990

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

667

vs.

RONALD DALE BRAMMER,

Appellant.

Appeal from the Iowa District Court for Union County,
Michael J. Streit, Judge.

The defendant appeals from his conviction, following a
jury trial, for delivery of a controlled substance.

AFFIRMED.

Raymond E. Rogers, State Appellate Defender, and
Andi S. Lipman, Assistant State Appellate Defender, for
appellant.

Thomas J. Miller, Attorney General; Julie Ann Halligan,
Assistant Attorney General; and Timothy R. Kenyon, County
Attorney; for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab,
JJ.

HABHAB, J.

The defendant, Ronald Dale Brammer, appeals his conviction, after a jury trial, for delivery of a controlled substance. Defendant contends he was denied effective assistance because his attorney failed to object to the introduction of a deposition at his trial. We affirm.

On August 6, 1988, Shawn Hamilton, who was then in the Union County Jail, revealed to Sergeant William K. Heatherington of the Creston Police Department that he would cooperate as an informant in a drug purchase in exchange for his early release. An agreement was reached and Hamilton was released. On August 11, 1988, Hamilton arranged the purchase of cocaine from the defendant. The next day he obtained \$550 in marked bills from Sergeant Heatherington. He then located the defendant and paid him in advance for the cocaine.

The defendant told Hamilton to return in two to three hours and meet him at the shelter house at McKinley Lake. During this interval, Sergeant Heatherington and two other law enforcement officers established surveillance in the area. The defendant subsequently arrived in a red Chevrolet Nova which was driven by Bradley Larkin. The defendant told Hamilton to get into the car, and the three men then drove off. When the car stopped at a stop sign, the defendant slid a package to Larkin, and Larkin handed the package to Hamilton. The package, a plastic bag wrapped in tissue paper, contained cocaine.

Both the defendant and Larkin were subsequently charged with selling cocaine. Prior to the defendant's trial, Larkin entered a guilty plea and gave a deposition implicating the defendant. Larkin was subpoenaed to testify at the defendant's trial but failed to appear on January 24, 1989, as required by his subpoena. When contacted by phone, Larkin stated he had car trouble and wasn't sure if he could repair it. Larkin was then informed to appear by 3:00 p.m. that day.

When Larkin failed to appear, the State arranged for Chief Jailer Dave Danielson to drive to Omaha to provide transportation for him. Danielson, however, was unable to locate Larkin. The next day, Larkin again called the county attorney, but refused to reveal his location or phone number. The State then filed a request to introduce Larkin's deposition at trial in lieu of Larkin's personal testimony. No objection was lodged by the defendant concerning the introduction of Larkin's deposition. The appendix reveals that defense counsel on the record stated he had no objection to the use of the deposition (which had been taken at defendant's request). The trial court ruled that the State had made a good faith effort to produce Larkin and would be permitted to introduce his deposition.

The defendant contends his trial attorney rendered ineffective assistance in failing to contest the State's introduction of Larkin's deposition and by failing to at least object to certain portions of the deposition which he

claims were prejudicial to him. Because defendant's claim is of a constitutional dimension, our review is de novo. See State v Hildebrandt, 405 N.W.2d 839, 841 (Iowa 1987). Ineffective assistance of counsel claims are typically reserved for postconviction hearings, but may be determined upon direct appeal when the record adequately presents them. See id. at 840; State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987); State v. Nebinger, 412 N.W.2d 180, 192 (Iowa App. 1987). We find the record in this case to be insufficient for this court to determine the merits of defendant's assertions. In so doing, we are mindful that "[e]ven a lawyer is entitled to his day in court, especially when his professional reputation is impugned." State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). Defendant's trial counsel may well have had good reasons for each inaction which defendant now claims was error. At a postconviction hearing, defendant's trial counsel will be given the opportunity to explain his actions.

AFFIRMED.