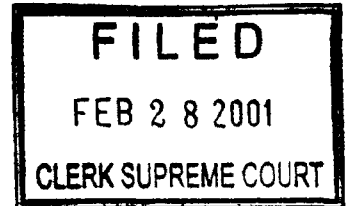


**IN THE COURT OF APPEALS OF IOWA**

No. 0-782 / 99-1864  
Filed February 28, 2001



**STATE OF IOWA,**  
Plaintiff-Appellee,

vs.

**JOSEPH HAROLD WEED,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Jon Fister and James Bauch Judges.

Defendant appeals from his convictions for conspiracy to manufacture a controlled substance, receipt of precursor drugs, and possession of a controlled substance. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen C. Odell, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kim Griffith, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

**HECHT, J.**

On appeal from his convictions for conspiracy to manufacture a controlled substance, receipt of precursor drugs, and possession of a controlled substance, Joseph Weed contends his trial counsel was ineffective in failing to timely file a motion to suppress evidence. We affirm.

**I. Factual Background and Proceedings.** On May 14, 1999, a Black Hawk County deputy stopped a Ford Mustang after observing the driver of the car driving erratically. Tina Boose was the driver of the car, Weed was sitting in the passenger seat, and Timothy Pyle was sitting in the back seat. Pursuant to search of the car, officers found numerous items commonly used to manufacture methamphetamine. During the course of the investigation of the case, officers also located and searched a red Ford Escort. The search revealed several bags containing more paraphernalia used to manufacture methamphetamine, including: syringes, gram scales, snort tubes, spoons, batteries, wire cutters, plastic gloves, and a grinder. The State ultimately charged Weed with conspiracy to manufacture a controlled substance, receipt of precursor drugs, and possession of a controlled substance. He was arrested and jailed.

Before trial, an officer spoke to Weed in jail about releasing the Ford Escort from police impound because the police no longer needed the car. The officer gave Weed a "notice of availability sheet" indicating the car's rightful owner could pick it up. Shortly thereafter, Weed's girlfriend, Rita Northup, contacted the jail and indicated Weed called her and asked to pick up the car. The officer then prepared a permission form to release the car to Northup and asked Weed to sign it, which he did. Northup then took possession of the car

from the police impound lot. This entire process was completed without contacting Weed's trial counsel.

Weed filed a motion to suppress requesting the district court to suppress the permission release form and any communications he had with officers regarding the Ford Escort. The district court granted the motion. The State then filed additional minutes of testimony detailing Northup's testimony concerning her conversations with Weed about the vehicle. Weed's trial counsel did not file a second motion to suppress or a motion to expand the district court's prior ruling suppressing the release form to include Northup's testimony. Trial counsel did, however, make an oral motion after the start of trial to suppress any statements made to Northup by Weed regarding the Ford Escort. The district court initially granted the motion but then later reversed its ruling and denied the motion because it was untimely.<sup>1</sup> The jury returned a guilty verdict on all charges.

**II. Standard of Review.** Our review of constitutional issues is de novo. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000).

**III. Merits.** Weed argues his trial counsel was ineffective for failing to file a motion to suppress Northup's testimony in a timely manner. In order to prevail upon a claim of ineffective assistance of counsel, a defendant must prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). An ineffective assistance of claim will fail if the

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<sup>1</sup> Motions to suppress evidence shall be filed no later than forty days after arraignment. See Iowa R. Crim. P. 10(4), 11(1).

defendant fails to prove either prong. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997).

We conclude Weed cannot prove the prejudice prong of the *Strickland* test stemming from trial counsel's alleged failure to file a timely motion to suppress. The record contains substantial independent evidence proving Weed exercised control of the Ford Escort during the relevant period of time. Nathan Frisch testified he sold the Ford Escort to Weed on May 12, 1998, two days before the car was located and towed to the police impound lot. Frisch indicated Weed approached him about buying a car. After test-driving the car, Weed gave Frisch \$750 but indicated he wanted Pyle's name to be on the title. While Weed and Frisch were in jail together, Weed pressured Frisch to testify Pyle actually purchased the car. In addition, Weed's clothing was found in the Ford Escort along with his identification and papers with his name on them. These items were in the same bag as the various items used in the manufacture of methamphetamine found in the car. Even if trial counsel failed in an essential duty by not filing a motion to suppress Northup's conversations with Weed, there is no prejudice from admission of evidence where substantially the same evidence is elsewhere in the record without objection. See *State v. Wells*, 437 N.W.2d 575, 578 (Iowa 1989). The record clearly shows Weed was the owner of the Escort and exercised control over it at the time it was searched. Weed's claim of ineffective assistance of counsel cannot succeed because he cannot show the requisite prejudice.

**AFFIRMED.**